



EMPLOYMENT TRIBUNALS

Claimant: Miss S Ward

Respondent: (1) Department for Work and Pensions
(2) Jenny Liebenberg
(3) Louise Mayhew

Heard at: Leeds
On: 17-20 April, 27 and (deliberations only) 28 June 2018

Before: Employment Judge Maidment
Members: Mr D Crowe
Mr K Lannaman

Representation

Claimant: In Person
Respondent: Mr S Redpath, Counsel

RESERVED JUDGMENT

1. The Claimant's complaint alleging a failure on the First Respondent's part to comply with its duty to make reasonable adjustments pursuant to Section 20 of the Equality Act 2010 is well founded and succeeds to the extent that the First Respondent ought reasonably to have provided the Claimant with a buddy/mentor, enquired into the causes of her distress and not threatened performance procedures in respect of behavioural issues.
2. The Claimant's complaint of discrimination arising from disability pursuant to section 15 of the Act is well founded and succeeds against the First and Third Respondent in respect of the threatening of performance procedures on 16 January 2017.
3. The remaining complaints of unlawful discrimination against all of the Respondents fail and are hereby dismissed.
4. The matter will be listed for a further hearing to determine remedy with a time estimate of one day.

REASONS

The issues

1. The Claimant's complaints are all of disability discrimination. The Claimant remains in the Respondent's employment. References to the Respondent (in the singular) below are intended to refer to the First Respondent. The Second and Third Respondent are referred to by their names. The Claimant's complaints are brought against all of the Respondents save that in the claim of a failure to make reasonable adjustments, any duty can only have been that of the First Respondent as employer.
2. The Claimant is accepted to have been at all material times, from November 2016 – June 2017, a disabled person by reason of her suffering from postnatal depression, hip/back pain and osteoarthritis. The Respondents however dispute that they had the requisite knowledge for them to be liable in respect of a number of the individual complaints of unlawful discrimination. The Claimant has also pleaded as a disabling condition that of depression (distinct from postnatal depression) which the Claimant indeed maintains she has suffered from for a number of years. As stated below, it became apparent (later) that this was not accepted by the Respondent as an impairment which rendered the Claimant a disabled person.
3. The Tribunal went through the individual complaints with the parties to ensure that they were properly understood. They did indeed coincide with a list of issues prepared by Mr Redpath on behalf of the Respondents albeit with two additional complaints omitted from that list which Mr Redpath accepted were complaints previously identified in these proceedings by the Claimant.
4. Firstly, the Claimant brought a series of complaints of harassment relating to disability as follows: (1) on 16 January 2017 Ms Mayhew threatening performance action unless the Claimant left; (2) from January – June/July 2017 Ms Mayhew and Ms Liebenberg attempting to move the Claimant to the Department of Health; (3) on 16 January 2017 Ms Mayhew not seeking "what" feedback from colleagues regarding the Claimant's performance but only "how" feedback; (4) on the Claimant finding out in June 2017 that her occupational health report had been disclosed to a colleague, Jayne Shepherd; (5) in the Respondent ignoring requests for adjustments and complaining to others about the Claimant's requests; (6) on 12 January 2017 Ms Mayhew's email criticising the Claimant's behaviour and copied to the management team; and (7) on 16 January 2017 unsubstantiated allegations against the Claimant being viewed by the senior human resources team.

5. The Claimant also brings complaints of discrimination arising from disability reliant on the acts listed in respect of the first, second and third harassment complaints, (1), (2) and (3) above. Whilst the “something arising” was said to be the Claimant’s working pattern and ill health absences from work it was clarified at the outset that it was also the Claimant’s “behaviours” which the Respondents considered to be problematic.
6. The Claimant brings complaints of direct disability discrimination in respect of: (1) the Respondent not following mandatory processes to make reasonable adjustments; (2) Ms Liebenberg pressurising the Claimant to undertake activities on 30 November 2016; and (3) Ms Liebenberg making allegations regarding the Claimant’s behaviour on 13 December 2016 which were included in this Mayhew’s feedback given to the Claimant on 16 January 2017.
7. Finally, the Claimant brings complaints alleging a failure on Respondent’s part to make reasonable adjustments. The first reasonable adjustment complaint relied on a practice of their being a requirement of staff to work without mentors/buddies/pastoral support which is said to have put the Claimant at a substantial disadvantage when compared to a non-disabled employee by reason of her mental health impairments. As reasonable adjustments the Claimant maintains that the Respondent ought to have provided her with a buddy/mentor; allowed for daily check-ins with her manager; asked about the causes when any behavioural issues were observed or offered to listen to the Claimant; and not threatening performance procedures.
8. The Claimant separately maintains that the physical features of her workstation put her at a disadvantage and/or she required ancillary aids as a disabled person in relation to her physical impairments such that reasonable adjustments would have included the provision of a riser desk, adapted chair, adapted computer mouse and the provision of daily office car parking.

The evidence

9. The Tribunal had before it an agreed bundle of documents numbering in excess of 435 pages. A small number of relatively brief additional documentation was disclosed during the hearing and was accepted into evidence by the Tribunal with no objection by either party.
10. Having identified the issues with the parties, the Tribunal took some time to privately read into the witness statement evidence exchanged between the parties and relevant documentation. This meant that when each witness came to give her evidence she could do so by simply confirming the contents of her statement and, subject to brief supplementary questions, then be open to be cross-examined on it. The Claimant gave evidence first on her own behalf. The Tribunal also accepted as evidence,

without any objection on behalf of the Respondent, a written witness statement from Mr Simon Gray, a HR Business Partner with the Respondent. The Tribunal explained that whilst such evidence would be considered by it, less weight could be given when the witness was not present to be cross-examined on its contents. The Tribunal then heard, on behalf of the Respondents, from Ms Jenny Liebenberg, HR Director for Digital Group and from Ms Louise Mayhew, previously a Senior HR Business Partner within the Digital HR team.

11. The Claimant was at times distressed when giving her evidence and recalling past events. The Tribunal considered such reaction to be entirely genuine. It has to be noted, however, that the Claimant was also, on her own evidence, in a state of significant upset and distress in her conversations with Ms Liebenberg and Ms Mayhew, many of which form the background if not at times the substance of the Claimant's complaints in these proceedings. The Claimant maintains that she had been prone to react irrationally and to have a less than accurate and objective perception of her line managers, particularly when she was criticised – that is a reason for having valued having her colleague, Mr Gray, as a sounding board in the past. Whilst not doubting the Claimant's personal conviction in her recollection of events, account must be taken of the Claimant's state of mind in determining conflicts of evidence and where otherwise all of the witnesses have sought to give to the Tribunal a straightforward account.
12. Having considered all the relevant evidence, the Tribunal makes the findings of fact as follows.

The facts

13. The Claimant was employed by the Respondent from 24 November 2014 as a Human Resources Business Partner, based in Leeds. Initially she was managed by Ms Bev Peary. When the Claimant became pregnant around February 2015 she met with Ms Peary to explain that she had suffered from a mental health illness for some 19 years and as a result of her pregnancy had stopped taking her antidepressant medication. She went into some detail about her condition including it having been triggered by her sister's suicide and that the Claimant often experienced suicidal impulses herself. She stopped taking medication previously and considered that this may have been the cause of a miscarriage she suffered in 2014. The Claimant raised these issues as she was concerned that stopping her medication could affect her behaviour and performance at work.
14. Evidence of the Claimant's general depression included reference to a report by a consultant psychiatrist, Dr S Ker, dated 24 February 2017 which referred to the Claimant experiencing episodes of depression and anxiety since 1996 with flareups at times of stress. One of these flareups referred to the period of 2016 – 17 after *“interpersonal problems with two new managers at work (now going through grievance procedures), highly*

distressing experience...". It was noted that when she was ill, the effects, including as at the date of the report, included reduced concentration, being more short tempered at home, tearful, having reduced sleep, low mood, a sensation of a constant stream of consciousness (too much going on in her mind and not been able to switch it off), generalised anxiety and a loss of appetite. Tactics used to combat the condition included taking exercise, keeping active and using cognitive behavioural therapy techniques. It was recorded that the Claimant was taking sertraline daily and for over the past year and short courses of diazepam to "*block everything out*". Other antidepressants were described as having been taken in the past. In her impact statement produced at an earlier stage in these proceedings she described being constantly treated for depression since 1997 and also suffering from anxiety. From October 2015 she had been referred to the community mental health team and had undertaken cognitive behavioural therapy.

