EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondents**
Ms D Radovic		London Borough of Hammersmith & Fulham

Heard at: London Central Employment Tribunal

On: 7, 8, 9, 10, 11, 14, 15, 16, 17, 21 June 2021 (22 June 2021 in chambers)

Before: Employment Judge Adkin
Mr D Clay
Ms Z Darmas

Representations

For the Claimant: Ms L Millin, Counsel
For the Respondent: Mr S Harding, Counsel

JUDGMENT

(1) The claim of failure to make reasonable adjustments under section 20 – 21 of the Equality Act 2010 ("EqA") succeeds in relation to the failure to grant a permanent desk in the period 12 December 2017 – 26 January 2018.

(2) All other claims are not well founded and are dismissed, specifically the following claims:

a. Direct disability discrimination (section 13) EqA;

b. Discrimination Arising from Disability (s. 15 EqA);

c. Harassment (s.26 EqA);

d. Victimisation (s.27 EqA);

e. Remaining claims of failure to make reasonable adjustments.

REASONS

Restricted Reporting Order

1. A **Restricted Reporting Order** was made on 8 June 2021 pursuant section 12 of the Employment Tribunals Act 1996 and rules 50(1) and (3)(d) of the Employment Tribunals Rules of Procedure 2013, which **PROHIBITS** the publication in Great Britain, in respect of these proceedings, of the Claimant's medical conditions as set out in that Order. The Order remains in force until both liability and remedy have been determined in the proceedings unless revoked earlier.

Procedural matters

2. This hearing was a fully remote hearing using video (CVP) technology. The Tribunal panel, representatives, parties and witnesses all joined remotely from separate places by video.

3. The Claimant's Counsel made applications to strike out the response on the first day of the hearing and renewed on the final day of the hearing arising out of inadequacies in disclosure and the preparation of the bundle. She was at pains not to criticise Mr Harding who had done his best to work around those inadequacies. For reasons given orally those applications were refused.

4. The Tribunal took frequent breaks in part as an adjustment to assist the Claimant.

The Claim

5. The Claimant presented four claims:

   5.1. Claim 1 (2207624/17) presented on 6 November 2017 was part withdrawn and dismissed. This claim was found at a Preliminary Hearing on 30 May 2018 to be out of time.

   5.2. Claim 2 (2208169/2017) was presented on 20 December 2017. Permission to amend this claim was granted on 14 February 2018.

   5.3. Claim 3 (2205816/2018) presented in 2019 in relation to equal pay was withdrawn.

   5.4. Claim 4 (2201301/2019) presented on 10 April 2019.

6. Our conclusions below follow the structure of the agreed list of issues.

Findings of fact

Earlier claim

7. The Respondent invited us to consider the findings of an earlier Tribunal claim involving the Claimant in particular relating to the Claimant's conduct in that employment with a different employer. We did not find that this assisted us. We have instead made findings based on the evidence we have received in relation to the Claimant's employment with the Respondent.

Background

8. On 13 March 2017 the Claimant commenced employment working as a Major Works Officer in the Respondent's Leasehold Services Team.

9. In the Claimant's job application she stated that she did not consider herself disabled and that she did not require any particular requirements in order to attend the job interview. She says that this was to avoid discrimination. As part of the recruitment process in separate document entitled "Employee Self Classification Form" the Claimant ticked "Prefer not to say" under the heading of "Disability" to 8 February 2017.

Underpayment dispute

10. On 22 August 2017 in a one to one meeting Mr Maguire the Claimant's line manager spoke to her about a claim she was proposing to bring about an alleged underpayment of pay. The Tribunal accepted his evidence that Mr Maguire initially believed that this matter had already been resolved earlier in the year and at this meeting he did no more than try to see if he could "break the impasse". He understood the sum in dispute to be approximately £400. The Claimant told him it wasn't a matter for him to become involved in.

Annual leave request

11. In September 2017 the Claimant says that Mr Maguire and second line manager Ms Du Preez did not allow her to take annual leave. We accept Mr Maguire's evidence that they generally do not allow annual leave immediately after annual estimates or final accounts have gone out as this is a busy period. This happens at the end of March and the end of in September respectively each year.

Office move & hot-desking

12. The genesis of the eventual breakdown in relationship between the Claimant and her manager Mr Maguire was an office move for the team from third floor of a block at 145 King Street in Hammersmith, which comprises Council offices fronting the main street, to the third floor of the Town Hall Extension. Part of the plan for the move is that the team would "hot desk", meaning that individual employees would not have allocated desks but would be required to leave desks clear and take desks on a first-come basis in the morning. The Respondent planned that there would be more opportunities for employees to work from home.

13. In fact there were 15 affected employees and 17 desks. Taking account of homeworking and annual leave it would follow that that there would ordinarily be sufficient desks.

September 2017 meeting

14. The Claimant met with Mr Maguire in September 2017. She told him that she needed a fixed desk and advised him that she had previously left a job at Notting Hill Housing Association because they had moved to a hot-desking environment. He explained that he understood that most people preferred a fixed desk, but that he did not anticipate this to be a problem for her as she reached the office at 7.30am. Given this early start she would have the pick of the desks.

15. The Claimant said this was not enough and she needed a fixed desk. Mr Maguire understood that other colleagues wanted a fixed desk, and asked her to explain why she needed a fixed desk. She said she was uncomfortable disclosing this. He therefore suggested referring her to the Occupational Health unit ("OH" or "OHU") for some specific guidance. She agreed to this and attended Occupational Health on 5 October 2017.

16. We accept that at this stage Mr Maguire had no idea that the Claimant suffered from nocturia and that it was not a condition he had ever heard of.

First claim

17. On 24 September 2017 the Claimant presented her first claim to the Employment Tribunal. This was rejected in September 2017 and resubmitted in November 2017. The substance of this claim was for "breach of contract, unpaid money, direct and indirect discrimination". Although it refers to discrimination and the Equality Act it is unclear that the Claimant was relying on any protected characteristic. The basis of the claim seem to be that she was treated less favourably than someone whose employment started the month before she did in March 2017. This does not seem to correspond to a claim under the Equality Act that the Tribunal recognises. In any event it was subsequently withdrawn.

18. The claim of unfair deductions from wages did not proceed because it was found to be out of time on 30 May 2018.

Meeting with Hannah Ogunbayo

19. On 27 September 2017 the Claimant met with Hannah Ogunbayo, an HR consultant. They discussed why the Claimant was seeking a permanent desk. The Claimant explained that she had history of various medical conditions and raised the concern that a hot desking policy would not help her manage her wellbeing. The Claimant says that Ms Ogunbayo told her that any recommendations made by the OHU would have to be adhered to.

Anxiety about the move

20. At was at around this time that the Claimant began to experience elevated stress levels, what she describes as anxiety attacks and nervousness, which were all brought on by the proposed relocation and proposed hot-desking policy. She says that felt that there was increased hostility on part of Mr Maguire and Ms Du Preez. The Tribunal finds that was genuinely her perception at that time, but we are not satisfied based on the evidence that in fact they were treating her in a hostile way.

21. The Claimant at around this time sought help from 'Back on Track' and 'Mental Health Matters' – two NHS services.

22. At some time in late September or early October the Claimant approached Mr Maguire about working from home once a week or working condensed hours on a temporary basis so that she could access counselling due to very limited availability outside of conventional working hours.

23. Mr Maguire told the Claimant to read the flexible working policies and to submit a formal application.

24. Unfortunately the Claimant did not put in an application. It seems that she was concerned that the application might not be granted and she felt uncomfortable about revealing details of her medical conditions in circumstances where her belief was that it was her line manager was causing harm to her mental and physical health. Again we accept that this was her perception and the reason that she did not pursue this application. We do not find that at this time Mr Maguire was harming her mental or physical health, nor do we think that he would have appreciated that the Claimant had reached such an impasse since she was extremely reluctant to discuss health matters with him.

OH report 5 October 2017

25. On 5 October 2017 the Claimant attended a face-to-face consultation with Stella Sadza an Occupational Health Advisor. It is worth noting that the Occupational Health Unit produces documents with a Hammersmith & Fulham logo and the address is Room 31, Ground Floor, Hammersmith Town Hall, Kings Street. Leaving aside the precise employment status of the individuals working in this Unit, it appears to operate under the auspices of the Respondent rather than being an externally provided service. In any event the OH staff are agents or employees of the Respondent.

26. Ms Sadza wrote in a report addressed to Mr Maguire dated 5 October 2017:

> "As you are aware, Daria has expressed anxiety about the forthcoming move to a different building where there is going to be hot-desking. Daria states that she has some medical conditions which will be aggravated by hot desking and that she is not prepared to compromise her health. I have requested her to obtain medical evidence from her GP to assist asked to make an informed advice to Management. She has assured me to

obtain and submit the documents/information at her earliest possible convenience to the OHU. She states that she is on annual leave till 02/11/2017. She states that she is managing one of the conditions by taking medication.

With regard to your concerns and advice:

1) She states that there are adjustments and additional equipment already in place and in my opinion, she will benefit from continued support as this is serving the purpose.

2) Daria would benefit from a worksta[t]ion assessment on her return from leave.

3) In my opinion, Management will be advised accordingly forward in supporting her when OHU these in receipt of documents/information from her GP.

4) …

27. On 12 October 2017 Claimant's GP wrote a letter to OHU as follows:

"To Whom It May Concern:

The above named is a patient of mine. She has a past medical history of work related stress which is being exacerbated by the implantation [*sic*] of a 'hot desking' policy work. She has **significant worries** regarding: hygiene of sharing equipment and the lack of natural light she would have with the constant moving of desks. She has concerns regarding pain in her neck and lower back which would be exacerbated by changing chairs and screens. She is known to have os[te]ocondromas which may be causing her some of the musculoskeletal problems. To compound her concerns she suffers with hearing issues in the left ear which I have referred her for audiological assessment.

She has several medical reasons that make 'hot desking' unsuitable. Notably: musculoskeletal, audiological, migranous and her **anxiety**. She would certainly suffer without a fixed station to work out. The fixed station allows her to minimise her musculoskeletal risk, her **anxiety** and her audiological conditions. This would allow her to remain productive."

(emphasis added)

28. In a follow-up report dated 17 October 2017 Ms Sadza confirms that she has received the GP report dated 12 October 2017. She concurs with the recommendations and feels that OH needs to carry out a workstation assessment.

Meeting 11 October 2017

29. On 11 October 2017 there was a general section meeting. At this meeting Kath Corbett, Director for Finance and Resources, had a slot to talk about the pending move, and the proposal to move to hot desking.

30. In this general meeting the Claimant, through comments and questions presented a critique of hot desking based on a significant amount of research. The Claimant did not hold back in expressing her disapproval of hot desking in a very direct manner. We accept Mr Maguire's evidence that the Claimant's questions came across as aggressive and that it created a very frosty atmosphere.

31. We accept the Claimant's evidence that a colleague told her she was "brave". The Claimant appears to have interpreted this straightforwardly as a compliment. We find that the meaning was likely more nuanced, i.e. while it might have been courageous to voice her opinions honestly in this forum her colleague recognised that it might be politically unwise to have challenged decisions of senior managers in such a direct and public way.

32. Following this meeting on the same day the Claimant alleges that Mr Maguire was highly critical of her. We find that she asked him if her questioning of Ms Corbet was going to cause "issues" for her and that he replied in moderate terms that he found her line of questioning "confrontational". He knew that she was anxious about the move. She told him that she believed Ms Corbett was a bully and was behaving in a high-handed. We accept that he, probably correctly, perceived that the Claimant feared that the decision to move to hot desking was a *fait accompli*.

Office move

33. On 13 October 2017 the Claimant went on annual leave.

34. On 23 Oct 2017 the office move took place. The Claimant contends that Mr Maguire "out of vindictiveness discarded all my office equipment". We do not accept that this is what happened. The Claimant put her own equipment into a crate. Mr Maguire confirmed to the Claimant in an email on 1 November that her box was beside his desk. We are not satisfied that Mr Maguire did anything vindictive with regard to equipment.

Claimant's return to the office after annual leave

35. On 1 November 2017 the Claimant, who was on her final day of annual leave, emailed Mr Maguire from the airport suggesting that Mr Maguire had agreed to email or text her about the move and her desk, asking about allocation of desks, expressing a preference to be with other MW (i.e. major works) officers, asking about the crate containing her stuff. She also asks about the occupational health advice from two weeks earlier in which the advisor stated that Mr Maguire agreed with the findings of the GP that hot-desking was not a suitable environment for her, in response to which Mr Maguire had asked for some clarifications.

36. Mr Maguire replied a couple of hours later saying that the team was all slightly fragmented at present, attaching a floor plan, saying that he and a colleague Sam were working from home the following days and that she could sit either desk and then thereafter she could choose where she sat. He was holding onto a particular desk because there was a chair next to him which was useful for short meetings. But then he reiterated that it was "first come first served", and that the team would firm up the working from home arrangements.

37. As to the OH recommendation regarding a permanent desk, Mr Maguire pointed out that the OH adviser advised that she would need to sort out a Workstation Assessment before she could give a definitive recommendation. He said therefore that they would arrange that once she was back in the office. He signed off in a friendly way "Everyone in the team says hi? We'll see you tomorrow."

38. On 2 November 2017 the Claimant returned to work to the new office at 7.15am. She found an area that she thought was the right place from memory, although she realised later it was for a different team. She said she could not find a desk that was free from any clutter. She took photographs of the cluttered desks, and was critical of what she saw her in witness statement. The Tribunal is not particularly surprised that the office was somewhat cluttered at this stage, given that this was only a week after the move and the new system had not yet bedded in.

39. The Claimant was directed to sit at Mr Maguire's desk by a colleague a few minutes later. While there she received a text from Mr Maguire, who was working from home, suggesting that she should sit at Fira's desk:

> "Morning Daria, sit at Fira's desk if you want? Simon can point you towards it and we have it for the next two days. Hopefully we'll be able to arrange something a bit more longer-term there."

40. The Claimant did not recognise Fira's name or know where that desk was had what she describes as a panic attack:

> "I had a sudden and complete meltdown – I collapsed on the floor and started gasping for air behind a pillar where I could no longer see Simon. I did not want him to see me in that state. I became dizzy and nauseous, I felt an uncontrollable urge to close my eyes and pass out. The pressure to the chest was immensely heavy, it felt like a tonne of bricks fell on me, this made breathing sharp and shallow. I was certain I was having a heart attack and the only thing that was going through my mind was "This is all your fault". My legs were tingling and hands felt numb. I was hot and sweaty and this tingling sensation just would not go away."

41. The Claimant then sat down and wrote an email to Mr Maguire to say that she was taking sick leave.

> "Morning Ciaran

> l write to let you know that I'm going home now as I've just had another panic attack when I got to work this morning at 7:15. The place is a mess and I am absolutely unable to find a desk which is free from documents, files, teas and other clutter although you told me yesterday in an email that I can sit wherever I like since I arrive early. This is hardly true and your own screen is so small that I'm struggling to type this. Plus, a cleaner is still vacuuming.
>
> I'll forward the sick note from my GP as soon as practicable. Please contact me only when a permanent desk has been found as I politely, though medically needed, refuse to return to work until suitable working conditions have been arranged for me, for which I have provided medical evidence and 2.5 weeks of my absence was long enough to deal with this present, this very lax and slow-motion progress is causing a huge detriment to my mental and physical health, which will in turn affect my performance, and I simply cannot and will not let that happen given that I've been very cooperative all this time."

42. The Claimant did not return to work until 16 November 2017. She says that she had to seek emergency counselling from Back on Track and Mental Health.

43. On 3 November 2017 there was a meeting described in the minutes as "Hot-Desking Review Meeting"at which the Claimant and Mr Maguire attended together with Hannah Ogunbayo, HR Consultant and Anne Donovan-Hill, Head of the Occupational Health Unit (OHU). The notes of that meeting record that the review had been convened because of the Claimant's concerns around hot-desking. It was noted that

> "The hot-desking proposal appeared to cause DR (Claimant) a considerable amount of anxiety. She met with CM in September to advise that she had significant reservations about the prospect and would like a set base when the move happened."

44. The meeting then went through something of the history, including the fact that the Claimant was reticent to explain the reason why she needed a permanent desk. She asserted that she fell under the Equality Act, which Mr Maguire said was the first time this had been raised.

45. Mr Maguire suggested a particular desk to try to break the impasse. The Claimant that she did not want desk. She said she would prefer to be the end of a bank beside an aisle. She suggested a spot where a colleague Duncan had been sitting. Mr Maguire confirmed that could be arranged. Ms Donovan-Hill suggested that Posturite, experts in workplace assessment should come into do an assessment and make recommendations for appropriate adjustments. Mr Maguire undertook to schedule this for the earliest possible juncture, on 17 November and ideally before 9am, but subject to their availability.

