EMPLOYMENT TRIBUNALS

Claimant: Mrs M Linsley

Respondent: Commissioners for Her Majesty's Revenue and Customs

Heard at: North Shields **On:** 20, 21, 22, 23, 24 and 30 November, 2017

Before: Employment Judge Nicol **Members:** Mr P Curtis
Mr J North

Representation

Claimant: Mr A Tinnion, Counsel
Respondent: Mr A Webster, Counsel

RESERVED REASONS

1 These are complaints by Mandy Linsley, the claimant, against the Commissioners for Her Majesty's Revenue and Customs, the respondent, arising from her employment with the respondent. The claimant's employment with the respondent commenced on 25 June, 2001, and is continuing.

2 The Claimant alleges that she is a disabled person for the purposes of the Equality Act, 2010 ('EA') and that she suffers from ulcerative colitis. For the purposes of these proceedings, the respondent has accepted that the claimant satisfies the test of disability under Section 6 in Schedule 1 to the Equality Act, 2010, at all relevant times. The Tribunal did not receive a medical report from any medical adviser of the claimant and had to rely on the claimant's evidence and reports from the respondent's occupational health advisers. The Tribunal understood that, among other things, the condition adversely affects the claimant's ability to control her bowel movements and this means that she may have urgent need for a toilet, depending on how well the claimant is able to control her condition. The claimant's representative suggested that in certain situations, seconds might be vital.

3 Throughout these proceedings, the claimant has made a considerable number of allegations against the respondent. However, near to the end of the hearing, the claimant reduced the list of issues for the Tribunal to decide to four from an earlier list of fifty seven. She withdrew her complaints in respect of all other matters, which are dismissed on withdrawal, but relied on them as background information.

4 The claimant now alleges that the respondent failed to make reasonable adjustments in respect of two matters and subjected her to harassment on the ground of her disability on two occasions.

5 The Tribunal heard evidence from the claimant and from Mark Atkinson, personal tax, design and development manager, Daniel Bell, senior officer, Brian Craven, business head for the north east within the wealthy and mid-sized corporate directorate, Michael Dunn, design and development leader in the personal tax and test design and development team, Beverly George, head of service, in the core business development, test and operations chief digital information officer, Ambika Natarajan, design and development manager in the core business platform, development test and operations area, Brendan O'Neil, tax specialist and formerly manager on the affluent team, and David Smith, offshore investigator and formerly team leader on the affluent team, on behalf of the respondent. The witnesses gave their evidence in chief by submitting written statements that were read by the Tribunal at the start of the hearing and, subject to any necessary corrections, confirmed on oath or affirmation at the start of each witness's oral evidence and, as permitted by the Tribunal, answering supplemental questions. All witnesses were cross-examined. The Tribunal also received a statement from Kate Rudd, deputy director in the individuals and small business compliance directorate and formerly assistant director for personal and capital gains tax, on behalf of the respondent, which was not in dispute.

6 The Tribunal had before it an agreed bundle of documents, marked 'Exhibit R1', to which additional documents were added during the hearing with the agreement of the respondent and the leave of the Tribunal. Both parties made oral closing submissions by reference to skeleton arguments.

7 From the evidence that we heard and the documents that we have seen, the Tribunal finds the following facts.

8 The claimant cited a considerable number of incidents which she relied upon for background information, many of them being repetitive both as to the nature of the complaint and the reaction of the respondent. It is not considered that each of these needs to be dealt with in considerable detail but set out below are sufficient details to explain the Tribunal's reasoning. Similarly, there are a large number of occupational health reports, most of which are written in similar terms and reach similar conclusions. The claimant's main complaints, relating to three of her four issues, were that the respondent should have provided her with a reserved car parking space and the opportunity to work from home, as was recommended by occupational health. It was not in dispute that the recommendations had been made or that a reserved parking space had not been provided at Benton Park View. The fourth issue related to a specific incident where the claimant objected to a remark made to her by her manager in respect of the level of support provided to the claimant.

9 The hearing took place in the hearing room nearest to the public toilets. Whilst giving her evidence, the claimant was informed that if at any time because of her medical condition she required a break, she was to indicate this to the Tribunal so that a break could be ordered. The claimant did take advantage of this.