15. The Claimant started her maternity leave on 21 September 2015 and gave birth to her son on 2 October 2015. She described that, during her pregnancy and following the birth, she was monitored closely by her GP including because of her mental health complications. In the later stages of her pregnancy she resumed her antidepressant medication but still developed postnatal depression after the birth of her son. On 23 October 2015 an abscess burst causing a large abdominal wound which took approximately 6 months to heal. Following the birth, she also suffered from severe hip and back pain which continue to get worse. The Claimant had also developed, during her maternity leave, lateral pain in her arms and wrists and in January 2017 was diagnosed as suffering from osteoarthritis.
16. The Claimant described Ms Peary as having been sympathetic to her mental health condition. Following her disclosure of this to Ms Peary, given that Ms Peary did not work in the same office as the Claimant, being based in Sunderland rather than Leeds, one of the Claimant's colleagues in their team, Mr Simon Gray, was asked by Ms Peary to be the Claimant's "*listening ear*" and offer her support when she needed someone to talk to.
17. However, following the Claimant's return to work from maternity leave in September 2016, Mr Gray and the Claimant were no longer in the same team and were not often working from the same location. Nevertheless, Mr Gray made himself available as continuing support for the Claimant as much as he could.
18. Before the Claimant's return to work, in May 2016, Ms Peary contacted the Claimant to advise her that Mr Nick Bean was to be her new line manager. During August 2016 the Claimant spoke to him regarding her return to work telling him about the current state of her mental and physical health. The Claimant maintains that this included reference to her postnatal depression and the Claimant's evidence in this regard is uncontested. They discussed

the advice of the Claimant's GP that, given her health issues, it would not be appropriate to return to work initially on a full-time basis such that the Claimant agreed with Mr Bean that she would work three (instead of five) days a week until after Christmas 2016 taking two days of her annual leave, which had been built up during her period of maternity leave, each week. In an email from the Claimant to Mr Bean of 15 August 2016 she referred to this changed working pattern being as a result of "*ongoing illness postnatally*". She also referred to a current annual leave balance of 68 days and proposed working Tuesday, Wednesday and Thursday each week. Mr Bean replied within an hour saying that was all agreed. The Claimant was also shortly thereafter told that, when she returned to work, she would be a Human Resources Business Partner to the Respondent's newly formed Digital Group.

19. Following the Claimant's return to work on 21 September an increase in hip and back pain caused her to undertake an online display screen equipment assessment and a referral was made to Trillium (who managed the Respondent's facilities) for a workstation assessment.
20. From mid-October, the Claimant's line manager changed again to a Mr David Webb who the Claimant described as supportive and to them having discussed her illnesses. She noted that he had proactively supported her in securing the workstation assessment.
21. On 2 November 2016 the Claimant's line manager changed again to Ms Liebenberg. She had joined the Respondent on 6 June 2016 after a transfer from the Department of Health where she had been trained as a Mental Health First Aider and Mental Health Champion. Ms Liebenberg was based in London and sat two grades above the Claimant in the position of HR Director for the Digital Group leading a team of Business Partners to provide strategic HR advice to 4100 colleagues in the Group. Initially, she had worked as HR Director for Technology until the formation of the new Digital Group at the beginning of September 2016. Ms Liebenberg herself on 12 September 2016 had an emergency operation for a strangulated hernia which resulted in her being absent from work for 2 months returning on 31 October on a phased basis. Ms Liebenberg never intended to manage the Claimant on a permanent basis, but saw the need for her to take up that responsibility on a temporary basis until the new Digital HR team was able to bring in additional headcount at a senior level.
22. In early November, Ms Liebenberg asked the Claimant to send her details of her working pattern and the Claimant forwarded the aforementioned correspondence with Mr Bean. Ms Liebenberg understood that the Claimant had "*ongoing illness postnatally*" but did not understand her to be suffering from a disability. She recalled hearing from the Claimant about her back and abdomen issues but did not believe that there had been any mention of mental health concerns and, in any event, she thought it would have been inappropriate for her to probe. Ms Liebenberg expressed to the

Tribunal that she preferred to make her own judgement/assessment of people she managed and it is undisputed that, in any event, Ms Liebenberg did not benefit from any form of handover from Mr Webb or Mr Bean, such that she was not advised by them or any other previous managers that the Claimant had been suffering from mental health impairments including postnatal depression.

23. Ms Liebenberg contacted Mr Bean to query the working arrangement the Claimant had and her evidence was that he stated that he had inherited the arrangement with the Claimant and it had not been a decision he took. Ms Liebenberg was concerned that a “*huge*” amount of leave was being carried over and that annual leave was being used to maintain effectively full-time working when the reality of the situation was that the Claimant was not fit to return to work on a full-time basis. The Claimant recounted a telephone conversation with Ms Liebenberg where the Claimant’s impression was that she was angry about the arrangement and, she said, told her it was not acceptable. Whilst the Tribunal can conclude that Ms Liebenberg had made some comment about her view of the practice of using annual leave to facilitate such a long phased return to work, the evidence is that Ms Liebenberg accepted that this arrangement had been agreed with the Claimant and did not seek to interfere with it.
24. On 10 November, the Claimant sent to Ms Liebenberg her DSE assessment which had been completed the previous day. This included a confirmation that the Claimant’s chair and equipment was set up in line with current DSE guidelines, but that the Claimant continued to have issues which were unresolved. She had explained that this was “*significant back pain*”. The Claimant’s message to Ms Liebenberg was that she needed her intervention to progress matters saying that she suspected she needed a different type of chair. She was looking to get a GP appointment as soon as possible. Ms Liebenberg’s knowledge at that time of the Claimant was that she had back pain as a result of a difficult pregnancy but she had not been told about any detail of the condition or indeed any other conditions when responsibility for the Claimant passed to her.
25. The Claimant spoke with Ms Liebenberg on the telephone on that day during which the Claimant was told that she was being given a new business director to support, Tamara Bruck, who was based in London. On balance the Tribunal accepts Ms Liebenberg’s evidence that this move was a positive decision in that the Claimant was identified as a HR Business Partner with the necessary experience to assist Ms Bruck in setting up a team from scratch. Shortly after the discussion, Ms Liebenberg emailed the Claimant and Ms Bruck explaining to Ms Bruck that the Claimant was experienced and ideally placed to help her and to the Claimant that Ms Bruck knew what to expect and how to work with a good Human Resources Business Partner so that she was sure that there was a good foundation for success. She left it for the Claimant and Ms Bruck to get in touch with each other.

26. The Claimant arranged a further telephone call with Ms Liebenberg for 17 November to ascertain whether any progress had been made regarding the DSE assessment requirements. It is not disputed that Ms Liebenberg and the Claimant discussed the Claimant's physical impairment and Ms Liebenberg commented that she was also taking the painkiller, codeine. The Claimant's evidence before the Tribunal was that she had also told Ms Liebenberg that she was suffering from postnatal depression. On balance, the Tribunal cannot accept that that was said. The Claimant's evidence, which is accepted, was that she cried during the call explaining that she was upset that her business area had changed. The Claimant on her own admission was in an emotional and upset state such that her recollection of events was likely to have been affected. The Claimant's own witness statement referred explicitly to having told Ms Liebenberg about her being in physical pain. The statement goes on to say that the pain was having a negative impact on her mood and exacerbating her postnatal depression. The suggestion is that this was the impact of her back pain, not that she told Ms Liebenberg this was the impact. Ms Liebenberg was adamant in evidence that she knew nothing of the Claimant's postnatal depression at this stage. Her evidence on this point is convincing and, on a balance of all the evidence, is accepted. During the call the Claimant requested an occupational health referral which Ms Liebenberg agreed to take forward. The Tribunal accepts that her understanding was that this related to the assessment which might lead to the Claimant being provided with a specialist chair, not an assessment of the Claimant's mental health condition.
27. On 18 November, whilst on one of her days of annual leave, the Claimant picked up an email from Ms Bruck requesting some information. She subsequently received an email from Ms Liebenberg asking her if she was working that day. The Claimant responded immediately that she was trying to get some information Ms Bruck was looking for and Ms Liebenberg replied to say that Ms Bruck had been in touch with her saying "*she has not received the support she needs*". Ms Liebenberg said she was having a call at 2:30 p.m. with Ms Bruck to sort this out. The Claimant queried whether she meant that she had not got support from her and received the response: "*as her BP I would say yes – what advice have you given her...?*" The Claimant forwarded the information requested. She said that she was waiting for Ms Bruck to respond to her advice. Undoubtedly, the Claimant reacted adversely to this chain of communication and felt that Ms Liebenberg was unjustifiably criticising her.
28. Ms Liebenberg emailed the Claimant on 22 November asking if the Claimant was around that day and saying that it would be: "*good to meet. Come and sit with Sharon and myself so you can gel with the team as well...*" Ms Liebenberg understood from electronic diary systems that the Claimant was in the London office that day, but the Claimant responded to say that her working day had changed to one based at Leeds where she was supporting her 'old' business director, Simon, before relinquishing

responsibility for his area and concentrating on Ms Bruck's. The Claimant went on to say that it would have been good to meet *"especially as the team meeting next week clashes with Tamara's workshop. I will of course come and meet everyone but I have asked if the workshop can be changed and Dina has advised that it can't."*