8 & 14 November 2017 emails to HR

46. On 8 November 2017 the Claimant wrote to Ms Ogunbayo regarding a floor plan emailed to her some 3 months earlier. She said that not every desk was suitable for her medical needs.

47. She wrote that members of her team shared a view that desk 94 was most suitable for her, which she agreed with. Unfortunately Mr Maguire was sitting at this desk.

48. She mentioned that she had had a second panic attack about the inevitability of hot desking.

49. She also wrote that she had decided to involve ACAS, who had advised her that there were reasons to bring a grievance and said that she could not trust her employer especially Mr Maguire. She said all of this was unavoidable and could have been handled with much more discretion.

50. On 14 November 2017 the Claimant raised a number of questions and made a number of requests. She described having had a "horrendous experience which I can't envisage a quick end to". This seems to be a reaction to the hot desking policy.

51. She complained that pretty much everyone in the department has sat in exactly the same spot since 30 October, and that some had simply adopted a desk, as had her manager Mr Maguire. She said the effect of this was that she and a few others who tried to adhere to the policy had to move around and faced a dilemma about whether to move the stuff left by those who were not properly hot desking.

52. She complained about the Town Hall Extension not having toilet facilities for female employees on each floor, by contrast with there being male toilet facilities on each floor. She went on:

> "Stella was fully made aware of one of my chronic conditions (directly linked to this issue) for which there is no cure – this was also confirmed by my GP – but now I found myself in worse working conditions, where managing my symptoms will be significantly challenged."
>
> "the policy doesn't mention anywhere if there are any provisions for the employees who qualify for a disability protection under the Equality Act and cannot hot desk? Doesn't this raise concerns about direct disability discrimination?"

53. She complained about a wide range of other things including departmental politics, the layout of the building leading to smells and odours spreading, lack of bacterial wipes, blockage of fire escapes, slow responses from another department. She requested a move back to the old office where the "working conditions and facilities are better suited to fit around my medical needs".

54. There were additionally a variety of queries, including about condensed hours, and the policy which she is concerned is not in line with the Working Time Regulations.

55. In the final paragraph she wrote “I politely ask you not to disclose this email to my manager as I want to exercise my right to confidentiality”.

17 November 2017 – workstation assessment

56. On 17 November 2017 a workstation assessment was arranged for the Claimant. Mr Maguire spoke to Steele McInnes, the representative from Posturite who would be carrying out the assessment beforehand and explained that the Claimant was anxious about having the assessment in front of others. He suggested that some of the assessment be carried out, where practicable, in a private room.

57. Unfortunately the Claimant refused to engage with the assessment and Mr McInnes left the floor. Mr McInnes spoke to Mr Maguire and was agitated. He described Daria’s energy as extremely negative and said that in spite of his efforts, she had refused to engage in the process.

Return to Work Meeting

58. Following on from the abortive assessment, Mr Maguire held a return to work meeting with the Claimant the same morning. Mr Maguire covertly recorded the conversation he had with the Claimant, without her consent, which we find is surprising and far from being good management practice. We infer this was done because Mr Maguire was finding the Claimant increasingly difficult to manage. As a result of this there is a very detailed note of the meeting, although we should note that the Claimant queries the accuracy.

59. The Claimant told Mr Maguire that she was finding the conversation extremely distressing. She said that her stress levels were elevated, her blood pressure was well beyond healthy levels and she felt violently sick. Mr Maguire asked her whether this was the circumstances of the return to work interview whether there was something bigger at play. She said she had no answer to this.

60. Mr Maguire tried to summarise the current position and acknowledged that the Claimant had been off for two weeks and the cause was the move to a hot-desking environment.

61. There was a decision about the impasse i.e. occupational health recommending a workstation assessment, and until they had that would not give guidance allocating the Claimant a specific desk. Occupational health would not comment until there had been a workstation assessment. The Claimant felt that she did not need a workstation assessment as this was something she had done for herself for the past 20 years.

62. As to what had occurred on the day that the Claimant return to work on 3 November the Claimant explained that she had a panic attack. She told him that she thought there was an understanding that he would update her by text

or email with her new dislocation, but he did not do that. She explained her concern about the fact that people were essentially reserving their areas with personal items such as mugs or a picture of a dog. She said the thing that had precipitated the panic attack was when Mr Maguire sent her an email suggesting that she sit at the desk of someone whose name she did not even recognise. Mr Maguire explained that he was just trying to give her more choices, but was not trying to compel her to move.

63. The Claimant said that she had sat at that desk until another colleague had told her that that's where someone in particular sat, so she felt she was taking over. She said that there was no resolution and she couldn't cope with this. Mr Maguire replied that there was no resolution because he had been given no guidance. He reiterated that the Claimant had decided not to tell him what her specific needs were and although she did not have to, it would help him to make adjustments if he knew what they were. In the absence of that they had agreed that OH would give that guidance and they had not, but rather they had deferred to a workstation assessment.

64. Mr Maguire said he recognised that everyone liked to have their own desk but he had to have "something to work with". He commented that OH not provided an opinion either. He had scheduled the workstation assessment for the earliest possible juncture.

65. As to the conversation with Posturite that morning the Claimant said it was okay but that she found the whole episode to be a "cheap ploy". It is unclear precisely what she meant by this, given that Mr Maguire was doing nothing more than follow an OH recommendation that there be a workplace assessment.

66. She said that what she needed significantly exceeded what OH had led Mr Maguire to believe. A comfortable workstation was the least of her worries. What she needed was something completely different, that Posturite could not deliver. She said she could not countenance having an assessment in full view of everyone else.

67. Mr Maguire asked whether the stress was about a fixed desk or more than that. The Claimant said it was more than that. He replied that he thought from previous discussions it was just about the fixed place of work. The Claimant said that this had changed when she came over to view the building. She had identified some very significant problems that would directly affect her health and had an incurable chronic condition (unspecified) that could only be managed.

68. Mr Maguire asked what the solution was. He said that he had earmarked a particular desk he assumed would be suitable. The Claimant had picked another desk. Although he did not understand why, he had agreed that but it currently lay empty in the absence of the Claimant.

69. The Claimant said that the building lacked basic facilities which made the management of symptoms challenging. She said she was going to put it in writing that she would like to be re-sited to the old building.

70. Mr Maguire said that given that she appeared to prefer being part of the team how would she cope with sitting in a different building. The Claimant admitted that this would lead to "gradual alienation". She said that the team work best when they were physically close to one another.

71. Mr Maguire moved the conversation on to talk about working from home. He asked whether it would alleviate the problem if the Claimant worked one day a week from home. He pointed out that with the lack of disclosure from the Claimant he was having to "work blind". The Claimant said that's why she felt conversation would not yield anything tangible or meaningful. With regard to working from home she said it would potentially give her access to external help to manage her needs but she would still have to come in four days a week and had "daily needs". Without explaining what these were by implication these were not being satisfied.

72. The Claimant returned to the question of the workstation assessment. She said that having someone coming in externally made have uncomfortable unexposed. Mr Maguire explained that the head of OH had explained that anything beyond the basic required Posturite who were specialist in the field. The Claimant said this was fine but it was the public nature of the assessment that that was the issue. She agreed that it would probably assist if there was an assessment at 8.30am but then went on to say that the whole attempt to address her concerns was "very shallow and dishonest". We find in view of her reluctance to disclose material matters about her health and Mr Maguire's attempts to resolve the matter this was rather unfair to him.

73. Mr Maguire explained that a workplace does need to make reasonable adjustments and balance is to make sure the adjustments were in place to allow the Claimant to perform function.

74. The Claimant reiterated that a comfortable chair and a suitable screen were "totally insignificant". She felt that Mr Maguire was just doing things by the book rather than addressing her "urgent needs", which would simply prolong her distress. She said her anxiety would not be managed and she would have difficulty managing her physical needs. She said that she did not need the assessor to tell her how to sit. She needed a solution that would fit around her medical needs and she felt this was going nowhere because Mr Maguire didn't know what those needs were.

75. Mr Maguire replied that there was an inherent difficulty for him because the Claimant had not revealed what the needs were. They had agreed to use OH. He commented that the guidance was opaque and focus on the workstation while than the wider facilities. The Claimant said that it was not just the fixed desk and it was significantly more than that. She said she felt vulnerable. The environment she said did not feel sufficiently safe.

76. Mr Maguire asked what made the Claimant feel unsafe or threatened. He asked her to meet him halfway otherwise it made his job more difficult.

77. The Claimant went on to say that she would feel more upset if she stayed at home. A fixed desk would allow her to move on with her life although it was

not ideal. Mr Maguire asked if a fixed desk, if applied at an earlier point was the solution given that she had alluded to larger problems about the building. The Claimant said that these points concerned her equally and she wasn't sure she was going to cope long-term.

78. She went on to say that she didn't need Posturite to return and would like either OH or Mr Maguire himself to do an assessment.

79. The Claimant confirmed that she felt well enough to stay. Mr Maguire made it clear that his preference was for her to stay because the longer someone is away the more difficult it becomes for them to return.

80. The Tribunal acknowledges that Mr Maguire was being put in a difficult situation as the Claimant was deliberately concealing information from him.

Record of 17 November

81. Mr Maguire wrote to the Claimant at 7:18 that evening with a note of the meeting, checking whether she thought it was accurate. She said "not entirely. It catches the core but I recall some details differently." This led to an exchange in which Mr Maguire corresponded professionally and appropriately in the judgement of the tribunal. This exchange culminated in a rude and disrespectful email from the Claimant dated 24 November, including the following:

> "No, this is not what I had in mind… … It's disconcerting to realise that you remain so disengaged because this attempt at truthful reporting is not supported by facts in quite a few instances. I can only deduce that you're not listening because you don't want to.
>
> I'm honestly not optimistic that there's a happy or speedy resolution to this. I'm asking you politely to take yourself out of the equation so that I can pursue it with HR, OHU and ACAS. I'd prefer, if possible, not to have any more meetings with you on this subject. If you need to produce this report for someone else, I propose that you use the previous version with my commentary and we can draw a line at that."

Grievance 28.11.17

82. On 28 November 2017 the Claimant raised a grievance to Hannah Ogunbayo regarding hot desking and reasonable adjustments with HR in the following terms:

> 1. My email of 14 Nov in which I raised a number of questions and made a number of requests remains outstanding. It's been 10 working days since then and I haven't even received an acknowledgment that it's been received or that it's being looked into. I'm asking that I receive a detailed response.

2. The council has knowingly failed in its duty of care towards me given that **the employer was informed as early as 5 Oct of the details of my medical needs, and why hot-desking is an unsuitable working environment for me. I believe I am protected under the Equality Act on grounds of disability**.

3. The council has knowingly refused to make reasonable adjustments at work having received two OHU reports (5 Oct and 17 Oct) and my GP report (12 Oct).

4. I have suffered a negligent injury to health as a result of a lax and irresponsible attitude of my line manager despite the fact that there was plenty of time to make reasonable adjustments (2 Nov).

5. This could highly likely be discrimination on grounds of disability.

6. I haven't received to date a written confirmation that a fixed working station has been allocated to me.

7. The enforcement of the WSA [workstation assessment] is unreasonable and bullying in nature because it cannot be justified as a conditional requirement in order to have a permanent desk allocated to me. My chronic medical needs greatly exceed the limited scope and purpose of the WSA.

8. The fact that the WSA is being enforced in full view of the open plan office just adds to my ongoing anxiety and stress.

9. I request that my previous working conditions are fully reinstated. This request is in line with the smart working policies. The move to the current location (Town Hall Extension) is not justifiable business-wise, as our team was led to believe by Kath Corbett in a team meeting on 11 Oct.

10. The whole team is required to meet customers (i.e. leaseholders) for planned or unplanned meetings in the old building despite the fact they can be met on the 1st floor reception of the Town Hall Extension. This is not a reasonable request on part of senior management.

11. The **whole team is knowingly breaching the smart working policies because nobody hot desks apart from Per, Duncan, Debbie and Brittney - all from the major works team.**

12. The **LS management is knowingly failing to manage the implementation of the smart working policies and themselves are in breach of the same policies**.

13. I am deprived of an opportunity to work from home as I'd have to use my own internet allowance. This is not a reasonable request- my broadband is for my own use.

> 14. When I asked my line manager some time in October about working half day on Wednesdays but still doing my contractual 36 hours a week, until the end of March 2018 to accommodate my needs for counselling and personal training during daytime hours as it gets darker much earlier now, he wasn't open to the idea but referred me to the flexible working policies which stipulate a justification. My justification is more than reasonable as it directly ties in with my **anxiety and panic attack disorders**. Now, due to the lack of 25% of desks available to the LS, the majority of the team has been working from home Tuesday to Thursday (Melanie, Stephen, Antigone, Samantha, Yogesh, Kimberley, Jana, Ciaran, Teri to name a few) - this is prejudicial and unfair because it increases the frequency of me having to deal face to face with the leaseholders who are not in my patch to manage. It is also unreasonable to condense flexible working over 3 days leaving more free desks than necessary during those days and not allowing homeworking on Mondays or Fridays so as to avoid the possibility of a long weekend. This makes no sense given that those who homework Mondays or Fridays are still under obligation to complete 7.2 hours and cover the core time of 1Oam to 12pm and 2pm to 4pm.
>
> 15. The desks are filthy and no cleaning / alcohol wipes are provided. I've taken a photo of how filthy the workstations are. This is a breach of health and safety.
>
> 16. Those who stay in the office during their lunch time eat at their desk and I struggle to cope with all sorts of unpleasant smells. This is possibly a breach of health and safety and only goes to prove that the facilities in this building are not fit for purpose.
>
> 17. My line manager isn't the right person to deal with this grievance as he is directly responsible for causing injury to my health. Beside this, **I am entitled to confidentiality when it comes to the details of my medical history which I know I am under no obligation to reveal to him and I therefore request that this remains closely guarded**.
>
> 18. This isn't the exhaustive list of all issues, the majority of which I already wrote about on 14 Nov.
>
> (emphasis added)

83. On 29 November 2017 the Claimant complained about a colleague Ms Seewak in immoderate terms suggesting that she was impertinent and immature.

Meeting – 1 December 2017

84. On 30 November 2017 Mr Maguire invited the Claimant to a meeting. The Claimant asked him what it was about. He said it was best discussed in person.

85. The Claimant and Mr Maguire had the meeting on 1 December 2017.

86. Mr Maguire's intention was to have a conversation with the Claimant about what he perceived to be her increasingly negative attitude. During the course of this meeting Mr Maguire told the Claimant that she "could not continue like this in the long run", which in the view of the Tribunal was a firm but reasonable and appropriate message to deliver given deteriorating relations. We find that Mr Maguire was counselling the Claimant with the reasonable aim of trying to get her to improve her communication with other members of the team. This was for her own benefit as well as the team.

87. He used three specific examples to illustrate his point, which we find was good and appropriate management practice. The first related to the Claimant's email dated 29 November about a colleague that contained a number of insults and a negative assumption about why the person had requested information in a particular form. He characterised the tone of this email as "scathing". The second related to the exchange during the section meeting on 11 October 2017 where she had aggressively challenged a director on the move to a hot-desking environment. The third related to the Claimant's attitude during the workstation assessment on 17 November 2017 where her refusal to participate had caused the assessment to fail.

88. Mr Maguire also advised the Claimant that she was negative and that she did not exchange greetings with colleagues.

89. Also during this meeting he acknowledged that hot desking was a problem for the Claimant and said that he would arrange a fresh workstation assessment, to be held before 9am and also requested that she should see a doctor rather than a nurse.

90. This is one of a number of events which were documented by the Claimant in the form of emails to herself which are essentially diary entries. She is explicit about the "immense dislike" and "hate" she feels for colleagues. She refers to her colleagues in dismissive, unkind and sarcastic terms for example referring to them as "wretched, miserable little creatures". We do not consider it is necessary for the purpose of these written reasons to reproduce these any more fully, but it is evidence of the Claimant's state of mind and is supports the impression we have from communication within the workplace that suggests that the Claimant's relationships were breaking down generally with colleagues. It is plain that she had little respect for her colleagues.