10 After giving her evidence, the claimant asked to be excused from attending the hearing as she did not wish to hear what was said, especially about her, by the

respondent's witnesses because of the effect this might have on her. Her representative was to remain. Although the claimant's representative had already discussed this with the claimant, the Tribunal pointed out the difficulties that might arise from this and indicated that it would require strong grounds before it would allow the hearing to be delayed because of something that arose from the claimant's absence. The Tribunal was assured that the claimant was fully aware of the potential problems and that a line of communication to the claimant would be available, if required. On this basis, the claimant was allowed to withdraw and the hearing continued. The Tribunal was not aware of any significant problems actually arising during the hearing.

11 The claimant commenced employment with the Department of Social Security on 25 June, 2001, as an administrative officer (teleagent).Her place of work was Waterview Park, Washington.

12 When the claimant commenced her employment with the respondent, she declared that she was not in poor health and the only matter that affected her health was that she was suffering from colitis. The claimant has suffered from the condition since around the age of 27. She stated that until about November, 2011, the condition had rarely affected her attendance at work. She then suffered 'an extreme flare up' and the condition had never fully gone back into remission. She sees a consultant at Dryburn Hospital every nine months. As mentioned, the Tribunal did not have any report from the consultant and was not aware of the consultant's opinion of any adjustments that the claimant might require or on the arrangements that were available to her, save to the extent that the claimant might have referred to them during an occupational health consultation.

13 At the end of 2011, the claimant was working as a tax collector in the special investigations department at the respondent's office at Benton Park View. It was not explained to the Tribunal how the claimant came to change department, work and her place of work.

14 She was dealing with what she described as 'unscrupulous customers' who were very confrontational when she visited their business premises and during telephone conversations. This was considered to have exacerbated her condition and, among other things, affected her on her journey to work. She was unable to drive the seventeen miles journey without suffering pain, incontinence and discomfort. The claimant approached the Department of Work and Pensions' Access to Work team and was informed that she should ask her employer to make an adjustment to assist her.

15 The claimant attended an occupational health assessment on 18 April, 2012. The claimant told the occupational health adviser that her symptoms affected her work because she suffered back pain and tiredness that affected her concentration and pace. She was declared fit for her full range of duties but it was stated that she would benefit from a car park space to avoid the stress of looking for a place to park, which aggravated her symptoms. It was also stated that the claimant would benefit from flexibility to mobilise and to avoid sitting for more than one hour. Some absences from work were anticipated but it was thought that management of the condition would minimise these. The claimant then requested a reserved parking bay but this was refused by the parking team for Benton Park View.

16 A further Occupational health assessment took place on 9 July, 2012. This was after the claimant was diagnosed by her GP as suffering from work related stress that was adversely affecting her colitis. The claimant was being asked to undertake what she describes in her statement as 'confrontational visits and calls' that she considered was the cause of her then current medical problems. Various recommendations were made including considering an alternative role, provision of a permanent parking place and an extension of the trigger points under the sickness absence management policy.

17 In August, 2014, the claimant commenced a grievance with the support of her trade union representative and Access to Work. The circumstances of the grievance are set out in the statement of Mrs Rudd, which was not disputed.

18 A further occupational health assessment took place on 28 August, 2014. It was recommended that the claimant be moved to a role where there was not any direct customer contact and that she undertook a stress assessment.

19 After three further occupational health assessments, the claimant was offered a permanent move to the post of an enquiry officer and was provided with a reserved parking bay. The post was located at Weardale House, Washington, which was closer to the claimant's home.

20 The claimant found her new role to contain confrontational elements and in September, 2014, she commenced a further grievance. To try to avoid the work, the claimant took on the duties of a trade union health and safety representative and volunteered with a local charity, both of which she was allowed to do in work time.