29. Ms Liebenberg was aware that the Claimant was putting together a workshop for Ms Bruck and was pleased that she was doing so, stating in an email of 18 November: *"that was the bit of support that she hadn't received (which I hope you pick up)."* Within that email she also referred to looking forward to meeting with the Claimant face-to-face for the first time on 30 November, the date set for the Digital HR team's awayday. Ms Liebenberg now on 22 November realised that the workshop for the business area clashed with the HR awayday. Is accepted on the evidence that the Claimant had had no control over when Ms Bruck's business team could meet.
30. Ms Liebenberg emailed the Claimant later on 22 November asking if they could work through this as the team awayday *"is a three line whip for attendance"*. Ms Liebenberg asked the Claimant to see if the workshop for Ms Bruck could be moved as the date for the HR team awayday had been in the diary for a long time and she wanted everyone to be present. The Claimant responded that she had already asked this of Ms Bruck, but after Ms Liebenberg's comments that Ms Bruck wasn't happy with her support, she thought that Ms Liebenberg would want her to attend. She queried whether she had misunderstood. Ms Liebenberg's response was to say: *"... How strange we really do need to spend some time getting to know each other. Of all the dates to run a session for the business it clashes with a key HR team session.... I'm not sure what to say – what is your plan of action?"* The Claimant responded saying that she was keen to build relationships with her HR team colleagues but that she also needed to build relationships within the new area of business she had been assigned to. She said that she was hoping she could join the HR team for the second half of their awayday and that the session with Ms Bruck would not last the full duration it had been scheduled for. Ms Liebenberg responded to clarify that Ms Bruck had not said anything negative about Claimant. She had said she wasn't receiving the support she needed from HR which Ms Liebenberg had understood meant her HR Business Partner.
31. Ms Liebenberg and the Claimant spoke again over the telephone on 23 November. Ms Liebenberg agreed that she had been frustrated, being under the impression that the Claimant had set up the workshop for Ms Bruck and chosen the date which clashed with the HR team meeting. However, she was now pleased that the Claimant had come up with a way of attending both of the meetings in London and that this was the *"best of both worlds"*. During their conversation, the Claimant realised that the meetings were taking place at two different sites in London. Ms Liebenberg gave evidence that the Claimant did not tell her that would be problematical for her and was unaware that the Claimant would have any particular

difficulty in walking between the venues. On balance, her evidence is accepted. The Claimant's account that she went into detail regarding the difficulty of getting from one location to another is unlikely given that the Claimant had no time to digest the implications of the different locations and to consider how far apart they were and how she might travel from one to the other.

32. Now understanding from these proceedings that the Claimant's complaint was regarding a need for her to attend different locations, Ms Liebenberg remained unclear what the Claimant's difficulty was in that the meeting locations were around a five minute taxi ride away from each other and in circumstances where the Claimant's own evidence was that she was permitted to catch taxis to get from one site to another when on business. The Claimant's attendance at any meeting in London involved her driving from her home in Harrogate to York station before catching the train to London, a tube train and then walking from the tube station to the venue.

33. The Claimant duly attended the business meeting with Ms Bruck and the HR team meeting on 30 November and then met with Ms Liebenberg (and indeed Ms Mayhew) for the first time. Her conversations with both were, however, very brief including in circumstances where the Claimant had to break up a conversation with Ms Mayhew as she needed to leave to catch her train. The Claimant did not raise with them that her attendance at both the meetings that day had caused her any particular difficulty.

34. On 2 December Ms Liebenberg informed the Claimant that Ms Mayhew would now be her line manager. The Claimant picked up an email to this effect however only on 5 December whilst on leave. The Claimant, despite being on leave that day, telephoned Ms Mayhew to see if she was available to talk. The Claimant expressed her pleasure that Ms Mayhew was her line manager and went on to say that she was worried that she had not had a good relationship with Ms Liebenberg. The Claimant and Ms Mayhew agree that the Claimant became upset during the phone call and was tearful/crying saying that she didn't know what to do about her relationship with Ms Liebenberg. Ms Mayhew shared with the Claimant that Ms Liebenberg had been unwell and absent for a while following surgery. The Claimant during this call, it is agreed, informed Ms Mayhew that she had postnatal depression. Ms Mayhew was open in saying that she had herself received counselling for postnatal depression. Ms Mayhew's evidence was that the Claimant did not tell her about any condition having an impact on her work. Ms Mayhew suggested that there was a staff help and advice service but the Claimant said that she was already seeing a counsellor (the Claimant believed she had also mentioned receiving Cognitive Behavioural Therapy, but Ms Mayhew did not recall that being said) and her GP. It was Mr Mayhew's perception that the Claimant seemed much better by the end of the call.

35. Ms Mayhew was interviewed by Ms Faran Johnson on 25 April 2017 after the Claimant had raised a grievance. The Claimant noted that, in her interview, Ms Mayhew was recorded as saying that she had been asked by Ms Liebenberg to line manage the Claimant because they had similar situations being both back from maternity leave, having had difficult childbirths. The note recorded also that Ms Mayhew had personal experience of post natal depression. The Claimant suggested that this indicated that both Ms Liebenberg and Ms Mayhew were aware of her post natal depression at the time Ms Mayhew was given responsibility for the Claimant at the start of December 2016. Ms Mayhew was adamant that she had never spoken to Ms Liebenberg about post natal depression either before or after her conversation with the Claimant on 5 December. Ms Mayhew was just telling Ms Johnson as a statement of fact that she had had post natal depression herself. That account is not inconsistent with the interview notes. The Claimant also noted that Ms Mayhew had stated that Ms Liebenberg and the Claimant were both on the same medication (a reference to codeine) suffering the same amount of pain in respect of their respective physical health conditions.

36. Ms Mayhew had only joined the department on 16 September after an absence from work of 18 months. As a result, she conceded, her awareness of current policies and the availability of any assistance for the Claimant, such as a mental health first aider, was limited. She took no steps to seek advice as to the management of an employee's mental health condition, not knowing that detailed guidance was available within the Respondent. When Ms Mayhew had first met the Claimant on 30 November she found her to be a bit rude and on 5 December the Claimant had cried during their phone conversation. Ms Mayhew said that she couldn't associate that behaviour with post-natal depression based on her own personal experiences. She did not see the Claimant's reference to counselling and seeing her GP as indicating that anything was seriously wrong with the Claimant and she assumed that she had been using her annual leave to give her shorter working weeks due to childcare arrangements. Whilst Ms Mayhew had suffered from post-natal depression, she herself had considered herself to be very fit to be at work. During December 2016, Ms Mayhew and the Claimant were only at work on two of the same days due to their working patterns. Ms Mayhew worked on Mondays, Tuesdays and for a few hours on Wednesdays at this time. In total Ms Mayhew only managed the Claimant over 13 working days. She believed during that time they had had 10 phone conversations, although some of them were relatively brief.

37. Ms Mayhew met with Ms Liebenberg on 6 December, but there was no specific handover and there was no discussion about the Claimant's health. Ms Mayhew considered that the Claimant's post-natal depression was not something to share for reasons of confidentiality. Such account could not be challenged and is accepted.

38. On 7 December Ms Mayhew emailed the Claimant and a Mike Gannon about the possibility of them buddying each other on HR business partnering. As Mr Gannon was new to the business, the Claimant was asked if she could play a coaching role for Mr Gannon. Ms Mayhew asked them to set up a call between themselves. The Claimant was not encouraged by this move as she did not see that she herself would benefit from having a mentor or buddy, but would instead be asked to take on a role which might give her additional work and stress.
39. The Claimant attended a HR team awayday on 13 December 2016 in London. Whilst this was a working day, a festive tone was introduced by everyone wearing Christmas jumpers. Ms Mayhew sat next to the Claimant. She noticed that during a presentation given by Ms Liebenberg, but not during any other presentation, the Claimant started to make what she described as loud sighing noises. She said that others at the event had remarked on the Claimant's behaviour afterwards – she herself described it as "*strange*" and did not know if it was intentional. The day also involved a team exercise looking at communication styles. Ms Mayhew and her colleague Julie Ryle assessed positive and negative communication behaviours of individuals taking part in the exercise. Ms Ryle assessed the side of the room the Claimant sat on and had commented to Ms Mayhew that the Claimant had demonstrated many negative behaviours, including interrupting colleagues who were talking. Ms Mayhew said that she asked Ms Ryle to tone down the assessment that was to be shared across the team as she did not feel it appropriate for such individual criticisms to be aired amongst the group. The Claimant's evidence was that she had no recollection of her sighing. The Claimant was prone during the Tribunal proceedings to sighing or breathing deeply especially at moments of particular stress for her and the Tribunal considers Ms Mayhew's perception to be genuine.
40. The Claimant travelled to the meeting by train and then a tube from King's Cross to St James' stations. During that tube journey she came across a HR Deputy Director employed by the Respondent at a similar level to Ms Liebenberg, Helen Pickles. The Claimant entered into conversation with Ms Pickles expressing the view that Ms Liebenberg did not like the Claimant and that she was being set up to fail. She asked if Ms Pickles had any jobs in her own area coming up. Ms Pickles subsequently reported this conversation to Ms Liebenberg but not until after the team meeting on that day. The conversation was not reported to Ms Mayhew until 16 January 2017. Ms Mayhew and indeed the Claimant departed soon after on leave for Christmas returning to work only in early January 2017.
41. Before doing so, however, on 15 December 2016 the Claimant tried to contact Ms Liebenberg to raise her concern that she had heard nothing from the Respondent's occupational health provider. The Claimant understood that Ms Liebenberg remained her line manager on the electronic HR system and therefore was the only person who was able to progress any medical referral. The Claimant spoke to Ms Liebenberg's