Grievance additions 4 & 12.12.17

91. On 4 December 2017 the Claimant sent a further email to Mrs Ogunbayo, adding to her earlier grievance. This is a long email containing a further 11 points including the following:

> 4. Regarding Posturite, I can only repeat that the WSA is not an adequate measure in securing a permanent desk nor is it an assessor's place to offer his "feedback" on my personality. From 5 minutes that we spent together (talking about football among

> other things), he concluded and fed back to Ciaran that I was "negative". I very much object to this - I may've been the worst or the best of clients but his fee paid for one particular job that day and it wasn't psychoanalysis. So, in turn, I very much protest against Ciaran's follow-up. Those who know me longest know me best and I really don't have to prove my qualities to anyone. Even Ciaran himself conceded that the WSA was very traumatic for me, yet here he went on about some imaginary "negativity". He shouldn't have put me in such a stressful situation in the first place, the reasons of which I explained very well in the meeting of 3 Nov.
>
> …
>
> 9. I seem to be getting nowhere with him in trying to bring to an end this ongoing nightmare I seem to be stuck in. He wants me now to see an occupational doctor. I always feel pressurised into agreeing to what he wants, when in fact I don't want it -I've fully complied with all requirements and provided evidence, so what I want is an outcome. He also asked me to contact the woman from the Nov 3 meeting to "tell her what I need". I also said yes to this although there's absolutely nothing I want from her or anyone else in the OHU.
>
> 10. As a result of no resolution to date (2 months on) I've suffered a significant weight loss, my insomnia has worsened, my GP has doubled the dosage of my medication and I'm having to seek emergency counselling - I'm simply coming to an end of what's humanly possible to withstand physically and mentally. I have no trust in Ciaran and I won't be seeking his involvement in work-related matters that bother me for as long as I work in his team.

92. The Claimant put in a formal grievance form in which she referred to the formal grievance of 28 November 2017, the second formal grievance of 4 December 2017 the earlier email of 14 November 2017, what she describes as her employer's refusal to make reasonable adjustments at work having received two OH reports (5 October 2017 & 17 October 2017) and GP report (12 October 2017). Under the heading "effect of management action on me" she wrote

> "Panic attacks, anxiety disorder, insomnia, stress, increased nocturia, increased medication, unhealthy weight loss, bullying, victimisation, none of my equipment was saved (phone, screen, chair or keyboard)."

Easter holiday request

93. The Claimant alleges that on 12 December 2017 Mr Maguire refused to approve her request for Easter 2018 holiday so she had to approach her second line manager Ms du Preez. We find this misrepresents the situation, and accept Mr Maguire's version that he simply needed to check with his

manager before booking this, given that this was potentially a busy time of year at the start of April.

'Unsympathetic' email - 15.12.17

94. On 15 December 2017 Mr Maguire wrote to the Claimant under the heading "New Workstation Assessment". She alleges that this email was unsympathetic. He wrote:

> "Further to our meeting on 1 December, I've made a second application to OHU this evening for a workstation assessment.
>
> The previous effort with Posturite foundered because you weren't willing to engage in the process and I would ask that you participate this time around so I can get some guidance on reasonable adjustments. It will hopefully also give us some certainty on the appropriateness of a fixed desk.
>
> I've asked OHU to contact you under separate cover to agree a time and date"

95. The Claimant replied:

> "Things could move forward more constructively if you'd please abstain from contemptuous criticism and blame games in matters that have passed to HR and I have asked you not to get involved following your previous failures. You are harassing me and I want you to stop. Thanks"

Further OH referral

96. On 15 December 2017 Mr Maguire made another OH referral in the following terms:

> "Further to the previous referral, Daria has expressed grave misgivings about hot-desking and its effect on her physical and mental well-being. However, she has decided not to disclose what those challenges are to management and an attempt to work around the issue with input from specialists Posturite failed when she chose not to engage in the process.
>
> As a result, she still does not have a fixed hot-desk.
>
> I met with her on 1 December to discuss this issue, inter alia, and we agreed that we would try again with an in-house assessment. We would ideally like this scheduled before 9am if possible."

97. He also posed a number of questions about whether there was an underlying medical condition and adjustments.

98. He followed this up with a further referral in similar terms on 21 December to see the OH doctor rather than a nurse.

Second claim

99. Claim 2 (2208169/2017) was presented on 20 December 2017. Permission to amend this claim was granted on 14 February 2018.

22.12.17 Christmas early closing

100. On 22 December 2017 the Claimant alleges Mr Maguire and Ms du Preez forced the Claimant to stay at work despite there being no outstanding work to be done and no phone cover to be provided when rest of the team took the afternoon off. We accept Mr Maguire's account that an email was sent by Ms du Preez as a goodwill gesture saying that the phones will be switched off at 2 PM on 22 December holidays and that everyone would be able to go home. We understand his perspective that it felt as if the Claimant tried to turn this into a confrontation by requesting to leave at 1pm.

Claimant's email of 29.12.17

101. On 29 December 2017 the Claimant in an email to Mr Maguire complained about the involvement of a colleague in her patch. The final two paragraphs of this email read:

> You will undoubtedly find my tone "scathing" and "unfriendly", which of course isn't my intention, but I can't help feeling frustrated, bullied and ostracised, all of which is entirely your fault. You have created a humiliating, degrading and intimidating working environment for me by being disengaged, irresponsible, disinterested and judgemental in managing a simple medical request and some in the team seem to want to follow your suit. Do you not realise that you are vicariously responsible for their actions?
>
> This is perhaps a suitable opportunity for you to reconsider my request to return to the previous office as it seems highly unlikely that the current challenges can be overcome in near future and I take all forms of mistreatment very personally. I come here to do a job as best as I can and I don't have to make friends along the way and sign birthday cards, so all of these petty hostilities and your recent mention of my "ability" to work by which you meant "capability" are really a blow below the belt. The last thing I want to say to you will unavoidably sound aggressive and I'm sorry about that but it's the only way I can put it - I swear to you on my dead father's grave, you won't have a final say in dismissing me.

102. We are not surprised that Mr Maguire found the content and tone of this email unsettling.

103. On 3 January 2018 the Claimant was called into a meeting about the 29 December email.

Occupational Health report 11.1.18

104. On 4 January 2018 the Claimant was assessed by Dr Jukes. Following on from this Dr Juke finalised an amended report dated 11 January 2018. There appears to have been a process of revision, leading to an amended report being produced on 11 January 2018. The occupational health Dr Jukes was hampered in her ability to give a full and straightforward account of the Claimant's medical condition, due to the Claimant's reticence in allowing it to be described. We understand the Claimant's reticence as she obviously felt self-conscious about her medical conditions. Unfortunately the reluctance to share the full detail meant that Mr Maguire and the Claimant's management more generally was left to speculate somewhat about what her conditions were. This report contains the following:

> "Daria has several health conditions which she does not wish me to describe in this report. I feel that she should be considered to fall under the remit of the Equality Act. Daria would benefit from a designated desk which is set up for her needs. She may struggle in a large open plan office with regard to noise levels; but tell me this is manageable if she avoids having someone sitting on her left hand side.… She prefers a clean monitor which she can maintain and have sole use of due to her condition.
>
> She needs to have bathroom facilities within easy reach. ……
>
> Daria does not feel that she needs to have a workstation assessment done she can adjust her desk height and desktop components to suit her needs if she has a designated desk.
>
> …She does not feel that the female toilets on the third floor (same floor as her office) are enough for the number of women in the building and so she may need to queue for the facilities which may make it harder to manage.
>
> As Daria's conditions are likely to fall under the Equality Act, it would be appropriate for her manager to make adjustments if they are reasonable and appropriate. I do not know if an office move back to the original office is possible? If not, then Daria having a designated desk with good functioning clean equipment and good natural light and available bathroom facilities without too much background noise would be helpful to her.
>
> Clearly Daria has found the office move and her perceived lack of support from her manager to be upsetting and frustrating. I hope that it is possible for her to have a designated desk with clean functioning equipment that she feels she needs. This is a management decision but it would certainly help Daria remain well within the workplace."

Ladies toilet facilities

105. On 23 January 2018 Mr Maguire had an exchanged with Mr Mazurczak in the property services team about the Ladies toilet facilities, following on from complaints that the Claimant had made to him about the Ladies toilet provision. He summarised that there were dedicated ladies toilets on the third floor on which they worked.

106. Mr Mazurczak replied explaining that they were male and female toilets on alternating floors in the building and additionally disabled toilets as well which could be used by female employees. He referred to the HSE guidance and summarised that there were 15/16 cubicles that could be used by ladies which met the relevant criteria. He clarified that there were female toilets on the odd floors in this six floor building.

107. On 12 February 2018, Mr Adewumi, who was at that stage in the middle of investigating the Claimant's grievance requested that the Claimant's pass be granted access to toilet facilities on the 1st floor, which took place on 20 February 2018. The idea of this was to give her access to another floor in the event that the third floor facilities were full.

108. It seems from the Claimant's diary entries e.g. 27 September 2018 [724] and 15 October 2018 [734] that what caused a particular difficulty were lengthy telephone conversations of 20 – 30 minutes where she was resolving problems for callers but during which she felt an urgent need to go to the toilet. She describing being in great discomfort. She does make the comment about walking to the toilets "I didn't think I'd survive to the loo".

Grievance process

109. On 9 January 2018 the Claimant attended the first interview as part of the grievance process, held by Kayode Adewumi, Head of Governance and Scrutiny. Mr Adewumi then carried out a variety of interviews.

110. On 5 April 2018 there was an outcome to the grievance process. The grievance outcome letter of four pages was produced together with a detailed 26 page grievance investigation report containing close type, which was a substantial and detailed piece of work. The grievance was partially upheld as follows:

> "Employer's refusal to make reasonable adjustments at work having received 2 OHU reports. (5-10-17 & 17-10-17) and my GP's report (12-10-17)
>
> OHU had a copy of your GP's report which had some recommendations. OHU had stated that they concur with the recommendations. These recommendations should have been given to Ciaran [Maguire] to assist him in making some reasonable adjustments.

> The lack of definitive recommendations from OHU has caused this aspect of the grievance which [*sic*] to be upheld. I now believe this situation has been rectified as Ciaran has received an updated detailed report OHU."

111. All of the other elements of the grievance were not upheld, specifically alleged negligent injury to health on 2.11.17 caused by line manager, bullying enforcement of the Workstation Assessment, disability discrimination, failure in duty of care and sex discrimination.

112. On 16 April 2018 the Claimant appealed the outcome of the grievance in a 22 page email containing type and photographs. Additionally she raised a grievance about Teri Seewak and Duncan Cheuing in relation to the evidence they had given in the in the grievance process.

Sickness Review process

113. On 26 January 2018 the Claimant attended a Stage 1 Sickness Review Meeting held by Mr Maguire with an HR adviser present. This was triggered by the Claimant's sickness absences.

114. At this meeting the Claimant refused to engage in much of the meeting and replied 'No comment' to a number of questions. She also left abruptly before the discussion was concluded. Mr Maguire was however able to tell the Claimant that her desk was now a permanent arrangement and to advise her what the sickness targets would be over the next 3 months and then the subsequent 12 months.

115. The outcome of the meeting was confirmed in a letter dated 26 January 2018.

Appeal against Stage 1

116. On 5 February 2018 the Claimant appealed stage 1 outcome as follows:

> 1. The sick leave was a consequence of Ciaran's mismanagement of my request to have a permanent desk allocated on grounds of disability. I assert that I have 5 more days worth of allowance until 12 Mar 18.
>
> 2. The intimidating and unlawful threats of dismissal contained in the outcome letter contrary to the Equality Act 2010 which guarantees me disability protection and as supported by Dr Jukes.
>
> 3. The letter is not an accurate reflection of facts that predate the meeting of 26 Jan 18 – e.g. exploring the underlying causes of my sick leave which were in fact put in writing to Ciaran on the morning of 2 Nov 17 and in subsequent communication; the trigger behind the panic attack which was explained in a meeting of 3 Nov 17 before Hannah Ogunbayo (HR) and Anne Donovan Hill

> (OHU); OHU never made any recommendations until early / mid January so
>
> it's perverse to rely on the facts discussed in the meeting and not the facts that already exist in writing.

117. On 12 April 2018 the Claimant notified Ms du Preez that she was undergoing counselling with "Back on Track Counselling" on 16 and 23 April. The email contained the line "As you're aware I've taken a legal action against the Council for disability discrimination, harassment and victimisation after the fact, so I'd be very grateful if you'd confirm that you agree to this temporary arrangement". The Claimant complains that Ms du Preez failed to pass the content of the information about the counselling on to Mr Maguire.

118. In an email dated 22 May 2018 entitled "Hot desking" sent to Ms Du Preez, the Claimant queried the absence a couple of colleagues and wrote "I have already brought this to Ciaran's attention and the manner in which you've been managing hot-desking is simply unacceptable". This was a surprisingly impertinent tone to use with a second line manager. Ms Du Preez responded within a couple of hours with a brief but professional email giving an explanation, to which the Claimant responded ticking her off "Thanks for the prompt reply, but that just won't do it.", making some further remarks, signing off "No response required and many thanks".

119. Ms Du Preez responded the following day responding to the points raised:

> "As an opening remark I have to say that I find the tone and content of your email very disrespectful. Can I remind you that I am your manager and I expect you to show the required respect to me?
>
> That said, I will respond to the points raised. …"

120. The Claimant responded

> "Hi Jana
>
> As an opening remark I have to say that I find your tone very aggressive and impertinent - you are shouting in your email so I'll ask you please to adjust your mannerism. Can I remind you that I am a permanent member of staff who has equal rights like anybody else employed by the Council including yourself? The fact that you're a manager doesn't make you more worthy, doesn't make you a better worker and most certainly doesn't make you a better human being than me. The fact that I am able to point out to your managerial failures doesn't mean that I have no respect for you.

> I have the guts to speak my mind about things that matter to me and that negatively affect me, whereas you appear to sugar-coat whatever it is you want to say.
>
> …
>
> Please don't respond to this. We'll just end up bouncing emails with no resolution and I have better things to do ahead of my hearing."

Claimant's vociferous email

121. On 28 June 2018 the Claimant used a generic email address to write to a colleague Ms Miah about a service charge calendar to indicate that she was working from home. She wrote:

> "Can you please enter in the service charge calendar that you'll be working from home. You haven't done it for today although the whole team has been told that you'll be WFH on Mon, Wed and Fri. This is clearly not the case."

122. The email was unsigned.

123. Later that day Ms Miah wrote to Mr Maguire to raise that this email was used a "cold tone" and was a "tad rude" not to be signed. Mr Maguire says that she was very upset and that she had been working at home with his permission as a primary carer for a relative who was in very poor health.

124. Mr Maguire asked another colleague Mr Price if he had sent the email. He said he had not. He then asked the Claimant by email whether she had sent it. She responded as follows:

> 'Excuse me? You're jumping to a conclusion which offends me yet again, so I'll add it to my list of your ongoing hostile criticism. You're conveniently forgetting that I had/have directly approached both Jana and you about the unreliability of the group calendar. Did that leave you with an impression that I need to hide behind anonymous emails like you hide behind anonymous sources? I don't need you to respond to this but if you do, I'll bring Ms Kaur and my barrister into this conversation to explain to you the implications of your defamatory accusations.'

125. We accept Mr Maguire's characterisation of this as vociferous, although we do not accept that it was a denial. While it stops short of an express denial, there is a clear implication in the email that Mr Maguire has wrongly accused the Claimant of something of which she is innocent. This was deliberately misleading.

126. The following day Mr Maguire wrote to his team to ask who had sent the email, saying that he was asking IT to retrieve it. In fact the IT department confirmed to Mr Maguire that the Claimant had sent the email and then deleted it.

127. The Claimant responded to Mr Maguire, copying in Shally Kaur, HR, telling Mr Maguire:

> "I find your group approach very distasteful and your tone unnecessarily threatening… …This is no way to maintain good working relationships and team spirit you're achieving quite the opposite and creating a culture of petty hostilities, suspicions and gossip-mongering, which I've already complained to you about and which I fear will only escalate."

128. She asked Ms Kaur to give Mr Maguire guidance.

Email exchange with Ms Du Preez

129. On 22 May 2019 the Claimant emailed her second line manager Jana Du Preez to tell her that the manner in which she had been managing hot-desking was "simply unacceptable". Ms Du Preez replied in professional terms a couple of hours later, to which the Claimant replied "Thanks for the prompt reply, but that just won't do it", making sarcastic remarks about some people benefiting from the relocation "sipping margaritas in the sunshine", and signing off "No response required and many thanks". Unsurprisingly Ms Du Preez made a remark in a response the following day saying "I find the tone and content of your email very disrespectful", explaining her position on various points again in measured and professional terms. To which the Claimant replied on 23rd May "As an opening remark I have to say that I find your tone very aggressive and impertinent".

130. Ms Du Preez forwarded this exchange to Dave Rogers and Shally Kaur in HR.

Further deterioration in Claimant's communications with Mr Maguire

131. On 9 July 2018 Mr Maguire queried with the Claimant whether she had left early on Friday afternoon as a team member had led him to believe, and where her times were recorded. The Claimant responded in combative terms:

> "Two things: I don't think I'm going to dignify "an anonymous tip" with a reply. And secondly, you're acting in bad faith as is your mole, which I'd advise against especially because you're facing another claim for continued victimisation and he's facing a defamation claim."

132. In emails on 9, 10 August 2018 the Claimant asked Mr Maguire a question about a colleague in repeated emails, to which he did not respond. On 14 August she threatened him with a grievance. He responded telling her that he was genuinely shocked by the tone and timbre of her message, explaining that the continued demands and attacks were absolutely not acceptable and explaining that he would refer the matter to senior management.