21 In the fact finding report compiled in connection with the grievance, which needs to be read for its full terms and effect, it was recorded that

> HMRC discussed a move of location and duties with ML prior to ML's move. ML agreed to move to I&PB. HMRC moved ML to a location closer to home, provided a dedicated parking space. On joining I&PB, the previous Reasonable Adjustment Passport completed in SI was revised/amended. I&PB revised work allocations via the Health and Safety risk assessment. ML did not raise her concerns over these arrangements through Line Management until 17 August 14 the day prior to raising the grievance with Alan Lee. HMRC/I&PB could not reasonably be expected to revise ML's work/environment within 1 day. As a result of the grievance being raised I&PB have revised working arrangements with ML. It is a business consideration as to whether these arrangements can continue.

The claimant was allowed to comment on the fact finding report and in the bundle there is note of a meeting held by the decision maker with the claimant on 17 November, 2014.

22 The claimant's second grievance was not upheld and she lodged an appeal in a letter dated 5 December, 2014. Pending the outcome of the appeal, the claimant commenced proceedings before the Employment Tribunal.

23 A Reasonable Adjustment Passport was issued on 17 December, 2014, that included various adjustments, including provision of a disabled parking space, a change of job role and a change of job location.

24 The grievance appeal was dealt with by Ms Rudd. The Tribunal noted detailed reports concerning the consideration of the appeal, including a note of a discussion with a representative of RAST.

25 The claimant's grievance was not upheld on appeal but in February, 2015, she was moved to the role of a personal assistant at Washington. The claimant then withdrew the proceedings before the Employment Tribunal.

26 The claimant was originally appointed as personal assistant to Peter Catchpole.

27 Ms Rudd had completed a stress assessment for the claimant and a copy of this was supplied to Mr Catchpole. In an email dated 13 January, 2015, the claimant informed Mr Catchpole that, contrary to a comment made by Ms Rudd, she could cope with change but that she could not cope with confrontation in her work. The correspondence in the bundle confirms that Mr Catchpole was in correspondence with the claimant's previous manager to clarify the issues relating to the claimant.

28 In May, 2015, the claimant was moved to work with Mr Craven. Unlike Mr Catchpole, Mr Craven was based in the same office as the claimant. Mr Catchpole's role was different to that of Mr Craven because Mr Catchpole dealt with staff training, building capability and leadership whereas Mr Craven was an operational manager. The claimant worked three days a week and found working with Mr Craven more pressured as he was busier than Mr Catchpole.

29 The Tribunal accepted that the claimant's role with Mr Craven was to manage emails, deal with telephone messages, arrange travel plans, prepare briefing packs and other one-off matters. Mr Craven worked with the claimant to develop her role and herself. The role, by its nature, should not involve confrontation. However, it was agreed that a stress reduction plan would be considered if it proved necessary. The Tribunal also accepted that the role was tailored to fit the claimant working part time and she was not required to work full time.

30 The claimant did suggest that her role should be performed on a job share basis so that the hours that she did not work could be covered. However, Mr Craven did not consider this to be necessary to cope with the work load.

31 In July, 2015, the claimant suffered a flare up of her condition to such an extent that she was absent from work. The claimant accepted that she had not raised the issue of stress affecting her colitis. When the claimant did speak to Mr Craven, she felt that he appreciated her condition. The claimant requested another occupational health referral and Mr Craven agreed to this. The claimant emailed Mr Craven setting out her analysis of her problems and the difficulties that she was having in coping with the work.

32 The claimant had a period of sick leave. The claimant rang Jason Fraser, another manager, in the absence of Mr Craven. She discussed the reasons for her absence and the claimant told Mr Fraser that she had not raised the issue of stress

because she 'was becoming a bit of a long playing record'. Mr Fraser said that he would take the matter up with Mr Craven. On 22 July, 2015, the claimant had telephone conversations with Pam Brewis and Mr Fraser but was too unwell to speak to Mr Craven when he telephoned her. However, she did speak to Mr Craven two days later before seeing her GP.

33 After seeing the GP, the claimant emailed Mr Craven saying, among other things, that 'I do not think it is ideal that this PA role is going to work for you or me in that I work part time and don't have the ability to travel to various locations with you'. The claimant then went on to set out various problems that she considered that she was facing with the work.