Business Support, Julie Branscombe, who said that she would ask if a referral had been made. It seems that this call in fact prompted Ms Liebenberg to make a referral to the bespoke services team of the occupational health provider. She emailed them on 15 December referring to the Claimant's back problems and asking them to do a full assessment. Ms Liebenberg received a reply on 16 December 2016 stating that it was not something that they could deliver asking her to refer the case in accordance with the Respondent's internal guidelines. The Claimant did have some brief email correspondence with Ms Liebenberg later that day, her having composed an 'out of office' reply to her emails directing anyone contacting her during her leave to speak to Ms Liebenberg. Ms Liebenberg responded noting that it was kind of the Claimant to be concerned that she might be deluged with email correspondence, telling her not to worry and that everyone could do with a break. She thanked the Claimant for *"all your hard work especially getting Tamara into a good place – I appreciate it."*

42. The Claimant was then in fact absent on leave until her return on 4 January 2017. Ms Liebenberg worked over the Christmas period and took a period of annual leave from 4 – 15 January 2017.
43. Ms Liebenberg conducted a handover meeting with Jill Moore, another Senior HR Business Partner, on 3 January as she was not going to have any period of overlap with Ms Mayhew. Her evidence was that she could not recall whether she mentioned the Claimant's occupational health referral in circumstances where she was still to look at what needed to be done next, given the response received from bespoke services. She agreed that it would have been ideal to have informed Ms Mayhew of what was happening with the occupational health referral.
44. On her return to work, the Claimant emailed Julie Branscombe seeking confirmation of when Ms Liebenberg had submitted the occupational health referral as she had not heard anything back yet. Ms Branscombe called the Claimant back to say that she did know anything about the referral, but had raised the matter with Ms Liebenberg before Christmas. That was not accurate. Ms Branscombe emailed Ms Mayhew on 10 January 2017 when she told Ms Mayhew of the response from bespoke services which she said that she had *"obviously"* not shared with the Claimant as she didn't want her to know that she was aware of this. She noted that her occupational health referral did need raising via the occupational health service portal considering that the attempted referral previously might have been more successful if it had been put through as a requirement for a medical assessment rather than what could be done in terms of a chair at the Claimant's workstation.
45. Ms Mayhew was unable to attend work on 4 January due to her son being unwell but emailed her HR team asking them each to drop her a few lines regarding their current work priorities and any issues which had come up over the Christmas period. She was back at work on Thursday 5 January

having increased her hours to work an additional 3.5 hours on that day each week. The Claimant responded promptly on 5 January. Under the heading of 'support' required from Ms Mayhew, the Claimant noted that she was very upset that she had given consent to an occupational health referral but had not heard anything yet. She referred to Julie Branscombe being unable to tell her what was happening continuing: *"I continue to be in constant pain in the office as the chair does not give me the support I need given the after effects of the abdominal trauma I suffered last year."* She referred to the fact that she would be due to be working five days a week from the following week. She ended with the comment: *"I'm very concerned at the apparent lack of care for my well-being since I've come back from maternity leave given the significant mental and physical health issues I have had post-nataly, any clarity you could provide would be helpful?"*

46. This was the first Ms Mayhew had heard of the occupational health referral. Ms Mayhew queried what was driving the return to 5 days a week from the following week. She also asked for some background information regarding the chair to help her progress this. The Claimant replied saying that she had not had any discussions with Ms Liebenberg regarding the use of her leave to effect a phased return as the agreement had been made with Nick Bean when he had been her manager. She said that she had only discussed with Ms Liebenberg what had been agreed and there was no end date specified. She went on to explain that she had decreased her annual leave balance and now needed the remaining leave to cover school holiday periods. As regards the chair, she explained the Trillium assessment which had taken place and said that she had spoken to Ms Liebenberg who had advised that she needed an occupational health referral in order to discuss *"the health issues"* and that she thought they could then recommend an assessment and sourcing of an appropriate chair. Overall, this communication from the Claimant is indicative of the issue of her occupational health report being seen to be required solely in respect of her physical rather than mental health and therefore of the issue of her mental health, again, not having been discussed previously with Ms Liebenberg. She went on say that she had completed the DSE assessment over three months ago whilst appreciating that the delays were not down to Ms Mayhew. Ms Mayhew subsequently asked for the Claimant to send the occupational health consent form through to her. Ms Mayhew's next working day was Monday 9 January

47. The Claimant and Ms Mayhew spoke on the telephone on 10 January to seek to resolve the occupational health referral issue. The conversation lasted around 30 minutes and Ms Mayhew said that she would *"get the chair sorted"*. Ms Mayhew's perception was that while she had tried to empathise with the Claimant and share personal stories with her, the Claimant's tone became quite aggressive and she made further negative comments about Ms Liebenberg. There is no dispute that the Claimant cried again during this conversation. Ms Mayhew understood that crying was symptomatic of post-natal depression but did not perceive the

Claimant to be struggling at work. She felt the Claimant was focused on the chair issue and told the Tribunal that with post-natal depression there is a tendency to fixate on a particular thing. The Claimant tried to discuss her performance objectives but Ms Mayhew wanted to leave that discussion to another time when indeed she had the time for it. Ms Mayhew described herself as *“back to back with appointments”*. Ms Mayhew suggested that the Claimant should take ownership for setting her own objectives which the Claimant reacted angrily to. On reflection, Ms Mayhew told the Tribunal that the Claimant’s sudden changes of behaviour indicated that something was wrong. A work related 1:1 had already been scheduled for 12 January.

48. It is noted that on 9 January Ms Mayhew had sought some further information from Julie Branscombe about the occupational health issue which email had been copied into the Claimant. She also forwarded this to Jill Moore who responded by email saying that it might be worth a call to Julie Branscombe as *“I think she has had a difficult time with Sarah on this early last week...”*.
49. After the 10 January conversation, the Claimant emailed Ms Mayhew information regarding the process for making reasonable adjustments via the Civil Service Workplace Adjustment Team. Ms Mayhew rang them on that morning and made a referral to them at 2:30 p.m..
50. Ms Mayhew had a further telephone conversation on 12 January with the Claimant, the main purpose of which, from Ms Mayhew’s point of view, was to inform the Claimant of some forthcoming changes in her business area and that there was going to be a written communication sent out about it. Ms Mayhew did not know much herself at this point. Neither the Claimant nor Ms Mayhew raised the issue of the need to set the Claimant’s performance objectives.
51. On that afternoon Ms Moore emailed the HR team about business structure changes which had been announced that day attaching a document setting out details of the announcement made. Those changes were to be discussed at an HR team call the following Monday. Around an hour after that was sent the Claimant responded to Ms Moore, copied to Ms Mayhew and Ms Liebenberg. She said: *“Just to check should I have had a conversation with someone? My area has significantly changed (albeit has increased in size rather than been disbanded). I was aware something was happening as I discussed with Louise this morning but it will be really helpful if we were given the information to allow us to be on the front foot and proactively assisting the business in the transition rather than reacting to the changes in real time...”*
52. In reply Ms Mayhew emailed the Claimant, copied into the other recipients of the Claimant’s own email, expressing surprise and saying that they had spoken that morning when Ms Mayhew had briefed her that changes would

be announced. She went on: *“The tone in your message reads passive aggressively – I’m sure this won’t have been intentional but you might want to consider using a more supportive tone with team colleagues in correspondence going forward.”* Ms Mayhew had been annoyed by the Claimant’s email, but Ms Moore more so as she had told Ms Mayhew – Ms Mayhew said that they were both overworked and saw the Claimant’s email as *“a kick in the teeth”*. They felt that their ability to handle matters in Ms Liebenberg’s absence was being challenged. The Claimant herself ‘replied to all’ saying that she was sorry that Ms Mayhew taken her email in that way which was not her intention and that she was trying to share some thoughts to help ensure a smooth transition. She stated: *“I am mindful of the task to be guru... All seeing and all knowing!! Perhaps I should have called as emails can be misinterpreted.”*

53. Ms Liebenberg returned from leave on 16 January. She emailed the Claimant saying that she was not aware that she changed her working pattern and that they needed to have a discussion about this, closing with the statement: *“I’ve not agree to this change”*. The Claimant responded quickly referring to the agreement she had had with Mr Bean saying that this was open ended, but she had agreed with Mr Bean that it would continue until Christmas. Ms Liebenberg replied referring to the unusually high number of days of leave carried over and asking for the Claimant’s updated leave chart. Later on that day, the Claimant attend an appointment with an orthopaedic consultant about pain in her thumbs and was told that she had been diagnosed as having bilateral osteoarthritis causing the Claimant particular upset when told that the condition was degenerative.
54. In the meantime, Ms Liebenberg had had a conversation with Ms Mayhew during which she informed Ms Mayhew that a Deputy Director colleague had overheard the Claimant *“slagging”* Ms Liebenberg off on her train home after the team meeting on 13 December. Ms Liebenberg asked Ms Mayhew to have a conversation with the Claimant about her behaviours. Ms Mayhew also spoke to Jill Moore. Each had asked the other to provide general feedback on their team members, albeit outside any formal review process. Ms Moore explained a number of observations made about the Claimant’s personal impact, communication style and positioning, leadership and engagement. Ms Mayhew said that she did not make any correlation between the behavioural issues raised about the Claimant and her post natal depression based on her own experience of that condition.
55. On her return from her hospital appointment, the Claimant picked up a message from Ms Mayhew and called her back. She started by explaining what she had just been told by the consultant and said she found it difficult to contain her distress, which Ms Mayhew appeared to understand. Ms Mayhew then raised the email exchange the previous week asking if the Claimant could see that her email might have been interpreted as passive aggressive. The Claimant said that she acknowledged that on reflection a telephone call may have been better, but expressed how she had been

embarrassed at the way Ms Mayhew had responded to her email copying in direct criticisms to the senior leadership team.