Grievance appeal

133. On 19 June 2018 a grievance appeal was heard by Paul Hayward.

134. On 22 August 2018 Mr Hayward produced an outcome to the grievance appeal. None of the grounds of appeal were upheld.

Memo about Claimant's conduct 3.9.18

135. In a memorandum dated 3 September 2018 Mr Maguire wrote to Janey Carey, Head of Involvement and Improvement to detail the continued poor behaviour and refusal to accept management instructions. He described the situation as untenable. He detailed for particular issues, giving evidence.

136. First was honesty, in which he raised the complaint of Ms Miah which he said that the Claimant emphatic denied sending the email that in fact she had sent.

137. Second was the effect on colleagues in which he cited the resignation of a colleague on 4 July 2018, who in her letter of resignation specifically referred to the Claimant being very negative and unapproachable and segregated from her colleagues. She said that it was difficult to approach her for information to do her role, which was causing stress. Mr Maguire commented himself that his relationship was extremely poor and that she bristles at direct management instructions, affecting the harmony, morale and functioning of the team.

138. Third was conduct, which he evidenced by reference to particular emails being accusatory, unsolicited or high-handed.

139. Fourthly, finally, was "manageability". He gave a recent example of the Claimant leaving at 3.30pm in his absence without telling anyone where she was going. When he queried this with her she sent him a timesheet giving her recorded departure of 4pm. When he raised a query about the time she said that she would not dignify an anonymous tip with a reply.

140. In conclusion he said:

> "Daria absorbs a huge amount of my time and takes me away from the substantive aims of the business. With every grievance, it also takes other officers and managers away from their roles. Efforts to deal with this informally have foundered and the prognosis, even by Daria' submission, is bleak. It appears that as a result of her conduct and behaviour that the relationships within the team are broken and are significantly disrupting the harmony and workings of the team, and, despite my efforts, she refuses to recognise her behaviour or the effect it has on others, or make any effort to correct it. It would seem she refuses to accept any other point of view or respond positively to legitimate management authority within the service.
>
> I this matter needs to be investigated to consider whether the working relationships between Daria and the team are capable of repair or whether they are retrievable broken."

Subsequent grievance

141. On 12 September 2018 Ms Carey wrote to the Claimant regarding about meeting over her April and August grievances.

Condensed hours request

142. The Claimant complains that from the first half of September 2018 until 17 December 2018, the Respondent required her to make a formal application for flexible working by way of condensed hours.

Second grievance

143. On 21 September 2018 Ms Carey wrote to the Claimant regarding the grievances raised on 14 – 15 August and 11 September 2018. In this outcome letter she confirmed that the reason why the Claimant's grievance of 16 April against Ms Seewak and Mr Price was not investigated as part of this grievance was that this was looked at as part of the June grievance appeal investigation, in which there had been an outcome on 22 August 2018.

144. In response to this email the Claimant wrote to Ms Carey in very strong terms saying she disagreed with her, threatening to take this to the highest level within the Respondent, specifically the Chief Executive and Leader of the Council.

Conduct report/disciplinary action

145. On 7 November 2018 Jane Carey, the Head of Involvement and Improvement produced a 'Conduct Report' into Claimant which was used subsequently for disciplinary action was taken against the Claimant leading to her dismissal. This report contained 14 unattributed quotes from colleagues suggesting that the Claimant was an unpleasant and unprofessional colleague. The report contained the following:

> "3. DR's relationship with her colleagues, management and H&F soon started to deteriorate shortly after she completed her probationary period. This initially started in September 2017, when her team was informed of a proposed office move and as part of that office move new ways of working such as hot desking will be introduced, This was not to DR's liking and led to her filing a number of complaints as to why she should not partake in hot desking as she had a disability. It is worth noting that DR had not previously raised any concerns about her disability with her Line Manager.
>
> 4. Following the move, she started to exhibit a negative attitude in her disposition, feelings and mannerism towards her colleagues and management. She became uncooperative, negative and had no regard for due process. Her attitude was one of arrogance and she felt she was the only one capable of undertaking tasks and every one else was beneath her.

5. DR can also be described as manipulative and calculating an example of this was in an email she sent to HR on 8th November 2017, where she stated that she had decided to involve ACAS, and has been advised by ACAS that if she doesn't raise a grievance that may be reduced financial compensation should this ever go to PT. This will tend to suggest that she had connived to manufacture a situation where she will eventually bring a case against H&F at a future Employment Tribunal for financial gain (it is worth knowing she did bring a Tribunal case against a previous employer)

7. … the relationship within the team soon became fractured due to her irrational behaviour and the fact that she continued to raise baseless unsubstantiated allegations against her colleagues and once challenged tends to overreact. Her tearn members are fearful of her and have expressed concerns about their safety

8. As none of her allegations could be substantiated her behaviour became more irrational. She began demonstrating a lack of respect for both colleagues and management.

9. The relationship within the team became nonexistent due to her continued irrational behaviour, threats and the fact that she continued to raise unsubstantiated allegations against her colleagues. She is known to express her opinions displeasingly and bluntly, without due care. She lacks empathy and herself had stated this on many occasions that she has no emotion towards her colleagues, During attempts by management to investigate her new complaints she raised in August and September, she was reluctant to attend a meeting to discuss her allegations. When she did attend she was uncooperative, disruptive and showed contempt towards the Head of Service, Janey Carey and HR Business Partner, Addy Olubajo.

…

11 . She herself had admitted that her relationship and trust with the team is broken and cannot be repaired and the only way this can be done is for people to leave voluntarily. "Her allegation against the team are baseless and vexatious. She can be quite manipulative and selective which has led to team members becoming wary of her. The morale within the team is low and productivity Is suffering" (CM)

…

13. DR has the propensity to send aggressive and threatening inappropriate emails to both her manager and Senior Managers copying the Leader of the Council. Her communication with management can only be described as appalling, aggressive and controlling. She shows no respect and can be prone to issuing of threats.

> 14. Furthermore, she comes across as very rude and condescending in communicating with the Leadership team. She has sent inappropriate emails bordering on threats and demands to the Chief Executive, Director of Corporate Service, Assistant Director and Leader of the Council.
>
> 15. In Conclusion:
>
> There is now a complete breakdown in relationship and a lack of trust between DR and LBHF. DR has not exhibited the attributes expected of an employee of H&F the Code of Conduct and Dignity at Work policies"

Suspension

146. On 12 November 2018 the Claimant was suspended. The Claimant's case is that she was denied access to the toilet during the process of suspension and specifically that made it clear that she needed to go to the toilets as a result of her bladder disability and it was urgent. Neither the need for the toilet nor the refusal is not mentioned in her contemporaneous E-diary account written that evening [741], nor in comments captured on the following evening which dealt with the aftermath of the events on 12 November. The Claimant introduced late during the course of the hearing (11 June) a Facebook exchange from 15 November 2018 in Serbian in which she makes a reference to being banned from the toilet. Ms Martin was not cross examined on this point during the hearing. Her evidence was that she did not recall any conversation about this and that it would have been out of character to refuse anyone the right to use the toilet.

147. Given the Claimant's extreme reticence to tell colleagues about her bladder disability hitherto and the absence of any reference in her diary written on the day and the unchallenged evidence of Ms Martin, we do not accept the Claimant's account that in response to her raising a bladder disability and saying it was urgent she was told that she could not use the toilet. We find it far more likely on the balance of probabilities that she was directed to leave the building directly following suspension with the practical effect that she was not able to go to the toilet, which is not the way that this incident has been portrayed by the Claimant in her claim.

148. On 13 November 2018 the Claimant was sent a letter and pack about disciplinary hearing.

Disciplinary hearing

149. The disciplinary hearing took place on 21 and 22 November 2018 and was heard by Mr Mark Meehan, Chief Housing Officer supported by Sharon Powell, HR Business Partner. Janey Carey the Investigating Officer presented the case for disciplinary action/dismissal, supported by Ade Olubajo.

150. Ms Carey in presenting the case made it clear that there was no issue of capability. She said that the Claimant's "work was fine the issue was with her behaviour". During the course of this hearing Mr Meehan confirmed that he would disregard any reference to Employment Tribunals.

151. During the course of this hearing the Claimant presented a concern that the toilet provision for female colleagues was worse than the provision for male colleagues and this amounted to "Substantive Sex Discrimination".

152. The Claimant accepted that there was a breakdown in trust.

Dismissal

153. On 17 December 2018, Mr Meehan took the decision to dismiss the Claimant. The letter of dismissal contains the following:

> "During the proceedings I advised that I would be disregarding all references to any ET proceedings past or present as they were not germaine [*sic*] to the case. I also disregarded any matters relating to your disabilities as again they too were not relevant to issues at hand.
>
> At the end of the hearing I confirmed with you that you had had a fair hearing and the opportunity to fully present your case to which you agreed.
>
> In coming to my decision, I focused my attention in the main on the evidence presented but also on the behaviours you displayed during the hearing. I listened to the evidence presented by you and making my decision I read through all the supporting papers both enclosed by you and by management before reaching my decision.
>
> You sent several emails to your manager openly insulting him and undermining his authority as well as clearly stating you considered there to be a breakdown in the relationship. You openly refused to follow reasonable management instructions from your line manager as can be evidenced in the emails sent to Ciaran Maguire.
>
> You admitted during the hearing that you had lied to your manager when you denied sending an inappropriate email to a colleague and you couldn't provide any mitigation for doing so, this goes to the heart of the employment contract which I consider to be a serious breach in trust and confidence.
>
> To inform my decision as to whether the professional relationship could be restored I asked whether you would be prepared to go mediation with your line manager Ciaran Maguire and the leasehold team and you confirmed you would. Both Janey Carey and Addy Olubajo stated mediation was suggested to you at the investigation meeting which you declined, however you claimed to

> have no recollection of this. I considered your response was not in line with the detail you were able to provide relating to all other incidences and concluded that this was a further example of a breach In trust and confidence.
>
> It was also apparent that you displayed inappropriate behaviours during your questioning of Janey Carey at which time you called Janey several derogatory names which I felt was indicative of the behaviours detailed in the allegations.
>
> Finally, my view going forward is that it is highly unlikely a change In your relationship with your manager, team and the wider organisation would occur given the evidence you provided against the allegations relates almost in its entirety to matters already dealt with Indicating an Inability to let go of events of the past. The Council places great importance of its behaviour and conduct as representatives of the council and In how they work and act and behave with work colleagues.
>
> The combination of the inappropriate way you interact with not only your manager but colleagues, the tone of your emails and the fact you have demonstrated you are not always truthful leads me with no other option but to dismiss you with notice from the employment of the London Borough of Hammersmith & Fulham Council."

Appeal against dismissal

154. On 22 December 2018 the Claimant appealed the decision to dismiss her in an email amounting to three pages of close type.

155. The Claimant alleged that Mr Rogers victimised her by refusing to forward the minutes of the disciplinary hearing which she requested as part of her appeal, knowing that she would have health-related difficulties in remembering the details. The Tribunal finds that surprisingly no completed minute of the disciplinary hearing was ever produced. It was only with some significant pressure from the Tribunal that on the final day of the hearing that the Respondent produced an incomplete draft note of the first day of the disciplinary hearing, taken by Sharon Powell. This had apparently been found on a shared drive. Similarly notes of the appeal hearing and the Claimant's appeal emails itself were produced at that late stage, which was in our view unsatisfactory.

Fourth claim

156. Claim 4 (201301/2019) was presented on 10 April 2019.

Appeal against dismissal outcome

157. The appeal against dismissal was considered by Joanne Woodward, the Chief Planning and Economic Development Officer.

On 24 May 2019 the dismissal appeal outcome letter was sent to the Claimant, dismissing all grounds of appeal, save for a ground relating to mediation, which was partly upheld and a ground relating to the date of termination which was fully upheld.LAW

Discrimination

158. We have considered the guidance set out in *Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205, EAT, as approved and revised by the Court of Appeal in *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases* [2005] ICR 931, CA.

159. We have considered guidance on the burden of proof in discrimination cases, in particular as referred to by the Claimant *Nagarajan v London Regional Transport* [1999] IRLR 572, *Madarassy v Nomura International plc* [2007] IRLR 246 CA, *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913. In *Hewage v Grampian Health Board* [2012] ICR 1054, SC in which Lord Hope endorsed the following guidance given by Underhill P in *Martin v Devonshires Solicitors* 2011 ICR 352, EAT:

> "'the burden of proof provisions in discrimination cases… are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent's motivation… they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law'.

Harassment

160. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 the EAT (Underhill, P) emphasised both the subjective and objective elements of a claim of harassment under section 26. There is a minimum threshold and following guidance was given at paragraph 22:

> "it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase"

Victimisation

161. In order for a claim of victimisation dismissal to succeed the protected act need not be the only or even the primary reason for dismissal. A Tribunal must be satisfied that the protected act had a "significant influence" on the decision-making (*Nagarajan v London Regional Transport* [1999] ICR 877).

162. Various appellate decisions have dealt with the circumstances in which a decision to dismiss following on from protected acts may be found to be for a reason separable to the protected act.

163. In *Martin v Devonshires Solicitors* [2011] ICR 352, the employment tribunal found that the reason for a dismissal had nothing to do with the fact, as such, that the claimant had made complaints of discrimination, but rather with the facts that those complaints involved a combination of inter-related features, namely, false allegations of considerable seriousness, that they were repeated and that the claimant refused to accept that they were false; the relevance of those facts being, taken together, that they led to the conclusion that she had a mental illness which was likely to lead to unacceptably disruptive conduct in future.

164. In that case the EAT described the underlying principle thus:

> ’22. … …In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. …
>
> Of course such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to “ordinary” unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.’

165. In *Woodhouse v West North West Homes Leeds Ltd* [2013] IRLR 773, EAT HHJ Hand QC suggested that it would only be in exceptional cases that a series of grievances alleging racial discriminatory conduct leading to dismissal would not be found to be done by reason of the protected act.

166. R counsel referred to paragraphs 46, 84, 104 and the fact that 10 grievances and 8 claims

167. Lewis J in *Panayiotou v Chief Constable of Hampshire Police* [2014] IRLR 500, EAT doubted the strength of the conclusion in Woodhouse at paragraph 54, before referring back to paragraph 22 of the *Martin* case with approval:

> 54. … In my judgment, there is no additional requirement that the case be exceptional. In the context of protected disclosures, the question is whether the factors relied upon by the employer can properly be treated as separable from the making of protected

disclosures and if so, whether those factors were, in fact, the reasons why the employer acted as he did.

Time

168. Relevant to *time limits*, section 123 EqA provides:

> 123 Time limits
>
> (1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (3) For the purposes of this section—
>
> (a) conduct extending over a period is to be treated as done at the end of the period;
>
> (b) failure to do something is to be treated as occurring when the person in question decided on it.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> (a) then P does an act inconsistent with doing it, or
>
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

169. In *Robertson v Bexley Community Centre t/a Leisure Link* 2003 IRLR 434, the Court of Appeal held that when employment tribunals consider exercising the discretion under [what is now] S.123(1)(b) EqA, 'there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.'

170. *Abertawe Bro Morgannwg University Local Health Board v Morgan* 2018 ICR 1194, CA, the Court of Appeal pointed to the fact that it was plain from the language used in S.123 EqA ('such other period as the employment tribunal thinks just and equitable') that Parliament chose to give employment tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision. At paragraph 18-19 Leggatt LJ said:

"it is plain from the language used (such other period as the employment tribunal thinks just and equitable) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike s 33 of the Limitation Act 1980, s 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in s 33(3) of the Limitation Act 1980 (see *British Coal Corporation v Keeble* [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see [2003] EWCA Civ 15, [2003] IRLR 220, para [33]. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under s 7(5) of the Human Rights Act 1998: see Dunn v Parole Board [2008] EWCA Civ 374, [2009] 1 WLR 728, paras [30] [32], [43], [48]; and Rabone v Pennine Care NHS Trust [2012] UKSC 2, [2012] 2 All ER 381, para [75].

That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

171. In Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, [2021] ICR D5, Underhill LJ said:

> "The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) the length of, and the reasons for, the delay. If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking."

Reasonable adjustments

172. In considering reasonable adjustments claims, tribunals are required to have an analytical approach (Environment Agency v Rowan [2008] ICR 218). The correct approach is to identify (i) the PCP; (ii) non-disabled comparators, where appropriate, (iii) the nature & extent of substantial disadvantage. This is in order to consider the extent to which taking the step would prevent the effect in relation to which a duty was imposed.

173. Regarding PCPs, in *Ishola v Transport for London* [2020] EWCA Civ 112, the Court of Appeal confirmed that one off events are not necessarily provisions

criteria or practices (i.e. PCPs) and must be examined carefully to see whether it could be said that they are likely to be continuing.