34 An occupational health adviser saw the claimant on 27 July, 2015. It was recorded that apart from colitis, the claimant suffered from anxiety and depression. Although this did not require medication, the claimant had had counselling. The claimant stated that her role was causing her stress because of having staffing responsibilities, additional work related travel, strict deadlines and because she only worked part time. It was considered that the claimant's absence from work was primarily associated with non-medical issues and that the claimant would be fit to return to work if the perceived work related factors preventing her return could be resolved. It was recommended that a stress risk assessment be carried out.

35 Mr Craven disputed that travel by the claimant in connection with her work was a problem. He only expected her to travel to local events and then only if she wanted to and was fit enough to go.

36 The claimant made a phased return to work. She then took 'the odd 2/3 hours leave…to manage her medication'.

37 During her return to work meeting, the claimant gave a clear indication that she was not enjoying her work and that a change of role would be appropriate.

38 She was told that there were not any jobs in Mr Craven's area that met the occupational health recommendations. The claimant considered that she could not return to Benton Park View because of the travel involved. A vacancy at nearby Waterview Park, Washington, had requirements that she could not meet despite Mr Craven approaching the vacancy holder.

39 The claimant suggested that Mr Craven contact the Reasonable Adjustment Support Team, of which Mr Craven had not been aware.

40 Options which may have been available included a reduction in grade to do other work, a promotion back to Benton Park View and a change of team. Mr Craven was satisfied that if the claimant was a caseworker, her role would not have to include dealing with confrontational telephone calls. However, if a situation did arise where the claimant was uncomfortable, the matter could be referred to her manager to deal with. In Mr Craven's experience, confrontational conversations were rare and the claimant had not experienced any when she had previously been a caseworker.

41 The claimant returned to work on 3 August, 2015, on a phased return. During her absence, Debra Robson had been covering the claimant's work. It appeared that this arrangement continued and the claimant found other work to do.

42 On 10 August, 2015, the claimant met with Mr Craven and told him that she wanted to become a caseworker. Mr Craven was surprised by this because of the claimant's earlier comments about not taking a role that she saw as confrontational. However, the claimant was fully aware of what the job would entail so he respected her decision and supported her request. The claimant was moved to work in Mr O'Neil's team on 7 September, 2015, and Mr Craven ensured that the change was handled smoothly. The claimant appeared to settle in well and was allowed to sometimes work from home.

43 Before moving, the claimant had a day's absence on 17 August, 2015. She had been taking leave to assist her manage her condition as mentioned above and she was now running short. She asked if she could have disability adjustment leave. This can be provided for employees who are absent from work for a reason associated with a disability. It cannot be used for sickness absences attributed to any other reason. Mr Craven decided that it was appropriate to grant the request.

44 After the claimant moved position, she was replaced by Ms Robson, who was a full time worker, and the role was expanded to take up the additional time available.

45 In Mr O'Neil's team, the claimant was a caseworker, undertaking enquiry work into the tax affairs of affluent individuals. She would be required to open enquiries and progress them through to a conclusion. This required training and the claimant had a learning plan. Mr O'Neil allowed the claimant to have study days at home. Because of her absences, the claimant did not progress to the stage where she was actively engaged with customers whilst with Mr O'Neil.

46 Mr O'Neil supported the claimant in her attempts to obtain a parking space. He also suggested that she obtain a blue badge but the claimant did not consider that this was necessary because she believed that she was permanently entitled to a reserved parking space because of her condition. She did not produce any evidence to support this assertion.

47 A further assessment was carried out by occupational health on 22 September, 2015. The assessment was particularly concerned with issues relating to the claimant's need for a dedicated parking place and her mobility. It was advised that the claimant 'would benefit from access to a parking space on site near to one of the buildings so that she can get to the toilet facilities urgently should she need to due to her physical symptoms related to her ulcerative colitis. As her condition is also known to cause joint pain in some individuals this would also be helpful when her levels of mobilising are reduced'.

48 A further reasonable adjustment passport was completed on 23 September, 2015.

49 Between 7 September, 2015, and 20 October, 2015, when the claimant started a further period of sickness absence, she claimed twelve hours disability adjustment leave, which was initially refused but subsequently allowed. Normally, this type of leave

would not be granted unless the employee was fit for work but was prevented from attending because of something relating to the relevant condition. The claimant had been unfit but had used ordinary leave to cover the absence. The claimant obtained retrospective fitness for work certificates that indicated that a longer period of rehabilitation should have been obtained.