56. Ms Mayhew then explained that she wanted to discuss some concerns about the Claimant's behaviour and asked the Claimant if she would prefer that she did this over the phone or face-to-face. The Claimant said that she wanted Ms Mayhew to be straight with her and asked her to continue. Ms Mayhew had considered saying nothing and waiting until she saw the Claimant in London the following day at the team awayday which had already been arranged. She knew that what she had to tell the Claimant would be hurtful, but if she had given the message in person was concerned that the Claimant would be in London, distressed, on her own, without any family support and with a long journey back. She thought it therefore better to have a phone conversation beforehand, thinking that the Claimant was likely to be at home with support at hand. If it had been physically possible to travel up to Leeds, she would have done so, but she was prevented from doing so by her own health and childcare responsibilities. There were no suitable locally based managers who could have spoken to her. Ms Mayhew said before the Tribunal that she had no idea of the mental health issues the Claimant was experiencing and if she had known would have handled matters differently. Whilst aware of her post natal depression she had viewed that in terms of her own experiences of that condition. She also agreed that the feedback she gave the Claimant could have been more balanced with some reference to her successes.
57. She then went through quite a long list of issues which she acknowledged would have been upsetting for the Claimant to hear and which caused her to check at various points that the Claimant was happy for her to continue. The Claimant listened to the concerns raised but felt unable to respond substantively to them at this point in time being in a continuing state of significant distress.
58. Ms Mayhew described the Claimant having been overheard making negative comments about Ms Liebenberg on 13 December, but described this as having occurred whilst the Claimant was on the train going home which was inaccurate and confusing to the Claimant, who was unaware what was being referred to. Ms Mayhew also said that the Claimant could come across as standoffish and unimpressed giving the impression that she did not wish to engage with people. Her communication style was described as rather blunt and open to misinterpretation with the Claimant at times being dismissive or even rude. She was described as being disruptive.
59. Following this feedback the Claimant asked Ms Mayhew what she would do and Ms Mayhew said that she responded that if she were in a situation like that she might look to move to another position on a level transfer to have a fresh start. Ms Mayhew's evidence was that it was obvious that the Claimant was unhappy working for Ms Liebenberg and she had said

repeatedly that she could not improve that relationship. She felt there was a serious breakdown in relationships between the Claimant and Ms Liebenberg and that she was simply being honest in saying that there were plenty of opportunities across the Civil Service. The Claimant was told that in the circumstances there was no need for the Claimant to attend the team awayday planned for the following day if she did not feel able. The Claimant acknowledged to Ms Mayhew how candid and direct she had been and asked her to put her comments in writing. She described to the Tribunal that she was by this point barely able to speak *“through tears and nausea.”*

60. After this conversation, Ms Moore emailed Ms Mayhew written confirmation of the feedback about the Claimant which she had given to her verbally earlier in the day. Ms Mayhew then emailed the Claimant at 7:42 p.m. as promised confirming their discussion on that evening, incorporating a number of the points in Ms Moore’s summary. In that email Ms Mayhew described them as having had a very tough conversation that afternoon. She said: *“I have tried to be very sensitive in respect of your PND and health issues which we have discussed over the previous weeks but I’m afraid feedback has been escalated to a point where I couldn’t sugarcoat the message.”* She went on to list the concerns which had been discussed. After referring to the comments overheard on the train, she said: *“Awareness of this has led to a breakdown of trust within the management team.”* She also referred to her observance that the Claimant had been sighing loudly during Ms Liebenberg’s presentation at the November event, noted that the Claimant said that she had a breathing issue and reflecting that she had only noticed this during Ms Liebenberg’s presentation and not at any other point in the day. She went on: *“We talked about how you might want to respond to this. I said that if I were in your situation I would look to move to another position on level transfer where I could have a fresh start. I asked if this was something you would like to consider going forward and you said that you would – I’m very happy to support you in whatever way I can to make this happen. Clearly there has been a significant breakdown of trust with SMT and supporting a move would avoid the need from us having a more formal discussion about how we will need to manage this within the team going forward.”* Ms Mayhew accepted that the more formal discussion referred to would have been under the Respondent’s conduct policy and could have led to the termination of employment, although the breakdown would need to be very serious for that. She accepted that she could see how the Claimant might have seen that as threatening, but at the time did not realise the extent of the Claimant’s mental health issues and if she had had that awareness would have done things differently. Mr Redpath’s subsequent submission that there was no threat of performance action is unsustainable when set against Ms Mayhew’s evidence.

61. The next day, the Claimant’s partner emailed Ms Mayhew notifying her that the Claimant was absent from work due to sickness.

62. Subsequent to commencing Tribunal proceedings, the Claimant received as part of her subject access request email correspondence which showed

the ordering for her of a headset which was to be used for video conferencing and the provision of which was unrelated to the Claimant's health conditions. Ms Liebenberg was reminded by email of the need for her approval to order the equipment and Ms Liebenberg is noted as responding that she hadn't approved this in light of the current situation. Ms Liebenberg's evidence before the Tribunal was that she did not wish the equipment to arrive if the Claimant was not going to be there to receive it in case it went missing. Certainly, the Tribunal considers that there was an anticipation that the Claimant would be absent due to sickness for some time and might indeed not be returning to her existing workplace. A further response from Ms Liebenberg on 25 January said that she was not approving the order until she had a better idea as to when the Claimant was back.

63. Around 26 January 2017 Ms Liebenberg received a call from the HR Director at the Department of Health who was looking for a HR Business Partner in Leeds. An email of that date from Ms Liebenberg to Ms Mayhew recounted that she told her about the Claimant and the fact that she was ill at present but that they would let her partner know that the Department of Health was interested in having a chat. Ms Liebenberg's evidence was that, whilst this would be a sideways move, she thought that the Claimant might be interested as for career progression within HR it was helpful to have worked across a number of government departments. The Claimant was not aware of this communication at that time.
64. On 2 February the Claimant raised a grievance in respect of Ms Liebenberg and Ms Mayhew. She also underwent on 6 February an occupational health assessment by telephone. A report was produced which again the Claimant subsequently learnt was sent by Ms Mayhew on 9 February 2017 to another HR colleague, Jayne Shepherd. Ms Mayhew sought Ms Shepherd's advice as to sickness absence guidelines. Ms Mayhew's evidence was that Ms Shepherd started on 1 February 2017 and had been earmarked to be the Claimant's new line manager. Ms Mayhew was only carrying out that responsibility on a "caretaking" basis until further senior HR appointments had been made in the team. There was no full handover to Ms Shepherd at this stage but Ms Mayhew felt that she ought to know what was going on. The Claimant noted that one question asked of occupational health was whether the Claimant would be fit to return to work if an alternative opportunity was provided on level transfer to a different department. Occupational health expressed the opinion that the Claimant was unfit for work and no adjustments would facilitate a return at that time.
65. The Claimant underwent a further occupational health review over the telephone on 9 March where the Claimant was again asked a question about her fitness if she was transferred to another department. In the subsequent occupational health report dated 9 March it was noted that it became evident that this question i.e. whether the Claimant would be open to a managed move to another department was different to the one

previously asked and that the Claimant became extremely upset and distressed because of this.

66. The Claimant attended a grievance investigation meeting with Faran Johnson on 10 March 2017 accompanied by Mr Gray. Ms Mayhew was interviewed by Ms Johnson on 25 April 2017. Ms Liebenberg was interviewed on 28 April 2017. Ms Liebenberg referred to the incident where the Claimant was heard making disparaging comments about her, referring to this having occurred when the Claimant was travelling up to Leeds by train after the December meeting. This confused the Claimant further as she had in fact taken a train to York.

67. The Claimant received notification on 11 May 2017 that her grievances had not been upheld. She raised an appeal which took place before Susan Moore on 15 June. On the same day the Claimant attended the Leeds office for a workstation assessment, her GP having issued a fit note on 4 May saying that she would be able to return from 15 May subject to the completion of a workstation assessment and implementation of any recommendations. She then received the workstation assessment report on 19 June which included a recommendation of a new chair. On 16 August the Claimant was told that all of her workstation equipment had arrived but had not yet been installed. On 31 August her GP confirmed that she would not be able to return until the equipment had been installed which was completed on 15 September. The Claimant then returned to work with the Respondent but in a new role under different line management to Ms Liebenberg and Ms Mayhew.

Applicable law

68. “*Disability*” is one of the protected characteristics listed in Section 4 of the Equality Act 2010. Whether someone is a disabled person is defined in Section 6 of the Act.