Knowledge of disability

174. Paragraph 20(1) of Schedule 8 to the EqA provides that a person is not subject to the duty if he does not know and could not reasonably be expected to know that an interested disabled person has a disability AND is likely to be placed at a disadvantage by the employer's PCP para 20(1)(b).

175. The EHRC Employment Statutory Code Of Practice (2011) issued under the Equality Act contains the following guidance in a section dealing with the duty to make reasonable adjustments:

> When can an employer be assumed to know about disability?
>
> 6.21
>
> If an employer's agent or employee (such as an occupational health adviser, a HR officer or a recruitment agent) knows, in that capacity, of a worker's or applicant's or potential applicant's disability, the employer will not usually be able to claim that they do not know of the disability and that they therefore have no obligation to make a reasonable adjustment. Employers therefore need to ensure that where information about disabled people may come through different channels, there is a means – suitably confidential and subject to the disabled person's consent – for bringing that information together to make it easier for the employer to fulfil their duties under the Act
>
> Example:
>
> In the example in paragraph 5.18, if the employer's working arrangements put the worker at a substantial disadvantage because of the effects of his disability and he claims that a reasonable adjustment should have been made, it will not be a defence for the employer to claim that they were unaware of the worker's disability. Because the information gained by the OH adviser on the employer's behalf is assumed to be shared with the employer, the OH adviser's knowledge means that the employer's duty under the Act applies.

CONCLUSIONS

Jurisdiction

176. [**Issue 1**] Did any of the allegations of discrimination occur three months less one day before the Fourth Claim was brought, taking into account ACAS early

conciliation? The Respondent contends that any conduct that occurred before 6 December 2018 is out of time.

177. The ACAS conciliation period for this claim occurred between 5 March 2019 – 5 April 2019.

178. The Tribunal finds that allegations before 6 December 2018 are out of time.

179. [**Issue 2**] If so, is there any conduct extending over a period?

180. The events leading up to the dismissal, including the suspension and including the production of an investigation report by Janey Carey might potentially have been part of a continuing act had the dismissal itself been an act of victimisation. We have found that the decision to dismiss was not an act of victimisation. It follows that there is no conduct extending over a period that could bring the claim in time.

181. [**Issue 3**] If not, is it just and equitable to extend time?

182. The onus is on the Claimant to show why we should extend time. She has had the benefit of legal representation. The Claimant has not either through evidence or submissions demonstrated to us reasons why we should extend time. This is not a case in which the Claimant was unaware of her legal rights. This is not a situation in which she has discovered matters a long time after the act of discrimination occurred or a situation in which she was so unwell that she was unable to pursue her legal rights.

183. The Claimant has not advanced reasons for the delay in presenting the claim. The Tribunal finds that the Respondent is inevitably to some extent prejudiced by the delay in this case, simply by the effluxion of time.

184. Considering all the circumstances of the case we do not find that it is just and equitable to extend time.

Disability

185. [**Issue 4**] The disabilities which the Claimant had are anxiety and depression and nocturia. The Claimant also relies on a deemed disability of progressive multiple sclerosis and states that she was diagnosed with this on 10 October 2018.

186. It is not disputed that the Claimant was a disabled person because of anxiety and depression. The disability of progressive multiple sclerosis has not formed a part of the claim before us.

187. On 30 May 2018, Employment Judge Wade found that the Claimant's condition of nocturia amounted to a disability, based on an impact statement describing her symptoms.

Knowledge of disability

188. [**Issue 5**] Was the Respondent aware of the Claimant's disability?

189. *Anxiety* - we consider that in respect of the Claimant's anxiety, there was an accumulation of information which meant that by the submission of the Claimant's grievance on **28 November 2017** the Respondent had knowledge of that she was suffering from anxiety such as to amount to a disability. The preceding events, namely a conversation with Hannah Ogunbayo on 27 September 2017, the occupational report of 5 October 2017, the sickness absence which commenced on 2 November 2017, taken together with the content of the grievance on 28 November, meant that cumulatively the Respondent had knowledge on 28 November. Knowledge on the part of Ms Ogunbayo is imputed to the Respondent.

190. We have not found that the Claimant's related condition of *depression* has been a significant feature of this case as distinct from anxiety. Accordingly we have not needed to make separate findings in relation to depression.

191. *Nocturia* - it has been a feature of this case that the Claimant has, understandably, been reticent to disclose information about her condition of nocturia. She alluded to it in an email dated 14 November 2017 to Hannah Ogunbayo, in which she made reference to toilet facilities and a chronic condition, and managing her symptoms, but without fully spelling out what the condition was. She referred back to a conversation with Stella Sadza (Occupational Health Advisor). The note of a conversation with the OHA on 5 October 2017 did not suggest that the particular issue requiring access to toilets was discussed on that occasion. In a consultation on 4 January 2018 with Dr Sophie Jukes the question of access to bathroom was discussed. It is clear that the discussion with Dr Jukes involved discussions about the Claimant's disability which she did not wish to be disclosed. We infer that this included nocturia. In that report Dr Jukes said as follows:

> "She needs to have bathroom facilities within easy reach. …… She does not feel that the female toilets on the third floor (same floor as her office) are enough for the number of women in the building and so she may need to queue for the facilities which may make it harder to manage"

192. We find that the Respondent corporately had knowledge of *nocturia* from **4 January 2018**.

193. We have gone on to consider Mr Maguire's personal knowledge, given that this is potentially relevant to Issue 7(12). We do not find that the recommendation bathroom facilities in itself was enough to put Mr Maguire on notice of *nocturia*. Access to bathroom facilities may be for a variety of reasons. To take one example, diabetics may use bathroom facilities to inject insulin. Some other conditions require an individual to have easy access to washing facilities. We do not consider that *nocturia* is a particularly well-known condition or that the information in the possession of Mr Maguire made obvious that the Claimant

had it. Indeed she seems to have gone to some lengths to keep this to herself. We do not make any criticism of her for this.

194. The Claimant described her condition in considerable detail in an impact statement dated **4 April 2018**. We find that this it was only on receipt of this impact statement that Mr Maguire had knowledge of nocturia.

195. [**Issue 6**] Alternatively, (for the purpose of any claim of failing to make reasonable adjustments or discrimination arising from disability) was the Respondent constructively aware of the Claimant's disability?

196. We do not find that there was a date on which the Respondent had constructive knowledge earlier than the dates of knowledge we have set out above.

DIRECT DISCRIMINATION (s. 13 EqA 2010)

197. [**Issue 7**] By reference to the pleaded matters within the Particulars of Claim, did the Respondent treat the Claimant less favourably than the Respondent treats, or would treat, a non-disabled comparator, in that:

In relation to anxiety/depression

198. [**Issue 7(1)**] During the Claimant's annual leave Mr Maguire failed to contact the Claimant to inform her of the exact location of her new desk (paras 20-23 of the Second Claim)?

199. Mr Maguire did not have the requisite knowledge of the Claimant's disabilities during the Claimant's annual leave 13 October – 2 November 2017. We do not find that this treatment was because of her disability.

200. [**Issue 7(2)**] On 2 November 2017 the Claimant could not identify her desk and could not find the phone with her extension (para 26 of the Second Claim)?

201. The Respondent did not have the requisite knowledge of the Claimant's disabilities. This allegation, even if true cannot amount to less favourable treatment, it simply describes circumstances following an office move.

202. [**Issue 7(3)**] The Claimant was asked to sit in the place of a person from another team (paras 30-33 of the Second Claim)?

203. The Respondent did not have the requisite knowledge of the Claimant's disabilities.

204. In any event we cannot identify less favourable treatment. This seems to been a pragmatic response to the question of where the Claimant should sit.

205. [**Issue 7(4)**] On 17 November 2017 the Claimant had a meeting with Mr Maguire where the same issues of working conditions and facilities were discussed (para 54 of the Second Claim)?

206. This must fail because of lack of knowledge.

207. In any event we cannot identify less favourable treatment.

208. [**Issue 7(5)**] Mr Maguire prepared a false note of the discussion held with the Claimant 17 November 2017 (para 56 of the Second Claim)?

209. This must fail because of lack of knowledge.

210. In any event we do not find this was less favourable treatment. We have had the benefit of a version of the note of the return to work meeting on 17 November 2017, which was typed by Mr Maguire and subsequently comments added in the margin by the Claimant. We have considered the content of these margin notes. In our experience the nature of the points that the Claimant has made are no more than completely routine clarifications and minor corrections of the sort that we see in minutes very routinely in the tribunal. We did not find that there was anything sinister in the points that the Claimant felt that she has to correct. We do not find this amounted to less favourable treatment.

211. [**Issue 7(6)**] Mr Maguire trivialised the matter of the Claimant's desk location and acted in a condescending manner (para 57 of the Second Claim)?

212. The Respondent did not have the requisite knowledge of the Claimant's disabilities.

213. In the alternative we would have accepted the evidence of Mr Maguire, in particular the content of his witness statement at paragraph 38, that he was not trivialising the matter and in fact was making prompt referrals to OH and the like, which demonstrated that he took the matter seriously.

214. [**Issue 7(7)**] The Respondent organised a meeting with the Claimant on 1 December 2017, the purpose of which was not explained (para 61 of the Second Claim)?

215. By this stage we find that Mr Maguire was on notice of the Claimant's anxiety. We do not find however that this was less favourable treatment because of her disability. In order for this claim to succeed, we would have to find that because the Claimant had the disability of anxiety Mr Maguire did not provide advance detail of the content of the meeting. We do not find that this fairly characterises the situation at all.

216. [**Issue 7(8)**] At the meeting of 1 December 2017, Mr Maguire criticised the Claimant and stated the Claimant "could not continue like this in the long run" (para 63 of the Second Claim and para 32 of the Fourth Claim)?

217. We find that this was a reasonable turn of phrase to use in this discussion, and do not consider that this was less favourable treatment. We find that any employee, disabled or not, might expect to hear a comment like this, given the circumstances of the Claimant's increasingly disrespectful and hostile communications. We have not found Mr Maguire's conduct in this meeting to have been inappropriate. On the contrary, we consider that had he failed to informally counsel the Claimant that her conduct was inappropriate he would be failing in his duty to her as a manager to allow her the opportunity to improve.

218. [**Issue 7(9)**] At the same meeting, Mr Maguire accused the Claimant of being negative and not greeting colleagues (para 64 of the Second Claim)?

219. We do not find that Mr Maguire remarking that the Claimant was negative and not greeting colleagues was less favourable treatment. It was Mr Maguire's responsibility as manager to encourage his team to work together cohesively and encourage good relationships among members of the team.

220. [**Issue 7(10)**] Smart-working by way of temporary working from home and/or temporary condensed hours was not extended to the C when she sought flexible working arrangement and was subjected to the formal procedure (paras 70-72 of the Second Claim and paras 13, 119-124, 126-129 of the Fourth Claim)

221. We understand that the Claimant's concern about this matter was that she was being made to make a formal request under the process. We find that any other employee would be made to do this. We do not find that this is less favourable treatment.

In relation to nocturia

222. [**Issue 7(11)**] The Claimant was provided with delayed and insufficient access to toilet facilities (para 46 of the Second Claim)?

223. We find that this is not less favourable treatment. Everybody in the building had the same access, whether disabled or not disabled. If anything this is a complaint about facilities which would naturally be a reasonable adjustment claim. This claim of less favourable treatment fails.

224. [**Issue 7(12)**] On 17 November 2017 the Claimant had a meeting with Mr Maguire where the same issues were discussed (para 54 of the Second Claim)?

225. Mr Maguire did not have knowledge of nocturia at this time. We have considered this allegation and paragraph 54 in which it is articulated in the second claim. We simply cannot identify less favourable treatment.

226. [**Issue 7(13)**] Smart-working by way of temporary working from home and/or temporary condensed hours was not extended to the C when she sought flexible working arrangement and was subjected to the formal procedure (paras 70-72 of the Second Claim and paras 13, 119-124, 126-129 of the Fourth Claim) - possibly just & equitable to extend time given already raised?

227. This appears to be substantially similar to allegation 7 (10) above.

Anxiety/depression and Nocturia

228. [**Issue 7(14)**] The Respondent isolated the Claimant from her team in that:

229. [**Issue 7(14)(a)**] In December 2017, Ms Seewak told the team to exclude the Claimant from all team-related events following the Claimant's email on 22

December 2017, where the Claimant had asked for details of her birthday to be removed (para 39 of the Fourth Claim); -

230. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

231. [**Issue 7(14)(b)**] On 20 December 2017, Ms Maroo told the Claimant she only had herself to blame for being shunned from the team (para 39 of the Fourth Claim).

232. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

233. [**Issue 7(14)(c)**] At some point in the week ending on 29 December 2017, Ms Maroo tampered with the Claimant's work duties making deliberate mistakes, providing false information to the customers and increasing the Claimant's workload (para 40 of the Fourth Claim);

234. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

235. [**Issue 7(14)(d)**] In the period of approximately 2 weeks prior to 14 August 2018, the Claimant was excluded from contributing to Mr Maguire's birthday card and present by Ms Seewak and Ms Maroo (para 102 of the Fourth Claim).

236. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

237. [**Issue 7(14)(e)**] On 11 September 2018, Ms Maroo introduced her new husband to every member of the team except for the Claimant (para 114 of the Fourth Claim).

238. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

239. [**Issue 7(15)**] On 5 April 2018, Mr Adewumi failed to uphold all of the Claimant's grievance dated 28 Nov 2017 and 4 Dec 2017 regarding hot desking, reasonable adjustment at work, no information about the purpose of a 1-2-1 meeting and relied on inaccuracies(paras 29, 60, 63 and 146 of the Fourth Claim)

240. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

241. [**Issue 7(16)**] From 16 April 2018 to 17 December 2018, Ms du Preez and Ms Carey failed to investigate the grievance raised by the Claimant against Ms [Teri] Seewak (para 62, 82, 87, 98, 103, 104, 111, 116, 118 of the Fourth Claim).

242. The time frame suggested for this allegation is partly in time and partly out of time. We have dealt with this allegation substantively on the merits on the basis that it could amount to a continuing act. We understand the basis of the allegation is that the Claimant complained about Ms Seewak in relation to the evidence she gave in a grievance process which concluded on 5 April 2018.

243. The Respondent dealt with these criticisms as part of the stage 2 appeal process following the grievance, rather than initiating a new grievance against Ms Seewak. We understand that this is the basis of the claim. We find that it was reasonable and understandable for the Respondent to deal with matters arising from the first stage of the grievance process in the second stage. We note that Ms Seewak was interviewed as part of stage 2. We do not therefore find that this was less favourable treatment.

244. In any event and crucially, we do not find that this treatment was because of the Claimant's disability.

245. [**Issue 7(17)**] From 16 April 2018 to 17 December 2018, Ms du Preez and Ms Carey failed to investigate the grievance raised by the Claimant against Mr [Simon] Price (para 82, 87, 98, 111 and 116).

246. Precisely the same considerations and an identical conclusion are arrived at on this allegation as for allegation Issue 7(16) above.

247. [**Issue 7(18)**] The Respondent failed to take any action in respect of the concerns raised by the Claimant about Ms Maroo on:

248. [**Issue 7(18)(a)**] 15 May 2018 to Mr Maguire regarding Ms Maroo's hostile behaviour (para 70 of the Fourth Claim);

249. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

250. [**Issue 7(18)(b)**] 4 July 2018 to Ms Carey regarding bullying, harassment and victimisation by Ms Maroo (para 87 of the Fourth Claim);

251. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

252. [**Issue 7(18)(c)**] 11 September 2019 to Mr Rogers and Ms Carey about an incident where Ms Maroo had brought her husband into the office and introduced him to every member of the team except for the Claimant (para 111 of the Fourth Claim)

253. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

254. [**Issue 7(18)(d)**] On 5 November 2018, regarding an exchange of emails between Ms Maroo and Mr Maguire about the Claimant's private life (para 130 of the Fourth Claim)

255. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

256. [**Issue 7(19)**] From 14 August 2018, the Respondent failed to investigate the grievance raised by the Claimant against Ms Miah (paras 100, 146(5) of the Fourth Claim)

257. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

258. [**Issue 7(20)**] From 14 August 2018, the Respondent failed to investigate the grievance raised by the Claimant against Mr Maguire (para 100 of the Fourth Claim).

259. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

260. [**Issue 7(19)**] On 22 August 2018, Mr Hayward failed to uphold all of the Claimant's appeal regarding her grievance dated 28 Nov 2017 and 4 Dec 2017 and failed to correct Mr Adewumi's inaccuracies (paras 81, 103, 104, 111 and 146 of the Fourth Claim)

261. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

<u>In relation to MS</u>

262. On 1 March 2019, Mr Rogers gave the Claimant a bad job reference (para 143 of the Fourth Claim)

263. This allegation was withdrawn by the Claimant during the course of the hearing.

264. [**Issue 8**] For each of the above did the Respondent treat the Claimant less favourably because of her disability?