50 On 12 October, 2015, the claimant was informed that her entitlement to a reserved parking bay would not be continued after her blue badge expired on 30 November, 2015. Mr O'Neil attempted to challenge this on behalf of the claimant.

51 The Tribunal noted that this was the first reference that the claimant made in her statement to having a blue badge that gave her entitlements in respect of parking in car parks and elsewhere. Initially, she informed the Tribunal that she did not renew her blue badge because of the expense and the inconvenience that was involved. However, she later said that it was because she obtained the badge when her condition was severely impacting on her mobility but that when her mobility improved she thought that her likelihood of obtaining a badge would be considerably reduced.

52 The Tribunal formed the impression that the claimant was attempting to give the impression that she only needed a blue badge in connection with parking at work. However, she informed the Tribunal that sometimes on her journey to work she needed to find a toilet whilst still travelling, in which case she either went to her sister's home or to a branch of Sainsbury's. Normally a supermarket will have parking for persons with a disability near the entrance, which will also be close to the toilet. The claimant gave the impression that at Sainsbury's it did not matter if she was not parked near the entrance and that finding a suitable parking space was easy.

53 On 20 October, 2015, the claimant commenced another period of sickness absence and was certified by her GP as being unfit for at least four weeks. She was suffering from stress that she attributed to her examinations and her role. She also attributed it to the removal of her reserved parking bay. The claimant had various conversations with Mr O'Neil and on 9 December, 2015, he informed her that her Waterview Park reserved parking space had been renewed for a further year. They also discussed other issues relating to the claimant's health. These included the claimant moving to a desk nearer the toilet. This could mean her moving to another team but the claimant appeared to think that this would be satisfactory as she knew a number of colleagues who worked in the location.

54 The claimant raised the issue of possible medical retirement and the possibility on the ground of capability was also discussed as this was required under the respondent's procedures.

55 On 17 December, 2015, the claimant submitted a fitness to work certificate which indicated that she could be fit enough to return to work on a phased basis.

56 A further Occupational health report stated that the claimant should be provided with a reserved parking space, be placed near to a toilet whilst working and have a less confrontational role. Her current role could involve an element of investigation where a taxpayer appeared to be living beyond the declared level of income.

57 The claimant returned to work on 4 January, 2016. At her back to work meeting, the claimant was issued with a sickness warning.

58 Mr O'Neil offered the claimant the opportunity to have her role varied or for her to be placed in a redeployment pool. The claimant reluctantly agreed to return to tax enquiry work. She changed team on 18 January, 2016, so that she could sit nearer to the toilets. Her new manager was Mr Bell, who was briefed on the claimant's situation by Mr Craven, including her occupational health reports. The intended benefits to the claimant were that she would be located nearer to the toilets and there was less risk of confrontation with customers because of the nature of the work.

59 The claimant had various meetings with Mr Bell to discuss her situation and her reasonable adjustment passport. The claimant remained concerned about dealing with difficult/offensive customers. However, there was not any evidence that she did actually have any problems. In particular, the claimant's studying for examinations did not allow time for such telephone conversations.

60 In January, 2016, the claimant requested to study from home. She put the request down to the noise in the office, which she found distracting. The request was refused because Mr Bell was not satisfied that the claimant would get the support she would need and the opportunity to experience the work through being with colleagues. In addition, files could not be taken home so that the claimant had to be in the office to consolidate her learning with practical work. The request was repeated in February, 2016, but Mr Bell was still not satisfied that it was appropriate. However, he agreed that whilst the claimant was training she could study at home for one of her three working days each week.

61 In this role, the claimant, as a trainee, was expected to spend about eighty per cent of her time studying. This involved a period of learning, attending a workshop and taking an examination. She was expected to consolidate her learning by undertaking casework. This would involve receiving a case where there was a discrepancy between the information supplied by the taxpayer and the information supplied by the employer. The caseworker was expected to draft a letter raising the query and then deal with the follow up, which was usually in correspondence. Often the follow up would come from a professional representative of the taxpayer. Because of the time that the claimant spent studying and her absences, the claimant did very little casework and did not progress beyond drafting initial letters.