69. The duty to make reasonable adjustments arises under Section 20 of the Equality Act 2010 which provides as follows (with a “relevant matter” including a disabled person’s employment and A being the party subject to the duty):-

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

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not

disabled to take such steps as it is reasonable to have to take to avoid the disadvantage.

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

70. The Tribunal must identify the provision, criterion or practice applied/physical feature/auxiliary aid, the non-disabled comparators and the nature and extent of the substantial disadvantage suffered by the Claimant. ‘Substantial’ in this context means more than minor or trivial.
71. The case of **Wilcox –v- Birmingham Cab Services Ltd EAT/0293/10/DM** clarifies that for an employer to be under a duty to make reasonable adjustments he must know (actually or constructively) both firstly that the employee is disabled and secondly that he or she is disadvantaged by the disability in the way anticipated by the statutory provisions.
72. Otherwise in terms of reasonable adjustments there are a significant number of factors to which regard must be had which, as well as the employer’s size and resources, will include the extent to which the taking of the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.
73. In the case of **The Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the predecessor disability legislation when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *“The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing.”* Pursuant, however, to **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10**, there only needs to be a prospect that the adjustment would alleviate the substantial disadvantage, not a ‘good’ or ‘real’ prospect.
74. It is not permissible for the Tribunal to seek to come up with its own solution in terms of a reasonable adjustment without giving the parties an opportunity to deal with the matter (**Newcastle City Council –v- Spires 2011 EAT**).

75. If the duty arises it is to take such steps as is reasonable in all the circumstances of the case for the Respondent to have to take in order to prevent the PCP/physical feature/lack of auxiliary aid creating the substantial disadvantage for the Claimant. This is an objective test where the Tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.
76. The Claimant also complains of direct discrimination. In the Equality Act 2010 direct discrimination is defined in Section 13(1) which provides: “(1) *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*”
77. Section 23 provides that on a comparison of cases for the purpose of Section 13 “*there must be no material difference between the circumstances relating to each case*”.
78. The Act deals with the burden of proof at Section 136(2) as follows:-
“(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.*
(3) *But subsection (2) does not apply if A shows that A did not contravene the provisions*”.
79. In **Igen v Wong [2005] ICR 935** guidance was given on the operation of the burden of proof provisions in the preceding discrimination legislation albeit with the caveat that this is not a substitute for the statutory language. The Tribunal also takes notice of the case of **Madarassy v Nomura International Plc [2007] ICR 867**.
80. It is permissible for the Tribunal to consider the explanations of the Respondent at the stage of deciding whether a prima facie case is made out (see also **Laing v Manchester CC IRLR 748**). Langstaff J in **Birmingham CC v Millwood 2012 EqLR 910** commented that unaccepted explanations may be sufficient to cause the shifting of the burden of proof. At this second stage the employer must show on the balance of probabilities that the treatment of the Claimant was in no sense whatsoever because of the protected characteristic. At this stage the Tribunal is simply concerned with the reason the employer acted as it did. The burden imposed on the employer will depend on the strength of the prima facie case – see **Network Rail Infrastructure Limited v Griffiths-Henry 2006 IRLR 865**.
81. The Tribunal refers to the case of **Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** for guidance as to how

the Tribunal should apply what is effectively a two stage test. More recently the Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** made clear that it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

82. In the Equality Act 2010 discrimination arising from disability is defined in Section 15 which provides:-

“(1) A person (A) discriminates against a disabled person (B) if – A treats B unfavourably because of something arising in consequence of B’s disability, and

A cannot show that treatment is a proportionate means of achieving a legitimate aim.”

83. Again, there can be no liability if A shows that A did not know and could not reasonably be expected to know that B had the disability.

84. The complaint of harassment is brought pursuant to Section 26 of the Equality Act 2010 which states:

“(1) A person (A) harasses another (B) if -

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

violating B's dignity, or

creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.”

85. Section 136 is again relevant to establishing that the unwanted conduct in question related to the relevant protected characteristic. In order to shift the burden of proof, there is a need for the Claimant to adduce evidence to suggest that the conduct could be related to the protected characteristic, i.e. the Tribunal could reasonably conclude the detrimental treatment to be disability related.

86. Section 26 does require there to be unwanted conduct related to a protected characteristic. This is wider than the predecessor legislation which required the conduct to be “*on the grounds of*” the protected characteristic, but the breadth of the current section 26 must have limits. The Tribunal notes Langstaff J’s hesitation in the case of **Conteh v Parking Partners Ltd [2011] ICR 341** Conteh in concluding that the creation of the necessarily hostile etc environment is apt to include a case where all that can be said against an employer is that he has failed to remedy a situation brought about by the action of others for whom he is not responsible. He said within that case:

“Thus, if inaction occurs because, for instance, the relevant person in the employment of the employer is ill, or for instance because the office is so completely inefficient as to fail to deal with something, or for various other reasons which can easily be imagined which have nothing to do in themselves with race or ethnic or national origin, then the inaction, however regrettable it may be, is not on the grounds of race or ethnic or national origin”.

87. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

88. A claim based on “*purpose*” requires an analysis of the alleged harasser’s motive or intention. This may, in turn, require the Employment Tribunal to draw inferences as to what the true motive or intent actually was. The person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused.

89. Where the Claimant simply relies on the “*effect*” of the conduct in question, the perpetrator’s motive or intention – which could be entirely innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the Tribunal to consider the effect of the conduct from the complainant’s point of view. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect. The fact that the Claimant is peculiarly sensitive to the treatment accorded her does not necessarily mean that harassment will be shown to exist.

90. Harassment and direct discrimination complaints are mutually exclusive. A Claimant can not claim that both definitions are satisfied simultaneously by the same course of conduct – ‘*detriment*’ does not include harassment (Section 212(1) of the 2010 Act).

91. Section 123 of the Equality Act 2010 provides for a three month time limit for the bringing of complaints to an Employment Tribunal. This runs from the date of the act complained of and conduct extending over a period of time is to be treated as done at the end of the period. A failure to comply with a duty to make reasonable adjustments is an omission rather than an act. A failure to do something is to be treated as occurring when the person in question decided on it. This may be when he does an act inconsistent with doing it. Alternatively, if there is no inconsistent act, time runs from the expiry of the period in which the person might reasonably have been expected to implement the adjustment. The Tribunal has an ability to extend time if it is just and equitable to do so.

92. Applying its findings of facts to the legal principles, the Tribunal reaches the following conclusions.

Conclusions

93. Whilst the Respondent admitted that the Claimant was a disabled person by reason of her subsequently suffering from postnatal depression, the Claimant's complaints of disability discrimination were at least in part reliant on her suffering from "*postnatal depression/depression*", the Claimant saying that she had suffered from mental health illnesses for around 19 years. The Respondent did not make an admission in terms of the more general condition of depression but did not either, at the commencement of the hearing (when there was a discussion as to the relevant issues before the Tribunal) make it clear that this was not accepted as a disabling condition – the matter was raised in submissions. Nor was the Claimant's evidence regarding her long-standing condition of more generalised depression challenged.

94. The evidence and the Tribunal's findings lead it to conclude that the Claimant was indeed a disabled person by reason of her impairment of general depression on its own. The Claimant had been diagnosed as suffering from depression. It was a long lasting condition and the Claimant has described significant and unchallenged effects it had on her ability to carry out normal day to day activities. The Claimant had taken anti-depressants and the evidence was that but for such medication the adverse effects on her would have been greater – hence the concerns regarding how she could cope and behave at work when the medication was withdrawn during pregnancy.

95. The Tribunal firstly considers the Claimant's complaints alleging a failure on the Respondent's part to make reasonable adjustments. The first reasonable adjustment complaint relied on a PCP of a requirement of staff to work without mentors/buddies/pastoral support. During submissions the Tribunal raised the conceptual difficulty of a negative practice and that

perhaps the PCP in fact being relied upon was more clearly viewed as the practice of HR Business Partners to be subject to ordinary line management where it was said that the Claimant suffered a disadvantage by reason of her depression and postnatal depression in that this caused her difficulty in interacting with others and where she was prone to perceive matters irrationally and react irrationally, upsetting herself in the process. That did not alter the nature of this reasonable adjustment complaint or, Mr Redpath accepted, cause any difficulties in the sense that the Respondent had anticipated the issues and called all necessary evidence to deal with them.

96. The Tribunal accepts that the Claimant taking instructions from and having to answer to a line manager did cause her the disadvantages just described and these arose out of her mental health impairments, both depression and post natal depression. There is significant evidence of the system of line management having those effects on the Claimant. Those effects would not have been suffered by a person who was not disabled by mental health impairments.
97. The Tribunal considers that the duty to make reasonable adjustments arose so as to enable the Claimant to be able to test her perceptions of management instructions and interactions and to ensure that management was aware of the claimant's perceptions so that any fears the Claimant had might be allayed and any necessary clarity provided. The Tribunal considers that this could reasonably have been achieved by the allocation to the Claimant of an appropriate mentor/buddy. This had indeed been in place prior to the Claimant's return from maternity leave, with the Claimant's previous manager Ms Peary recognising the Claimant's needs from a mental health perspective and how she would not be able to ensure the Claimant's well-being and effectiveness given that they worked remotely from each other. Hence, Mr Gray was asked and very effectively undertook the role of an accessible sounding board for the Claimant. Whilst, despite the change in their respective locations, Mr Gray had continued, when he could, to assist the Claimant this was no longer effective given that he was neither working in the same office as the Claimant nor within the same team. What was reasonably needed was for an individual within the team and at the Claimant's workplace who could act as a bridge between her and her line managers.
98. The Claimant had very problematical communication with her managers, Ms Liebenberg and Ms Mayhew. She was left feeling distressed and isolated with no recognition within the team and no assistance provided for her to assimilate what she was being told and understand and rationalise any critical comments made. The lack of quality and accessible face to face time with a manger in the Claimant's working arrangements was starkly evident.