265. This is dealt with above.

DISCRIMINATION ARISING FROM DISABILITY (s. 15 EqA 2010)

266. [**Issue 9**] The Claimant alleges that, arising from the condition of nocturia, she needed to have speedy access to a women's lavatory.

267. [**Issue 10**] Was the Respondent's relocation to the Extension and hot desking policy unfavourable treatment in that it prevented the Claimant's access to the lavatory (paras 45-46 of the Second Claim)?

268. We have considered the evidence of where the Claimant and her team were seated after the move by reference to a plan [193 {pdf 349}], specifically desks 94, 96, 100, 101. We have considered the location of the lavatories which were located on the same floor. We have considered the Claimant's diary entries that suggest that lengthy telephone calls in reality represented more of a challenge than the location of the female toilets. We do not find that the Claimant suffered unfavourable treatment in the sense of being prevented from accessing the lavatory.

269. [**Issue 11**] Was Ms Martin, Ms Carey and Mr Olubajo's refusal to let the Claimant use a toilet in the extension on 12 November 2018 unfavourable treatment?

270. We do not find that this allegation was made out for the reasons given in the finding of fact above. In essence we do not accept the Claimant's case on this point, for the reasons given above.

271. [**Issue 12**] Did R know, or could R reasonably have been expected to know, that the Claimant was disabled by the condition of nocturia?

272. We find that the Respondent had knowledge of nocturia from 4 January 2018 onward.

273. [**Issue 13**] Was any unfavourable treatment because of the "something arising", i.e. the Claimant's need to have speedy access to the lavatory?

274. We do not find that there was unfavourable treatment and have not needed to consider this point.

275. If we are wrong about unfavourable treatment, we still do not consider that causation is made out. We do not find that the move to the extension or the move to hot-desking were because of the Claimant's need to access the lavatory speedily. Both of these decisions were taken for policy reasons at a much higher level than the Claimant in the organisation and without reference to her.

276. As to the events on 12 November 2018, while we do not find that this amounted to unfavourable treatment, since we have rejected the Claimant's version of events, we find that Ms Martin's actions are entirely explained by the fact that the Claimant was being suspended and was being requested to leave the building forthwith. We have not detected any element of those events being influenced by the Claimant's particular need for the toilet.

277. [**Issue 14**] Can R show that C's treatment was a proportionate means of achieving a legitimate aim? In relation to issue 10 above, the Respondent contends that the legitimate aim was to achieve a successful move of the Claimant's team and then to manage and support her in the workplace. In relation to issue 11 above, the Respondent contends that the legitimate aim was that the Claimant was provided with the use of a suitable alternative toilet in the closest proximity to the Claimant's desired toilet that was not occupied and/or in use at the material time.

278. In view of our findings above it has not been necessary to consider this.

HARASSMENT (s.26 EqA 2010)

279. [**Issue 15**] Did the Respondent subject the Claimant to the following unwanted conduct:

280. [**Issue 15(1)**] On 11 October 2017 Mr Maguire was highly critical of the Claimant (paras 16-18 of the Second Claim)?

281. Mr Maguire at this stage did not have knowledge of the Claimant's disabilities. We accept his evidence that he said that her line of questioning was confrontational. We find that this is what he genuinely believed. We cannot detect any aspect of this allegation which is related to the Claimant's disability.

282. In any event this would not, objectively, amount to harassment.

283. [**Issue 15(2)**] On 23 October 2017, Mr Maguire arranged the move to another office during the Claimant's leave and disposed of her office furniture and office equipment (para 18 of the Fourth Claim)

284. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

285. [**Issue 15(3)**] On 2 November 2017, Mr Maguire ordered the Claimant to sit in another department and away from her team (para 21 of the Fourth Claim)

286. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

287. [**Issue 15(4)**] On 2 November 2017, Mr Maguire insisted that the Claimant attend an emergency meeting the next day even though he was aware that she had already gone on sick leave (para 22 of the Fourth Claim)

288. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

289. [**Issue 15(5)**] On 3 November 2017, Mr Maguire requested the Claimant to repeat the events of 2 Nov 2017 in front of HR and OHU (para 23 of the Fourth Claim)

290. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

291. It is worth noting that, had we gone on to deal with this on its substantive merits, in cross examination the Claimant admitted that it was reasonable of Mr Maguire to repeat these matters to HR and OHU. We cannot see how in the circumstances this claim could succeed.

292. [**Issue 15(6)**] On 3 November 2017 Mr Maguire requested that the Claimant have a workstation assessment (paras 40-41 and 59 of the Second Claim)?

293. We do not find that a line manager asking an employee to have a workstation assessment in the circumstances of this case, viewed objectively, could amount to harassment.

294. [**Issue 15(7)**] On 17 November 2017 Mr Maguire forced the Claimant to sit in an isolated area (para 51 of the Second Claim)?

295. We understand from the Claimant's witness statement that she felt isolated for a number of minutes waiting for a workstation assessment to take place. We do not find that objectively this would amount to harassment.

296. [**Issue 15(8)**] On 17 November 2017, Mr Maguire required the Claimant to have a workstation assessment in full view of others (para 26 of the Fourth Claim);

297. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

298. [**Issue 15(9)**] On 1 December 2017, Mr Maguire criticised the Claimant in a 1-2-1 meeting (para 63 of the Second Claim)? We do not see how this relates to the Claimant's disability. In any event we find that the concerns raised by Mr Maguire were objectively justified, based on the Claimant's conduct.

299. Mr Maguire informed the Claimant on 1 December 2017 that she should go back to the OHU (para 65 of the Second Claim)? Given that the Claimant had

failed to cooperate with the workstation assessment that an assessor from Posturite was attempting to carry out, we consider it was understandable and objectively cannot see how it was harassment for him to suggest a referral OHU.

300. [**Issue 15(12)**] On 30 November 2017, Mr Maguire invited the Claimant to a meeting without giving her any details when she asked him (para 31 of the Fourth Claim);

301. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

302. [**Issue 15(13)**] On 15 December 2017 Mr Maguire sent the Claimant an unsympathetic email in which he blamed her for an unsuccessful workstation assessment (paras 68-69 of the Second Claim)?

303. It is a fact that the Claimant did not engage with the process. In our assessment, in common with many of the allegations of alleged harassment this is not close to the threshold of conduct potentially amounting to harassment.

304. [**Issue 15(14)**] On 15 December 2017, the Respondent bullied the Claimant into having another OHU appointment, warning her to participate and using accusatory language (para 35 of the Fourth Claim)

305. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

<u>The Respondent isolated the Claimant from her team in that:</u>

306. [**Issue 15(14)(a)**] In December 2017, Ms Seewak told the team to exclude the Claimant from all team-related events following the Claimant's email on 22 December 2017, where the Claimant had asked for details of her birthday to be removed (para 39 of the Fourth Claim);

307. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

308. [**Issue 15(14)(b)**] On 20 December 2017, Ms Maroo told the Claimant she only had herself to blame for being shunned from the team (para 39 of the Fourth Claim).

309. [**Issue 15(14)(c)**] At some point in the week ending 29 December 2017 Ms Maroo tampered with the Claimant's work duties making deliberate mistakes, providing false information to the customers and increasing the Claimant's workload (para 40 of the Fourth Claim);

310. [**Issue 15(14)(d)**] At some point before 4 May 2018 Ms Maroo tampered with the Claimant's work duties despite having been told not to do so (para 68 of the Fourth Claim)

311. [**Issue 15(14)(e)**] In the period of approximately two weeks prior to 14 August 2018, the Claimant was excluded from contributing to Mr Maguire's birthday card and present by Ms Seewak and Ms Maroo (para 102 of the Fourth Claim).

312. [**Issue 15(14)(f)**] On 11 September 2018, Ms Maroo introduced her new husband to every member of the team except for the Claimant (para 114 of the Fourth Claim).

313. [**Issue 15(15)**] On 22 January 2018, Mr Maguire served the Claimant with a stage 1 absence invite letter, threatening her with dismissal (paras 46-48 of the Fourth Claim)

314. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

315. [**Issue 15(16)**] On 2 February 2018, Ms du Preez declined to hear the Claimant's appeal against a stage 1 absence warning (para 28 of the Fourth Claim);

316. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

317. [**Issue 15(17)**] On 21 May 2018, Ms Maroo complained to Mr Maguire about the Claimant's absence from work when she went for counselling (para 74 of Fourth Claim)

318. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

319. [**Issue 15(18)**] Ms Carey failed to act as agreed to resolve the issues raised by the Claimant in the meeting of 5 July 2018 (para 115 and 147(22) of the Fourth Claim)

320. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

321. [**Issue 15(19)**] On 20 September 2018, Ms Carey and HR advisor Mr Addy Olubajo came unprepared to a meeting to discuss outstanding grievances (para 117 and 118 of the Fourth Claim)

322. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

In relation to anxiety & depression & nocturia

323. [**Issue 15(20)**] Between 16 October 2017 and 1 November 2017, Mr Maguire failed to update the Claimant regarding her requests relating to a permanent desk, relocation and equipment (para 19 of the Fourth Claim)

324. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

325. [**Issue 15(21)**] On 8 November 2017, at a team meeting where the Claimant raised concerns about hot-desking, Ms du Preez knowingly resorted to falsehoods in disagreeing with the Claimant by stating that the team was still finding their way, had nowhere to put their things, and by relying on the team's ethos (para 24 of the Fourth Claim)

326. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

327. [**Issue 15(22)**] On 17 November 2017, Mr Maguire covertly recorded a conversation with the Claimant without her consent (para 27 of the Fourth Claim);

328. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

329. [**Issue 15(23)**] On 21 May 2018, Ms Maroo complained to Mr Maguire about the Claimant leaving work too early even though her leaving time was consistent with the Respondent's policies (para 74 of the Fourth Claim)

330. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

331. [**Issue 15(24)**] On 8 November 2017, Mr Maguire forbade the Claimant to keep a pedestal but allowed 5 other officers to keep theirs (para 25 of the Fourth Claim);

332. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a

discriminatory state of affairs. We did not find that it was just and equitable to extend time.

333. [**Issue 15(25)**] On 17 and 20 November 2017, Mr Maguire refused to supply the Claimant with a new keyboard when she requested it (para 28 of the Fourth Claim);

334. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

335. [**Issue 15(26)**] On 1 March 2019, Mr Rogers gave the Claimant a bad job reference (para 143 of the Fourth Claim)

336. This allegation was not pursued by the Claimant.

337. [**Issue 16**] Was the unwanted conduct related to disability?

338. This has been dealt with where appropriate above.

339. [**Issue 17**] Did it have the purpose of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment?

340. This has been dealt with where appropriate above.

341. [**Issue 18**] Alternatively, did it have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment?

342. This has been dealt with where appropriate above.

343. [**Issue 19**] In deciding whether the conduct had this effect, the tribunal must take into account the Claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

344. This has been dealt with where appropriate above.

VICTIMISATION (s.27 EqA 2010)

345. [**Issue 20**] The protected act(s) is/are pleaded as:

346. [**Issue 20.1**] submitting a claim to the ET in September 2017 (para 82 of the Second Claim);

347. This claim was rejected by the Tribunal by letter of 6 October 2017. It seems that the Claimant did not tick the box to indicate that she was bringing any sort of discrimination claim [box 8.1 of the claim form], but in the narrative of the clan had a heading “Breach of Contract, Unpaid Money, Direct and Indirect Discrimination”. The narrative however did not explain how this was direct or

indirect discrimination, although there is a reference to time being extended on a just and equitable basis "as per section 123 (1) (b) of the EA 2002.

348. We find that the claim initially presented in September 2017, which was initially rejected but then presented again in November 2017, was, just, a protected act, although it did not contain the content of a discrimination claim.

349. [**Issue 20.2**] submitting a claim to the ET in November 2017 (para 148(1) of the Fourth Claim)

350. As set out above under 20.1 this claim similarly refers [A19] to "direct & indirect discrimination", yet it does not provide any particulars of that claim including protected characteristic relied upon. For similar reasons, we find that this was a protected act.

351. [**Issue 20.3**] the Claimant's line manager Mr Maguire knew from a meeting with the Claimant on 1 December 2017 that the Claimant might bring a further claim (para 66 of the Second Claim);

352. We find, based on the Claimant's diary entry, which was contemporaneous, that a reference to a potential claim in the context of disability issues was mentioned. This was a protected act.

353. [**Issue 20.4**] submitting a claim to the ET in August 2018 (para 5 of the Fourth Claim).

354. This was a protected act, as the Respondent conceded.

355. [**Issue 20.5**] Raising a grievance on hot desking and reasonable adjustments with HR in late November/early December 2017 (para 138(d) of the Fourth Claim)

356. This was a protected act, as the Respondent conceded.

Victimisation – parts out of time

357. [**Issue 21**] Did the Respondent subject the Claimant to the following detriments?

358. We find that the claim relating to each of the allegations **Issues 21(1)-(24)** below were brought out of time.

359. We did not find that these allegations were part of a continuing act of discrimination or a discriminatory state of affairs.

360. We did not find that it was just and equitable to extend time.

361. [**Issue 21(1)**] In a one to one meeting on 22 August 2017, Mr Maguire requested the Claimant to abandon her claim (para 9 of the Fourth Claim);

362. [**Issue 21(2)**] In September 2017, Mr Maguire and Ms Du Preez did not allow the Claimant to take annual leave but allowed Mr Price to take leave that month (para 10 of the Fourth Claim;

363. [**Issue 21(3)**] In September 2017, Mr Maguire treated the Claimant differently to others by subjecting her to the formal policies and procedures for flexible working (para 13 of the Fourth Claim)

364. [**Issue 21(4)**] In October 2017, Mr Maguire requested the Claimant to shorten her already approved leave in the second half of October (para 11 of the Fourth Claim)

365. [**Issue 21(5)**] In October 2017, Mr Maguire victimised the C by keeping her in the dark despite their agreement that he would update her about the move to worse working conditions she was concerned about (paras 18 and 19 of the Fourth Claim)

366. [**Issue 21(6)**] On 2 November 2017, Mr Maguire victimised the C by ordering her to sit in another department and away from her team (para 21 of the Fourth Claim)

367. [**Issue 21(7)**] On 8 November 2017, at a team meeting where the Claimant raised concerns about hot-desking, Ms du Preez knowingly resorted to falsehoods in disagreeing with the Claimant by stating that the team was still finding their way, had nowhere to put their things, and by relying on the team's ethos (para 24 of the Fourth Claim)

368. [**Issue 21(8)**] On 17 November 2017, Mr Maguire victimised the C by forcing her to sit isolated from the team (para 26 of the Fourth Claim)

369. [**Issue 21(9)**] On 17 November 2017, Mr Maguire covertly recorded the conversation he had with the Claimant on 17 Nov 17 without acquiring her consent (para 27 of the Fourth Claim)

370. [**Issue 21(10)**] Between 17 and 20 November 2017, Mr Maguire did not allow the Claimant to use a new keyboard, and forced her to use discarded keyboards (para 28 of the Fourth Claim)

371. [**Issue 21(11)**] In November/December 2017, Mr Maguire refused to allow the Claimant to take holiday for Christmas 2017 (para 36 of the Fourth Claim)

372. [**Issue 21(12)**] On 1 December 2017 Mr Maguire organised an ad hoc meeting on 1 Dec 17 but refused to give the details to the Claimant (para 31 of the Fourth Claim)

373. [**Issue 21(13)**] Mr Maguire threatened the Claimant with dismissal in a one-to-one meeting of 1 December 2017 after the Claimant had raised a grievance about his failure to make reasonable adjustments and exercise duty of care (para 63 of the Second Claim, para 32 of the Fourth Claim);

374. [**Issue 21(14)**] On 12 December 2017 Mr Maguire refused to approve the C's request for Easter 2018 holiday so she had to approach Ms du Preez (para 37 of the Fourth Claim).

375. [**Issue 21(15)**] On 15 Dec 17 Mr Maguire bullied the Claimant into having another OHU assessment, warning her to participate and using accusatory language (para 35 of the Fourth Claim).

376. [**Issue 21(16)**] On 22 Dec 2017 Mr Maguire and Ms du Preez forced the Claimant to stay at work despite there being no outstanding work to be done and no phone cover to be provided when the rest of the team took the afternoon off (para 38 of the Fourth Claim).

377. [**Issue 21(17)**] On 18 January 18 Mr Maguire wanted to subject the Claimant to the formal complaint procedures after a customer complained in bad faith (para 45 of the Fourth Claim).