62 The claimant's reasonable adjustment passport was reviewed again and steps taken to assist the claimant were updated and Mr Bell believed that the claimant was satisfied with it. However, because of an oversight, it was not provided to the claimant until she pressed for it.

63 The claimant requested a further reduction in her working hours to allow her more time to care for her father and to manage her condition. Despite possible operational difficulties, the change was agreed.

64 On 26 April, 2016, the claimant was classified as 'needs improvement' because she had not met her objectives in the 2015/16 appraisal year. The managerial view was that the claimant had not done enough casework to be classed as 'achieved'. She did not appeal against this classification because she felt that the system was biased

against her because the appeal manager would be from her own area of business and not independent. Despite the classification, the claimant was not put on a performance improvement programme.

65 The claimant's study programme was slipping and a workshop was deferred to allow the claimant time to catch up. Mentoring support was also made available to the claimant. This was provided by two colleagues, although there was usually only one.

66 The claimant returned from leave on 6 June, 2016, having previously asked for some cases to work on despite the fact that she felt that this could mean that she had to start dealing with confrontational telephone calls. Mr Bell considered that this was unlikely from his experience of the work that the claimant was undertaking. If there was anything that the claimant could not handle, it could be escalated to someone else in the team.

67 At that time, the claimant did not want to proceed with a stress reduction plan.

68 The claimant was allowed to undertake voluntary work in North Durham Academy.

69 Around the end of June, 2016, the claimant was put under the charge of another new manager, Mr Smith. A reorganisation had been implemented. Mr Bell's team was disbanded but Mr Smith's team would be located near the toilet. Mr Bell discussed the claimant's situation with Mr Smith, especially with regard to giving her the less confrontational work.

70 The work on which the claimant was now engaged was mostly non-complex tax discrepancy work which did not involve much customer contact but, where it did, this was usually with agents. The claimant was to maintain her work pattern of one day studying and one and a half days in the office. As a trainee, her priority was to pass the examinations.

71 She complained to Mr Smith about her concerns over confrontational telephone calls and he said that she could just conduct correspondence. The claimant felt that she could be given a support role that would avoid criticism from colleagues that she was not answering telephone calls. However, there was not any evidence to suggest that that there was a vacancy in any of the potentially suitable roles. The claimant agreed to continue with her tax enquiry role but anticipated that she would just hang up on any caller who was confrontational.

72 Mr Smith was supportive of the claimant but did not recall any occasion where the claimant had been involved in a confrontational telephone call. If she had been, Mr Smith was satisfied that she was aware that she did not have to continue with the call and that it would be taken over by someone else.

73 Mr Smith did not recall having said to the claimant that she could 'always do letters'. However, he considered that, if he did, this would have been intended to be supportive and an attempt to keep the claimant away from the risk of confrontation on the telephone.

74 The claimant stated that, because of her perceived problems, her condition started to deteriorate but she did not raise the matter at that time.

75 On 20 July, 2016, the claimant started a dialogue with Mr Smith about her parking arrangements, although her parking permission was not due to expire until December, 2016. Mr Smith agreed to take the matter up on behalf of the claimant. In due course, he was able to confirm that as the claimant did not hold a blue badge her position would be reviewed annually but that it was too early for a decision to be made by those responsible for managing parking. The claimant responded by arguing that she had a lifelong condition and should not have to suffer the embarrassment of repeated applications.

76 Whilst Mr Smith would have pursued the matter when the time came, the claimant transferred to Benton Park View before this was necessary.

77 On 12 September, 2016, the claimant started another period of sickness absence. The claimant discussed her health and her concerns over the confrontational aspects of work and the need to study for examinations. Mr Smith indicated that he would look into the options for a move for the claimant. The claimant stated that she would consider a move to Benton Park View, if it meant that she had a less confrontational role. Whilst on sickness absence, the claimant attended a promotion interview and she was successful in being appointed as a higher officer, business analyst, at Benton Park View.