99. The Tribunal rejects any suggestion that a reasonable adjustment would have involved daily check-ins with the Claimant's managers as the interactions which did take place between the Claimant and her line managers were problematical and the likelihood is that a greater level of contact with her managers would have simply increased the number of problematical conversations and indeed built up a perception in the Claimant that she was being micromanaged.

100. It would, however, have been a reasonable adjustment to ensure that the Claimant had proper, quality discussions with her managers including face-to-face meetings. The reality of the Claimant's situation was that she was managed by email correspondence and through time-limited telephone discussions by individuals who, not knowing the Claimant and being at such a remote distance from her, were inevitably unable to properly understand the Claimant's reactions to them, how she felt and was coping with the workplace demands placed upon her. The situation within the Respondent is not an example of effective part-time working in the sense that the Claimant's and her line managers' working time often did not coincide, thus further limiting the Claimant's access to her managers and putting further time pressure on their interactions when they were able to occur. The impression the Tribunal is left with is of line managers with significant workload pressures and extremely busy, not least in having to fulfil their work demands within part-time hours. This was exacerbated by the lack of face-to-face time with the Claimant and in circumstances where neither Ms Liebenberg nor Ms Mayhew had enjoyed the benefit of what might have been a very valuable handover from previous managers so as to better understand the staff they were inheriting. In such circumstances there was much greater likelihood that the Claimant's difficulties would not have been recognised - there ought reasonably to have been more enquiry into the causes of the Claimant's obvious distress during almost all her interactions with line managers.

101. This leads on and relates to the Claimant's contention that as a reasonable adjustment she ought not to have been threatened with performance management procedures. The Tribunal has found that she reasonably perceived those to be threatened and objectively the Claimant was told by Ms Mayhew on 16 January 2017 that the Respondent might have to look at the issue of a breakdown of trust between the Claimant and management as a conduct matter. The view taken by the Respondent of the Claimant's actions was, again, not fully informed as it would have been had the aforementioned mentor/buddy been in place to act as a bridge between the Claimant and her line management.

102. The Claimant was taken to task because of behavioural issues which caused the Respondent genuine concern, but those behavioural issues obviously arose in the context of the Claimant's mental ill health. As such they ought reasonably to have been addressed by way of a more sympathetic approach recognising that the Claimant was not necessarily culpable as regards all aspects of her behaviour and the impression

created by her demeanour at times at work and in her interactions with colleagues. It ought reasonably to have been recognised as a reasonable adjustment that the circumstances of the Claimant's case were not such as to justify the threat of potential disciplinary action. Whilst the suggestion that the Claimant might benefit from a move to another department was not inappropriate to explore, this should have come out of a discussion regarding the Claimant's feelings and perceptions rather than as an alternative to potential disciplinary action.

103. The Claimant has also complained that Ms Mayhew threatening performance actions unless the Claimant left the department was an act of unfavourable treatment arising from her disability. The Tribunal's conclusions regarding this as a reasonable adjustment complaint lead inevitably to a conclusion that the Claimant's complaint about the same subject matter succeeds as one pursuant to Section 15 of the Equality Act. There can be no dispute but that Ms Mayhew's intimation that the Claimant might face formal action (which she agreed might have been reasonably seen by the Claimant as a threat of a formal disciplinary action) amounted to unfavourable treatment. Ms Mayhew took this position in respect of the Claimant because of the behavioural issues she had just gone through with the Claimant. Whilst some of these, including for instance the discussion with Ms Pickles on the tube, might have been unrelated to her disability, a significant number of the behavioural issues in terms of the Claimant appearing to be aloof or disinterested or at times negative certainly are concluded to be by the Tribunal indicative and symptoms of the Claimant's state of mind and health as a result of her impairments of depression and postnatal depression. In circumstances where the Tribunal has already found that these issues could have been dealt with in a more sympathetic manner with a discussion regarding the causes of the behaviour and with a reasonable adjustment having been made in respect of the Claimant having access to a mentor/buddy, whilst it was legitimate for Ms Mayhew to seek to address with the Claimant issues of her behaviour, her response cannot be regarded as proportionate.

104. This claim of unfavourable treatment arising from disability must succeed against the Respondent but also against Ms Mayhew individually. The Tribunal would, however, wish to make it clear that culpability rests with the Respondent as employer much more than with Ms Mayhew individually in that the primary cause for the way in which the Claimant was treated arose out of institutional and organisational failings within the Respondent relating to a rapid turnover of managers and therefore a lack of continuity for the Claimant in her line management, allowing managers to be responsible for individuals working remotely from them (with little scope for live interaction) and due to a lack of proper handovers.

105. The Tribunal appreciates and has considered the issue of knowledge in the context of both the reasonable adjustment complaint and the Section 15 complaint, it being contended on behalf of the Respondents that they did not have the necessary actual or constructive knowledge to be liable

for such acts of discrimination. Ms Liebenberg's individual knowledge was quite limited and not so great as Ms Mayhew's who at was aware from the commencement of her management of the Claimant that the Claimant was suffering from postnatal depression. However, both managers were faced with a very emotional and distressed colleague to manage in circumstances where the behaviour the Claimant exhibited ought reasonably to have caused alarm bells to ring even without knowledge of any mental health impairment which, of course, at least Ms Mayhew actually had. Both were on notice of the need to make enquiries. The Tribunal refers to the examples given at paragraphs 5.15 and 6.19 of the EHRC Employment Code. In terms of the Respondent's knowledge (as employer), clearly the Claimant's previous managers had been aware of her long-term mental health difficulties and the more recent postnatal depression such that thought had been given to the assistance the Claimant could be provided. Ms Peary and Mr Bean knew that the Claimant had issues regarding her perception of events and was personally vulnerable. That is information which ought reasonably to have been transferred to any new line manager and the Respondent cannot escape liability arising out of its failure to have any mechanism in place to ensure that managers were aware of any particular health-related needs employees under their management might have.

106. The Claimant's second reasonable adjustment complaint relates to the physical features of her workplace causing her a disadvantage in terms of her back pain with the provision of a riser desk, adapted chair, adapted computer mouse and daily office car parking put forward as adjustments/ancillary aids which ought reasonably to have been made/provided. The Tribunal can accept, on the evidence, that the Claimant's working environment put her at a disadvantage because of her back pain and that she was in a significant amount of discomfort which affected her mobility and which was exacerbated if her workstation was not set up in a way which might make her more comfortable.
107. However, as regards the provision of a daily office car parking space, the Tribunal has heard no evidence whatsoever from the Claimant in this regard and has no knowledge of what arrangements were in place.
108. As regards the chair and other office equipment, the Tribunal notes that there was no refusal on the part of the Respondent to make whatever adjustments were required and that those adjustments were ultimately provided. The question is therefore one of delay. However, whilst there was some delay in making the (correct) occupational health referral, that was not in all the circumstances a lengthy delay and of course by reason of matters unrelated to the Claimant's physical impairment, she was no longer at work for significant period after 17 January 2017. There was no failure in terms of workplace adaptations to make a reasonable adjustment.

109. The Tribunal turns now to the remaining complaints of unfavourable treatment arising from disability. The Claimant complains about Ms Mayhew and Ms Liebenberg's attempt to move the Claimant to the Department of Health from January to June/July 2017. The Tribunal's findings are such that there was, as a matter of fact, no such attempt. Ms Liebenberg received a query as to whether there might be a HR Business Partner available who might wish to work for the Department of Health and the Claimant's name was mentioned. This was, however, an opportunity for the Claimant to progress and take forward if she wished to. Ms Liebenberg did not source a potential vacancy and seek to move the Claimant into it. Furthermore, the questions raised of occupational health as to whether or not the Claimant would benefit, in terms of a return to work, from working in another department, were questions raised in the context of Claimant clearly being unhappy in her current department and herself not having ruled out the possibility of working elsewhere providing a solution. In no sense was there within the raising of such questions an actual attempt to move the Claimant whether against her wishes or otherwise.