378. [**Issue 21(18)**] On 22 January 18, Mr Maguire served the Claimant with a stage 1 absence invite letter, threatening possible dismissal (para 46 of the Fourth Claim)

379. [**Issue 21(19)**] On 29 January 18 Mr Maguire sent the Claimant the outcome of the sickness review, which was aggressive and repeated the threats of dismissal (para 48 of the Fourth Claim)

380. [**Issue 21(20)**] On 2 February 18 Mr Maguire served the Claimant with a Code of Conduct letter without providing any evidence as to his accusations and criticism (paras 50-51 of the Fourth Claim) 855 - CM68 -

381. [**Issue 21(21)**] On 7 February 18 Ms du Preez refused to hear an appeal against the stage 1 sickness warning (para 49 of the Fourth Claim)

382. [**Issue 21(22)**] On 8 Mar 18 Mr Maguire responded to the Claimant's request for a team meeting in an aggressive and intimidating manner, and refused to hold a team meeting (para 59 of the Fourth Claim)

383. [**Issue 21(23)**] Between January 2018 and 5 April 2018, Mr Adewumi delayed in providing a response to the Claimant's grievance regarding hot-desking (paras 29, 60 and 148(24) of the Fourth Claim)

384. [**Issue 21(24)**] On 5 April 2018, Mr Adewumi failed to uphold the Claimant's grievance on hot-desking. In particular, he deliberately investigated matters not raised by the Claimant or matters that were contradictory to the raised particulars (paras 60 and 148(24) of the Fourth Claim)

385. [**Issue 21(25)**] From 16 April until 17 December 2018, Ms Carey failed to investigate the grievance raised by the Claimant against Ms Seewak (para 62, 82, 87, 98, 103, 104, 111, 116, 118 of the Fourth Claim).

386. The paragraphs referred to in the particulars of claim relating to a grievance raised on 16 April 2018, forwarding of the same on 20 June 2018 to Ms Carey, a request for an update on 4 July 2018 together with a complaint about being

bullied, notification on 10 August 2018 by Mr Rogers that the grievances would be heard during the grievance appeal, a letter written to Mr Hayward on 14 August 2018, and outcome letter from Mr Hayward on 22 August 2018, a reference to alleged ongoing harassment by Ms Seewak on 19 September 2018 and an outcome letter from Ms Carey dated 21 September 2018. All of these actions are out of time. We did not find that it was just and equitable to extend time.

387. Had we been required to deal with this allegation, we find that it was reasonable in the circumstances to investigate the Claimant's concerns about Ms Seewak through the second stage of the grievance process rather than initiating a further grievance, purely to make the matter manageable. We do not find that this was a detriment, nor would we have concluded that the five protected acts identified by the Claimant were the reason for this treatment.

388. [**Issue 21(26)**] From 16 April to 17 December 2018, Ms Carey failed to investigate the grievance raised by the Claimant against Mr Price (para 82, 87, 98, 111 and 116). From 14 August 2018 to November 2018, Ms Carey failed to investigate the grievance raised by the Claimant against Ms Miah (para 100).

389. With regard to the allegation about the grievance raised about Mr Price, we rely on precisely the same reasoning as for alleged detriment **21(25)** above, save for the reference to 16 April 2018, which does not apply in the case of Mr Price.

390. As to the claim regarding Ms Miah we find that this was brought out of time.

391. We did not find that these allegations were part of a continuing act of discrimination or a discriminatory state of affairs.

392. [**Issue 21(27)**] From 16 April 2018 to 22 August 2018, Mr Rogers and Mr Hayward failed to investigate the grievance appeal raised by the Claimant regarding hot-desking and reasonable adjustment at work (para 63, 104, 111 of the Fourth Claim).

393. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

394. [**Issue 21(28)**] In Apr 2018, Ms du Preez failed to inform Mr Maguire of the Claimant's counselling appointments on 16 and 23 April 2018 (para 66 of the Fourth Claim)

395. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

396. [**Issue 21(29)**] On 11 May 2018, Mr Maguire and Ms du Preez refused to allow the Claimant 2 flexi days in the same flexi sheet period to attend to her mother's

medical needs (who is partially blind and suffers from Parkinson's) (para 69 of the Fourth Claim).

397. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

398. The Claimant admitted that this was not detrimental treatment during cross-examination so in any event we would not have upheld this claim.

399. [**Issue 21(30)**] On 31 May 18 Ms du Preez forwarded a chain e-mail between her and the Claimant (in which the C identified instances of mismanagement) to HR and made it known that it should be used against the C to dismiss her (para 75 of the Fourth Claim).

400. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

401. [**Issue 21(31)**] On 20 June 2018 (para 83 of the Fourth Claim), on 29 June 2018 (para 85 of the Fourth Claim), on 3 July (para 86 of the Fourth Claim) and on 22 August 2018 (para 108 of the Fourth Claim), Mr Maguire informed the Claimant that he would arrange a formal meeting with HR without any intention to do so but never did so.

402. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

403. [**Issue 21(32)**] Mr Hayward delayed in providing the Claimant with the outcome to her appeal between 19 June 2018 and 22 August 2018 (paras 81 and 111 of the Fourth Claim)

404. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

405. [**Issue 21(33)**] On 5 Jul 18, in a one to one meeting, Ms Carey committed to talking to Mr Maguire and HR without any intention to do so, and blamed the Claimant for the events at work (paras 87 and 148.33)d) of the Fourth Claim)

406. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

407. [**Issue 21(34)**] On 9 Jul 18 Mr Maguire made an unsubstantiated allegation that the Claimant misrecorded her working hours (para 90 of the Fourth Claim).

408. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

409. [**Issue 21(35)**] From 20 July 2018, Mr Maguire failed to hold an annual appraisal with the Claimant despite having previously requested this and as stipulated by the Respondent's policies and procedures [para 91 of the Fourth Claim) C initially requested a delay. Thereafter, overtaken by conduct issues

410. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

411. [**Issue 21(36)**] On 2 Aug 18 Mr Maguire criticised the Claimant for another officer's mistake even though he knew the Claimant was not employed by the Respondent at the time (para 96 of the Fourth Claim)

412. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

413. [**Issue 21(37)**] Between 9 and 14 Aug 18 Mr Maguire refused to respond to the Claimant's query as to whether Ms Miah had complained about the Claimant (para 97 of the Fourth Claim)

414. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

415. [**Issue 21(38)**] On 10 Aug 18 Mr Rogers informed the Claimant that the grievances against Mr Price and Ms Seewak were meant to be heard during the grievance appeal, thereby implying incorrectly that Mr Hayward would be investigating these (para 98, 103 and 104 of the Fourth Claim)

416. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

417. [**Issue 21(39)**] On 14 Aug 18 Mr Maguire ordered the Claimant to go to a joint inspection for major works carried out a decade earlier, for which she was neither trained nor qualified (para 101 of the Fourth Claim).

418. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

419. [**Issue 21(40)**] On 22 August 2018, Mr Maguire refused to allow the Claimant to have 2 flexi days in 2 periods, one day before her trip abroad (para 108, 148(43) of the Fourth Claim)

420. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

421. [**Issue 21(41)**] In September 2017, Mr Maguire and Ms du Preez intentionally denied the Claimant a salary increment which she was due (paras 70 and 73 of the Fourth Claim)

422. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

423. In any event the Claimant abandoned this allegation during cross examination. We would not have upheld it.

424. [**Issue 21(42)**] On 22 August 2018, Mr Hayward failed to uphold the Claimant's grievance appeal, correct Mr Adewumi's inaccuracies and dismissed facts and evidence (para 111 of the Fourth Claim)

425. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

426. [**Issue 21(43)**] Between 22 August 2018 and November 2018, Ms Carey failed to follow the instructions of Chief Executive Kim Dero to produce an independent report on how a request for a permanent desk escalated into an ET claim, and instead produced substituted it with a Conduct Report (paras 110, 138(a) of the Fourth Claim)

427. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

428. [**Issue 21(44)**] Between 22 August 2018 and 3 September 2018, Ms Carey instructed Mr Maguire to submit a memo to her asking for an investigation into the Claimant's conduct so that she could substitute an independent report with a conduct report (para 138(b) of the Fourth Claim)

429. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

430. [**Issue 21(45)**] Ms Carey's conduct report was inaccurate, unsubstantiated and/or overly critical in that:

431. We find however that the claim relating to this allegation was brought out of time. We did not find that was part of a continuing act of discrimination given our finding about the decision to dismiss below. We considered the linkage between this report and the decision to dismiss very carefully. We did not find that it was just and equitable to extend time.

432. This allegation does not succeed. Had we been required to make findings, however, we would have found that some of Ms Carey's report dated 7 November 2018 was an assessment of the situation open to her as an investigator on the evidence. In broad terms we would find that she was entitled to find that the Claimant's behaviour in the workplace was problematic and her relationships with colleagues and management very poor. Based on substantial evidence in the agreed hearing bundle it is clear that the Claimant was guilty of inappropriate and disrespectful conduct in the way that she communicated with her colleagues at various levels of the organisation. There was ample evidence which could be properly put forward to support a disciplinary case against her.

433. We accept however that there is some force in the Claimant's complaint that the report was in places unsubstantiated and overly critical. It is unfortunate that Ms Carey's report does not come across as independent or balanced. It contains in our view some unnecessary conjecture and opinion. We would have had concerns about this document were this being analysed in the context of a claim of unfair dismissal.

434. Ms Carey in her conclusions makes reference to protected acts. It is of concern Ms Carey seems to trivialise the Claimant's disabilities and seems to consider the fact that the Claimant has sought to exercise her employment rights as something that can be held against her.

435. The Tribunal did not hear evidence from Ms Carey. Had this part of the claim been in time or part of a continuing act, we would have had to pay very careful attention to the burden of proof provisions in section 136 of the Equality Act 2010.

436. [**Issue 21(45)a**] She described the Claimant's request for a permanent desk on medical grounds as "not to her liking" despite having knowledge from the Claimant herself that she was disabled and could not hot-desk (para 138(c) of the Fourth Claim)

437. See Issue 21(45) above.

438. [**Issue 21(45)b**] She described the Claimant's protected act of raising a grievance with HR in late Nov/early Dec 2017 as "arrogant and that she felt she was the only one capable of undertaking tasks and everyone else was beneath her" (para 138(d) of the Fourth Claim)

439. See Issue 21(45) above.

440. [**Issue 21(45)c**] She described the Claimant as "manipulative, calculating, conniving and manufacturing a situation where she would bring a case against LBHF for financial gain" [1587] after the Claimant did a protected act of talking to ACAS and after she did a protected act related to a previous employment (para 138(e) of the Fourth Claim)

441. See Issue 21(45) above.

442. [**Issue 21(45)d**] She stated that the Claimant informed the whole team that she did not want to partake in team events contrary to the Claimant's evidence submitted to the ET in March 2018 as ordered by Judge Wade and given to Ms du Preez in Apr 2018 which Ms Carey viewed and dismissed (para 138(f) of the Fourth Claim) [911 para 6]

443. See Issue 21(45) above.

444. [**Issue 21(45)e**] She stated that the "team members were fearful of the Claimant and have expressed concerns about their safety" despite there being no such evidence (para 138(g) of the Fourth Claim)

445. See Issue 21(45) above.

446. [**Issue 21(45)f**] She stated that the Claimant had "on a number of occasions said that she had no emotion towards her colleagues" despite there being no such evidence (para 138(h) of the Fourth Claim) not detriment - trivial.

447. See Issue 21(45) above.

448. [**Issue 21(45)g**] She listed 14 points from the Claimant's original grievance and referred to them as "the allegations that could not be substantiated" despite the Claimant providing solid evidence to the contrary (para 138(i) of the Fourth Claim) - not detriment - just an opinion.

449. [**Issue 21(45)h**] She accused the Claimant of sending inappropriate, threatening and demanding emails despite no evidence of the same (para 138(j) of the Fourth Claim) [912 para 8]

450. See Issue 21(45) above.

451. [**Issue 21(45)i**] She accused the Claimant of "showing a lack of respect for both investigators and dismissed both reports as baseless and lacking merit" (para 138(k) of the Fourth Claim)

452. See Issue 21(45) above.

453. [**Issue 21(45)j]** She accused the Claimant of being "uncooperative, disruptive, showing contempt, talking about her ill feelings towards the organisation, her colleagues and management" when she met her to discuss outstanding grievances (para 138(l) of the Fourth Claim) - Zofia "oozing" ! fair comment - no detriment

454. [**Issue 21(45)k**] She stated that the Claimant "openly stated that she detested her manager" (para 138(m) of the Fourth Claim)

455. See Issue 21(45) above.

456. [**Issue 21(45)l**] She accused the Claimant of making "countless complaints against other members of the team" (para 138(n) of the Fourth Claim)

457. See Issue 21(45) above.

458. [**Issue 21(45)m**] Ms Carey, in bad faith, and with the knowledge that the Claimant had volunteered to Ms Carey some months earlier on 5 July 2018 that she had been studying Russian at work, referred in her report to another team member telling her that the Claimant had been studying Russian whilst at work (para 138(o) of the Fourth Claim)

459. See Issue 21(45) above.

460. [**Issue 21(45)n**] Ms Carey stated that the "Claimant herself said that the relationship and trust with the team was broken and could not be repaired and the only way this could be done was for people to leave voluntarily" (para 138(p) of the Fourth Claim)

461. See Issue 21(45) above.

462. [**Issue 21(45)o**] She stated that according to Mr Maguire, the Claimant was responsible for "low morale and productivity in the team". The Claimant contends that there was in fact a significant drop in productivity as soon as the move to the Extension took place yet the Claimant's KPIs consistently remained at 100% (para 138(q) of the Fourth Claim)

463. See Issue 21(45) above.

464. [**Issue 21(45)p**] She described the Claimant's communication with management as "appalling, aggressive and controlling" (para 138(r) of the Fourth Claim)

465. See Issue 21(45) above.

466. [**Issue 21(45)q**] She described the Claimant as "rude and condescending in communicating with the Leadership team, sending inappropriate emails bordering on threats and demands" (para 138(s) of the Fourth Claim)

467. See Issue 21(45) above.

468. [**Issue 21(45)r**] She stated that "a specific instruction was given to [the Claimant] by both the Assistant Director and Director of Corporate Services to follow the correct procedure in her request for flexible working which she ignored and went on leave without prior authorisation". The Claimant contends that she did not go on leave but she worked condensed hours and Ms Martin responded 5 days later so the Claimant could not have ignored an instruction that was yet to be given (para 138(t) of the Fourth Claim).

469. See Issue 21(45) above.

470. [**Issue 21(46)**] From the first half of September 2018 until 17 December 2018, the Respondent treated the Claimant differently from others by requiring her to make a formal application for flexible working by way of condensed hours (para 119 to 129 of the Fourth Claim)

471. We do not find that requiring the Claimant to make a formal application for flexible working amounted to different treatment as the Claimant alleges, or detrimental treatment. This was the normal process. This part of the claim is not made out.

472. [**Issue 21(47)**] Throughout the second half of September and first half of October 2018, Mr Maguire, Ms Martin and Mr Rogers failed to respond to the Claimant's requests for flexible working by condensed hours (paras 119, 120 - 124 of the Fourth Claim)

473. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

474. [**Issue 21(48)**] On 11 Oct 18 Mr Maguire tasked a temping income recovery officer from a different department with cancelling the major works invoices and payment agreements for a scheme the Claimant was responsible for, without telling the Claimant beforehand and she could not cope with the workload (para 125 of the Fourth Claim)

475. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

476. [**Issue 21(49)**] Between 12 Oct and 30 Oct 18 Mr Maguire and Ms Martin forced the Claimant to take 10 Oct 18 as a half day flexi even though she had worked full-time that week (paras 126-27 of the Fourth Claim)

477. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

478. [**Issue 21(50)**] On 8 Nov 18 Mr Maguire manipulated the telephone system so that the Claimant was overloaded with phone calls and she could not cope with the workload (para 131 of the Fourth Claim)

479. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

480. [**Issue 21(51)**] On 12 Nov 18, Ms Carey, Ms Martin and Mr Olubajo suspended the Claimant from work (paras 132 and 133 of the Fourth Claim)

481. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

482. Had we been required to deal with this allegation, we note that we find it surprising that the letter of suspension dated 12 November 2018 contains "a possible outcome of the meeting will be that you will be dismissed for "Some Other Substantial Reason". We understand the Claimant's concern on this point. We do not regard it as good practice for the letter of suspension to be elided with a warning about a possible disciplinary outcome.

483. [**Issue 21(52)**] On 12 Nov 18, Ms Martin, Ms Carey and Mr Olunbajo falsely stated that she was not being subjected to a disciplinary hearing when she asked twice if that indeed was the case (paras 132 and 133 of the Fourth Claim).

484. We find that the claim relating to this allegation was brought out of time. We did not find that there was a continuing act of victimisation so as to bring this in time. We did not find that it was just and equitable to extend time.

485. [**Issue 21(53)**] In Nov 18 Ms Carey and Mr Rogers victimised the C in bad faith and vexatiously to have her dismissed (paras 135 ,136, 137, 138 of the Fourth Claim)

486. We find that the claim relating to this allegation was brought out of time. We did not find that there was a continuing act of victimisation so as to bring this in time. We did not find that it was just and equitable to extend time.

487. [**Issue 21(54)**] Mr Maguire denied the Claimant her payslips for the end of her employment in Nov and Dec 2018 (para 148(53) of the Fourth Claim).

488. We accept Mr Maguire's evidence on this point at paragraph 106 of his witness statement. Payslips are the responsibility of payroll. He did not have access to her payslips. We do not find that he acted to the Claimant's detriment as alleged.

489. [**Issue 21(55)**] On 17 December 2018, Mr Meehan dismissed the Claimant based on the conduct report (para 140 of the Fourth Claim)

490. We accept Mr Meehan's evidence that he not only considered the report dated 7 November 2018 by Janey Carey, but also the grievance investigations by Kayode Adewumi, the subsequent review by Paul Hayward, the emails sent to Mr Maguire and the behaviours demonstrated by the Claimant during the hearing, which went into a second day. We considered this carefully given our concerns about Ms Carey's report above.

491. We accept that Mr Meehan read through all the supporting papers provided by both the Claimant and by management before reaching his decision and that

he found that a key piece of evidence was that the Claimant had sent several emails to her manager openly insulting him and undermining his authority as well as clearly stating she considered there to be a breakdown in the relationship. He concluded on the evidence that the Claimant had openly refused to follow reasonable management instructions from her line manager. He found that she admitted during the hearing that she had lied to her manager when she denied sending an inappropriate email, to a colleague, Fahima Miah and did not provide any mitigation or remorse for doing so.

492. There are numerous examples in the bundle of emails written by the Claimant to colleagues which are disrespectful, combative and inappropriate for a workplace setting. The reasons set out by Mr Meehan in the letter of dismissal were substantial, and in the view of the tribunal it was not unreasonable or surprising that he took the view that the employment relationship needed to come to an end in view of the Claimant's conduct. We had some doubts about Mr Meehan taking account of the Claimant saying that she did not remember declining mediation during the course of the hearing itself, but in the overall context this is a minor point. We are not considering the fairness of the dismissal, but whether this dismissal was an act of victimisation.

493. We did not find that the Claimant making protected acts had a "significant influence" on the decision to dismiss. We have considered the Martin, Woodhouse and Panayiotou line of authorities, i.e. whether the making of the protected acts was genuinely separable from the manner of making them. While the Claimant has made protected acts her conduct that led to her dismissal was unconnected to the five protected acts relied upon. It follows that we have not had to separate out the making of the five protected acts and the manner of making them. The reality is that the conduct leading to dismissal was altogether separate.

494. We accept Mr Meehan's evidence that he disregarded references to ET proceedings and the Claimant's disabilities in making his decision. The substance of the first two protected acts was a minor wage dispute in which the reference to discrimination was tangential. This was minor and we do not find that this "made waves" within the management team at all. The third protected act was a reference to a potential future claim made to Mr Maguire. We have not concluded that this caused management to victimise her nor that it had any impact on Mr Meehan's decision. Similarly with the fourth or fifth protected acts. We accept that Mr Maguire's memo of 3 September 2018 set out genuine and substantial concerns about the Claimant's conduct, based on factual matters known by him, which were not protected acts and were reasons why she was becoming unmanageable. He gives various factual examples which were of substance in most cases directly quoting her. He could have given others in a similar vein. This lead to the disciplinary hearing and we find that this was not because of the protected acts but was entirely to be explained by the Claimant's own conduct in the workplace.

495. [**Issue 21(56)**] On 22 December 2018, Mr Rogers victimised the Claimant by refusing to forward the minutes of the disciplinary hearing which she requested as part of her appeal, knowing that she would have health-related difficulties in remembering the details (para 148 (52) of the Fourth Claim).

496. We accept the evidence of Mr Rogers that he could not forward the minutes because he did not have them. We have noted in our findings of fact that a draft of this document was found after some pressure from the Tribunal. While this did cause us to scrutinise the evidence of Mr Rogers on this point, ultimately we accept that he did not have in his possession the minutes and we find that he was not aware that there was a draft in the shared area until it transpired during the course of the hearing.

497. [**Issue 21(57)**] On 1 March 2019, Mr Rogers gave the Claimant a bad job reference (para 143 of the Fourth Claim)

498. This allegation was not pursued by the Claimant.

499. [**Issue 22**] Was the Claimant subjected to that detriment because of the protected act(s)?

500. We have dealt with this issue where appropriate above under issue 21.

FAILURE TO MAKE REASONABLE ADJUSTMENTS

501. [**Issue 23**] Was the Respondent under a duty to make reasonable adjustments?

502. [**Issue 24**] The Claimant relies on the following PCPs:

In relation to anxiety/depression

503. [**Issue 24(1)**] The Respondent's requirement that employees 'hot-desk' (paras 23-25 of the Second Claim);

504. As the Respondent rightly accepted this was a “PCP” (provision criterion or practice) operated by the Respondent.

505. [**Issue 24(2)**] The Respondent's practice of not enforcing hot-desking policies (para 27 of the Second Claim);

506. This is denied by the Respondent. We accept that at the time material to this claim there was a practice of not fully enforcing hot desk policies. We find that for example Mr Maguire was typically using the same desk from day to day. There are photographs of desks with material all over them, suggesting that they had not been left clear as required by the policy. We accept the Claimant’s evidence that her colleagues did leave material on their desks. This is supported by the content of her grievances.

507. It was suggested to the Claimant that she should use “Duncan’s desk”. This is highly suggestive that informally at least particular colleagues were taking ownership of desks.

508. In short we find that the hot desking policy was unpopular with employees who at time material to this claim did not follow the letter of the policy and in fact informally in some cases had their own desks.

509. [**Issue 24(3)**] The Respondent's practice of asking the Claimant to sit at a colleague's desk (para 29 of the Second Claim);

510. Following *Ishola*, we find that this was simply a one off event which occurred specific on 2 November 2017 which did not amount to a PCP.

511. [**Issue 24(4)**] The Respondent's practice of not providing permanent desks in the short or long term (paras 30-33 of the Second Claim);

512. This is disputed by the Respondent.

513. We find that the practice of not providing permanent desks in the short or long term is no more than another description of the hot-desking policy itself at issue 24(1) above. It is a PCP.

514. [**Issue 24(5)**] The Respondent's practice of not ensuring employees tidied their desks (para 43 of the Second Claim);

515. We find that this substantially overlaps with issue 24(2), i.e. the practice of not enforcing the hot desking policy.

In relation to nocturia

516. [**Issue 24(6)**] The Respondent did not have adequate facilities, with ladies' toilets on every second floor (paras 45 and 54 of the Second Claim);

517. This is a physical feature of the building falling under section 20(4) of the Equality Act 2010 rather than a PCP.

518. [**Issue 24(7)**] On 12 November 2018, the Respondent required the Claimant to leave the premises without allowing her to access the toilets in an emergency and she wetted herself and suffered a panic attack (para 133 of the Fourth Claim).

519. We find that the claim relating to this allegation was brought out of time. We did not find that it was part of a continuing act of discrimination or a discriminatory state of affairs. We did not find that it was just and equitable to extend time.

520. Following *Ishola*, we would have found that this was simply a one off event which occurred on 2 November 2017 which did not amount to a PCP.

521. [**Issue 25**] Did the PCP put the Claimant at a substantial disadvantage in comparison with persons who are not disabled?

522. As to alleged PCP3, it has not been necessary for us to deal with this given that we do not find it was a PCP.

523. In relation to PCPs1 and 4 the Tribunal finds that the hot desking policy itself caused the Claimant anxiety. This is manifest from the outset of the announcement of the policy all the way through to subsequent events, including instances of panic attacks.

524. In relation to PCPs2 and 5 the Tribunal finds that the informal practice of not fully enforcing the policy also caused the Claimant anxiety. It was clear that she found it difficult to deal with the fact that notwithstanding the policy in fact colleagues were leaving materials on desks and informally adopting them.

525. We have considered whether by in November 2017 Mr Maguire suggesting a particular desk that the Claimant could sit at he had fully ameliorated the substantial disadvantage being suffered by the Claimant. It might be said this was a step in the right direction. The difficulty however is that the Claimant needed a permanent resolution to help deal with her anxiety. The lack of resolution in the matter was causing her significant anxiety which affected her work and was a substantial disadvantage. We find the Respondent in effect acknowledged that there was a genuine problem by communicating to her on 26 January 2018 that the allocation of a particular desk was permanent. This is a recognition that whatever had been communicated before was not a permanent arrangement.

526. In relation Issue 24(6) the alleged inadequate toilet facilities for ladies, we do not find that the Claimant has satisfied us that this placed her at a substantial disadvantage as compared with persons who are not disabled. There was a toilet on the same floor that she worked. It is difficult to see how a toilet facility could have been more conveniently located. In the alternative, if we are wrong about this, we find that the provision of a pass to access toilet facilities on the first floor removed any substantial disadvantage from 20 February 2018 onward.

527. As to alleged PCP7, it has not been necessary for us to deal with this given that we do not find it was a PCP.

528. [**Issue 26**] Did the Respondent fail to make such adjustments as were reasonable to avoid the disadvantage?

529. We have carefully considered the adjustments contended for by the Claimant as described in the document at page 512 [electronic PDF 870].

Permanent desk

530. [**a**] The Respondent should have allocated a permanent desk to the Claimant after the move to substandard working conditions so that the negative triggers causing deterioration in Claimant's mental-health would be minimised

531. *Knowledge* – the Respondent relies upon its contention that Mr Maguire was unaware that the Claimant had any disabilities as these had not been disclosed to him. Further the Claimant, it is argued refused to disclose the grounds for a permanent desk that might help the line manager support her. The Claimant obstructed the workplace assessment taking place on 17 November 2017 it is argued that the same fixed desk was confirmed with the outcome of an OH report on 11 January 2018. In essence the Respondent's case is that the Respondent did not know and could not reasonably be expected to know that the Claimant was disabled and was likely to be placed at a substantial disadvantage by the hot desking policy.

532. Our finding (Issue 5 above) is that by an accumulation of information based on discussions, emails and events, by 28 November 2017 the Respondent, corporately, had knowledge of her anxiety such as to amount to a disability. If we are wrong about that we find that the Respondent could reasonably be expected to know.

533. We find that the Respondent had knowledge of substantial disadvantage caused by the hot desking policy also by 28 November 2017. This is again based on the conversation with Hannah Ogunbayo on 27 September 2017, the occupational report of 5 October 2017, the sickness absence which commenced on 2 November 2017, taken together with the content of the email on 14 November and grievance on 28 November. We acknowledge that Mr Maguire personally did not have all of this knowledge, but by its agents or employees the Respondent did.

534. We have considered the potential unfairness caused to the Respondent by the Claimant insisting that some crucial medical matters were kept confidential. This plainly made resolution of matters significantly more difficult. We are sympathetic to the situation Mr Maguire found himself in whereby he was trying to resolve matters and the Claimant was essentially stonewalling him on information that might have led to a speedier resolution. However we have considered the guidance in the EHRC Employment Statutory Code of Practice (211) at paragraph 6.21, that an employer must manage information coming through different channels, which may be confidential, to bring that information together to enable the employer to fulfil their duties under the act. That information was being provided to OH and particularly to Ms Ogunbayo in HR.

535. We found that by 28 November 2017 the Respondent corporately, had knowledge both of the Claimant's disability of anxiety and also the substantial disadvantage caused by the hot desking arrangements. Granting the Claimant a permanent desk was a simple management action, which could easily be done. We acknowledge however that the Claimant had presented the Respondent with a lot of information, relating to a whole range of matters. Taking account of the time it would reasonably take for the Respondent to digest the content of this grievance, we find that an adjustment to grant the Claimant a permanent desk could reasonable have been done within 14 days of the grievance of 28 November 2017. We find that by **12 December 2017** there was failure to make this adjustment.

536. On **26 January 2018** at the Stage 1 Sick Review Meeting it was clarified to the Claimant that the desk that the Claimant had been allocated was now a permanent arrangement. Accordingly the adjustment was made at this point and we do not consider that there was any ongoing failure. <u>The failure, we find is confined to this 6 ½ week period from 12 December 2017 to 26 January 2018</u>.

<u>Working from Home/Condensed hours</u>

537. [**b**] The Respondent should have allowed the Claimant to work from home or to [work] condensed hours when she first requested it in September 2017 so

that she could access counselling services and manage her mental-health prior to the move

538. We do not find that this proposed adjustment would ameliorate the substantial disadvantages caused by PCPs that are identified in the list of issues.

539. In any event we accept the Respondent's case is that work from home was actively encouraged and that Mr Maguire explained to the Claimant that all she needed to do was apply. We also take account of Ms Du Preez emailing the whole department on 23 October 2017, the first day in the new location, offering one day a week to work from home.

540. The Claimant has not satisfied us that the requirement to put in an application put at a substantial disadvantage compared to employees who are not disabled.

Return to old office

541. [**c**] The Respondent should have allowed the Claimant to remain in the previous office where she had her own workstation and adequate toilet facilities

542. Considering what is reasonable, we do not find that it was reasonable or practicable to have the Claimant sitting alone in the old office. On 17 November 2017 during the Claimant's return to work interview she admitted that working in a different office from her colleagues would lead to gradual alienation and that she believed that the team worked best in close proximity. Given the Claimant's strained relationship with members of her team generally, it was clearly important that she have some contact with the team. We do not find that this would have been reasonable adjustment to make. On the contrary, we consider that it would have been poor management practice to put the Claimant in a situation where she would have been likely to feel alienated by virtue of physical distance from the team.

Pass for toilet facilities

543. [**d**] The Respondent should have reprogrammed the Claimant's pass to optimise access to toilet facilities before or immediately after the move

544. We did not find that the alleged substantial disadvantage to which this relates was established, and accordingly have not dealt with this proposed adjustment.

545. For completeness however we note that on 12 February 2018, Mr Adewumi requested that the Claimant's pass be granted access to toilet facilities on an additional floor, which happened on 20 February 2018. On any view there was no substantial disadvantage from this point on stop

Better management of hot-desking

546. [**e**] The Respondent should have managed hot-desking by ensuring the workstations were de-cluttered and accessible to achieve fairness and allow the disabled staff to optimise their working conditions

547. The Respondent states: “Clear instructions were given to all staff by the Head of Service Jana Du Preez. At the section meeting on 8 November 2017, she reminded everyone of the need to keep desks clear and to use the recently installed lockers. Almost all staff complied with this request, and the lockers were utilised to store way files/Equipment such as laptop etc.”

548. We find that the Respondent was taking steps to manage what was a new system, albeit that we accept that this was not entirely successful. To the extent that the Claimant appears to be advocating a much harder line management approach our assessment is that this was not a reasonable adjustment in the circumstances. There was a new system bedding in, which we find required a degree of pragmatism in management. We do not find it was required as a reasonable adjustment to manage this in a Draconian or hard-line way, much as the Claimant might have preferred it.

Furniture/equipment

549. [**f**] The Respondent should have kept the Claimant’s furniture and equipment for her sole use

550. We do not find that this proposed adjustment would ameliorate the substantial disadvantages caused by PCPs that are identified in the list of issues.

Workstation assessment

551. [**g**] The Respondent should have a workstation assessment in line with Claimant's needs after she had made it clear to the management, HR and OHU that such a course of action in full view of others caused her distress and anxiety

552. We do not find that this proposed adjustment would ameliorate the substantial disadvantages caused by PCPs that are identified in the list of issues.

Remedy

553. [**Issue 27**] Should any award to the Claimant be reduced on account of contributory fault?

554. The Tribunal will invite submissions on this point at the remedy hearing.

555. [**Issue 28**] If the Claimant succeeds fully or in part, what remedy if any is she entitled to?

556. The Tribunal will invite submissions on this point at the remedy hearing.

REMEDY HEARING

557. A one day remedy/costs hearing has been listed on **11 November 2021**.

558. The parties are ordered to exchange and send to the Tribunal any written submissions on which they rely relating to either remedy or costs by **8 November 2021**.

559. Other case management orders:

559.1. By **17 September 2021** parties are to send to one another documents on which they rely (including schedule of loss).

559.2. By **18 October 2021** parties are to agree remedy bundle.

559.3. By **27 October 2021** parties to write in confirming if the remedy/costs hearing is required.

559.4. By **1 November 2021** exchange of witness statements, including any statement on which either party may wish to rely in respect of the Claimant's application for wasted costs.

559.5. By **8 November 2021** parties to send in witness statements & bundles to the Tribunal.

Employment Judge Adkin

Date 3.9.21

WRITTEN REASONS SENT TO THE PARTIES ON

06/09/2021.

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FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant (s) and respondent(s) in a case.

Where oral reasons were given during the course of the hearing the parties have 14 days from the date that this judgement is sent to them to request written reasons.