110. The final discrimination arising from disability complaint relates to the feedback given to the Claimant by Ms Mayhew on 16 January 2017 where the Claimant maintains that she was told only about negative factors in 'how' she performed her duties in a behavioural sense rather than any comments regarding 'what' she actually did in terms of achievement against objectives. Whilst there was unfavourable treatment in the Claimant being effectively threatened with potential disciplinary action arising out of her behaviours, there was no unfavourable treatment arising from disability in the behavioural issues being raised rather than the Claimant's performance against objectives i.e. the 'how' instead of the 'what'. This was not a performance review meeting or any attempt to set objectives where there might be expected to be some balance. Instead, negative features regarding the Claimant's behaviour had been raised with Ms Mayhew and Ms Mayhew had been tasked with addressing these with the Claimant. She addressed those negative behaviours because it was perceived that there were negative behavioural issues which needed to be raised with the Claimant, outside of any performance review. Essentially, matters of a potential disciplinary nature were indeed been raised with the Claimant and the lack of balance occurred because those were perceived as urgent issues which needed to be addressed and not matters which should wait to be raised in routine performance review and objective setting meetings. The Claimant's complaint of discrimination arising from disability fails and is dismissed.

111. The Claimant then brings three separate complaints of direct disability discrimination. The first of these is that the Respondent did not follow mandatory processes to make reasonable adjustments. In terms of mandatory processes, the Tribunal is aware only of processes for referrals to occupational health and for workplace adjustments. There are no facts found from which the Tribunal could conclude that a non-disabled

employee, in similar circumstances to and with similar difficulties to those experienced by the Claimant, would have been treated any differently. It must therefore fail. Otherwise, this particular complaint appears more of an attempted alternative pleading of the reasonable adjustment complaint already found in the Claimant's favour.

112. Secondly, the Claimant maintains, as an act of direct discrimination, that Ms Liebenberg pressurised the Claimant to undertake activities on 30 November 2016, a reference to her having to go to 2 meetings at different locations in London on that day. The reason for Ms Liebenberg's insistence that the Claimant attended both meetings was her genuine view that there were two important meetings that day, one to service the business area for which the Claimant was responsible and the other to bring together the newly formed Digital HR team meeting. She was particularly concerned that the HR team meeting involved all those HR professionals who had been put together to look after a relatively recently formed division. There are no facts on which the Tribunal could reasonably conclude that a non-disabled person in circumstances similar to the Claimant would have been treated any differently. The reason for the Claimant being required to attend both meetings was straightforwardly the importance Ms Liebenberg attached to her attendance at both meetings. This complaint of direct discrimination must fail and is dismissed.

113. The Claimant was pressurised in the sense that she effectively had to come up with a solution, which indeed she did, enabling her to attend both meetings. In reality, this is a complaint which perhaps ought more appropriately have been brought as one of a failure to make reasonable adjustments. It has not, however, and the Tribunal cannot consider it as such. In any event, the Tribunal was not persuaded that the need to attend the two relatively proximate sites in London put the Claimant at a substantial disadvantage when compared to a non-disabled person in that the Claimant already had to travel significantly to attend just one meeting and arrangements were in place which allowed her to take a taxi from one venue to the other at the Respondent's expense.

114. The third complaint of direct discrimination is in respect of Ms Liebenberg's allegations regarding the Claimant's behaviour on 13 December 2016 (her conversation with Ms Pickles) which was included in Ms Mayhew's feedback to her on 16 January 2017. The Tribunal is clear that Ms Liebenberg was upset at a report from a senior colleague that the Claimant had been making disparaging remarks about her management of the Claimant and had disclosed information about their problematical working relationship. That is why she was upset and that is why she asked Ms Mayhew to raise the issue with the Claimant, which Ms Mayhew did on 16 January 2017. The Claimant's conversation with Ms Pickles and the Respondent's reaction to it can not be related to her disability and her being a disabled person was not the reason for her being taken to task about it.

115. Finally, the Claimant has brought a series of distinct complains of disability-related harassment. Firstly, the Claimant maintains that she was subject to unwanted conduct related to her disability arising out of Ms Mayhew's threat of performance action on 16 January 2017. This complaint has already been dealt with (and found in the Claimant's favour) as instead an act of unfavourable treatment arising from her disability and indeed that is how her treatment is viewed by the Tribunal, rather than as Ms Mayhew suggesting the possibility of performance actions for a reason related to the Claimant's disability. She raised the possibility of performance actions because the Claimant had shown problematical behaviours not for a reason related to the Claimant as a disabled person, with the purpose or effect of discomforting her as a disabled person.
116. The second harassment complaint is of Ms Mayhew and Ms Liebenberg attempting to move the Claimant from January – June/July 2017 to the Department of Health. The Tribunal has already dealt with this complaint as one of discrimination arising from disability and fundamentally concluded that there was no such attempt to remove the Claimant such that this must also fail as a complaint of unlawful harassment.
117. The third harassment complaint is also a duplication of a complaint of discrimination arising from disability, already dealt with by the Tribunal, in that it suggests that Ms Mayhew not seeking "what" feedback from colleagues but only the "how". Ms Mayhew did not in fact seek feedback at all, but was provided with it and, as already explained, was not seeking to provide the Claimant with any form of performance review or objectives but (outside any such processes) seeking to raise more urgent behavioural issues she had been asked to raise with the Claimant by Ms Liebenberg. This complaint simply cannot therefore succeed as one of unlawful harassment.
118. The Claimant's fourth complaint of harassment arises out of her finding out in June 2017 that an occupational health report had been disclosed to Ms Mayhew's colleague, Jayne Shepherd. The Claimant may not have wished the occupational health report to be viewed by any other senior HR manager but the reason for its disclosure was not a reason related to the Claimant's disability but because Ms Shepherd was soon to take over line management responsibility for the Claimant and Ms Mayhew thought that she ought to be aware of the issues relevant to the Claimant which she would be managing. This complaint of harassment must fail and is dismissed.
119. The Claimant's fifth complaint of harassment is in respect of the Respondent ignoring requests for adjustments and complaining to others about the Claimant's adjustments. This again appears more as an alternative pleading of the reasonable adjustment complaint in respect of her working environment. There was no ignoring of the Claimant's requests for adjustments in any event but rather a delay in actioning them and, on

the Tribunal's findings, only in respect of the provision of a chair, the Respondent not recognising that any reasonable adjustments had been requested arising out of the Claimant's mental health impairments. The Tribunal was unclear as to what was being relied upon in terms of complaining to others about the Claimant's requests, but understands that this relates to the involvement of Ms Branscombe. If the Respondent had a criticism or concern regarding the Claimant, it was in fact in how she had spoken to Ms Branscombe, rather than the subject matter of their conversations. The evidence is that, rightly or wrongly, Ms Branscombe perceived that the Claimant was annoyed at her and felt uncomfortable in the way the Claimant had sought information about progress of the adjustments. No complaint of unlawful harassment can succeed on this basis.

120. The sixth complaint of harassment relates to the 12 January 2017 email from Ms Mayhew criticising the Claimant's behaviour and copied to the management team. This criticism arose out of the Claimant's email which suggested that more information could usefully have been given to her about forthcoming business changes. Ms Mayhew and Ms Moore's perception was that the Claimant had been given as much information as she could have been and was being critical of them, undermining them directly to their line manager, Ms Liebenberg. This had nothing at all to do with the Claimant's disability and the complaint of disability related harassment in this respect must also fail and is dismissed.

121. The Claimant's final complaint of unlawful harassment is in respect of, on 16 January 2017, unsubstantiated allegations being viewed by senior HR leaders. This relates again to the behavioural issues raised with the Claimant by Ms Mayhew. Again, whilst the behavioural issues themselves may have arisen out of the Claimant's mental health impairments, the discussion of them and communication of them amongst members of the senior HR management team was unrelated to the Claimant's disability itself. Therefore, this complaint as one of unlawful harassment must also fail and is dismissed.

122. The Tribunal has considered the question of whether or not the Claimant's otherwise successful complaints of discrimination were brought within the applicable 3 month time limit. As against the Respondent, any act complained of which occurred on or after 8 January 2017 is in time, early conciliation having taken place from 7 April to 7 May 2018 and the claim submitted on 6 June, within a month of the period of conciliation ending. As against Ms Mayhew personally (the Respondent being vicariously liable for her actions in any event), any act complained of occurring on or after 14 January 2017 is in time, early conciliation having followed for a period from 13 April to 8 May 2017. The threat of performance action and lack of enquiry into the Claimant's reasons for her behaviour on 16 January 2017 are therefore in time. The requirement for a reasonable adjustment of the provision of a buddy/mentor was a continuing state of affairs from the Claimant's return to work after maternity

leave. There was also a duty which re-arose on Ms Liebenberg and Ms Mayhew taking over line management responsibility for the Claimant and as at 16 January 2017 when the behavioural issues were raised with the Claimant. It ought reasonably to have been clear to Ms Mayhew in her conversation with the Claimant of 5 December 2017 that a system of help for the Claimant ought to have been put in place. If she had recognised this, then such system, given earlier holiday absences should reasonably have been in place by 31 January 2018. The complaint asserting the need for the Claimant to have been further supported at work as a reasonable adjustment was also therefore brought in time. If it or any of the successful complaints had been brought out of time, it would certainly have been just and equitable to extend time given the Claimant's state of health and her seeking to resolve matters internally before commencing proceedings (and explanatory of any delay). No prejudice has been asserted by the Respondents who have been able to give full and cogent evidence. The prejudice of the Claimant not being able to pursue her complaints would have been great.

Employment Judge Maidment

Date: 24 August 2018