78 The post was advertised as part of a recruitment exercise to appoint several business analysts. The Tribunal was satisfied that the claimant was or should have been aware that the post was at Benton Park View, where the relevant business unit was based. Smaller offices were in the process of closing to bring the complete unit to a single location there. Work was done collaboratively, which made home working difficult. Out of two hundred and twenty applicants, the claimant scored in the top five. The precise nature of the work and its requirements were made clear in a job description that was available to applicants. It was a responsible role and, although management of other employees was not part of this role, in other areas of the respondent it would have been included this at this level.

79 The claimant returned to her position under Mr Smith on 24 October, 2016, four weeks before she was due to take up her promotion. She then started correspondence about a parking place at Benton Park View. As the claimant did not feel that she was making progress with this, she asked Mr Smith to intervene on her behalf.

80 On 10 November, 2016, there is a string of emails in which the issue of obtaining a parking place is discussed. At 14.57, there is an email from the claimant to Mr Smith stating

> I've just called Kerry to let her know what's happening. She said exactly the same as you in that why do they need the letter when its for medical parking but I just said keep them happy!
>
> Thanks for calling…no manager would have ever done that in the past ☺

81 Mr Smith responded

> No worries Mandy, pleased you can see the funny side with the needless red tape.

82 The incident does not even warrant a note in the claimant's diary of events and in her statement, the claimant does not refer to any telephone conversation. Mr Smith's evidence was that, during the telephone conversation, the claimant was light-hearted and laughed at the bureaucratic nature of the process to obtain a parking place. The Tribunal found that Mr Smith was well aware of the claimant's feelings over parking places but that his comment reflected the conversation that he had had with her.

83 Benton Park View is a large site operated by the respondent where about 8000 employees work. There are two entrances that give access by roadways and walkways to a series of offices. Some parts of the road system are used on a one-way basis. Around the offices, there are numerous car parks. At both entrances, there are security offices. Once cleared to enter the site, access to the car parks and the offices is unlimited. Near the main entrance, there is a reception area with parking areas restricted to use by visitors. Most of the other parking spaces are on a 'first come' basis but some parking bays have dedicated users and one car park is limited to essential users. Parking is normally restricted to the car parks but some on-road parking is permitted for delivery vehicles. There are toilets in the reception area and near the entrances of all of the office buildings. Near the office where the claimant works, there are laybys on both sides of the road where limited parking is available.

84 The respondent has a national policy on the use of its car parks. This includes a priority list. The highest priority is given to members of staff who require a car parking space as a reasonable adjustment under the Equality Act, 2010. This covers blue badge holders and non-holders for whom occupational health have recommended a parking space as a reasonable adjustment. This provision is repeated in the management policies for individual car parks, including Benton Park View.

85 The Tribunal did not hear any evidence from anyone directly involved in car park management at any of the car parks in which the claimant had requested a dedicated parking place. None of the respondent's witnesses were aware of the precise detail of these policies and all relied on advice that they were given. The Tribunal was satisfied that all of the witnesses for the respondent supported the claimant in her attempts to obtain a dedicated parking place. The Tribunal was informed at the end of the hearing that now that the policy was known, attempts would be made to get a dedicated parking place for the claimant and these were expected to be successful.

86 At Benton View Park, the hours worked were flexible and there were not any core hours. The Tribunal did not accept the claimant's evidence that she needed to be on site by a particular time and so could not be flexible with her travel arrangements.

87 At the relevant time, the claimant could not secure a dedicated parking place and asked Mr Smith to assist. This he did.

88 Because of the problems, the claimant organised parking in the visitor area initially for a week or two after her start at Benton Park View. The claimant considered that even if the parking bay was allocated later, the move away from her previous role would assist her managing her condition.

89 Before she left his team, Mr Smith informed the claimant that her performance would be classified as 'achieved', although the claimant was not aware on what this assessment was based.

90 The claimant's new manager was to be Ms Natarajan, who became involved in trying to obtain a dedicated parking space for the claimant. Ms Natarajan's manager was Mr Atkinson, who reported to Ms George. Mr Dunn, who will be referred to later, also reported to Mr Atkinson.

91 On 28 November, 2016, the claimant met Ms Natarajan. They discussed the new role. Although the claimant did not mention her condition, she did state that she had applied for a reserved parking place. The claimant did not raise any other issues that were related to her condition.

92 The next day, the claimant asked Ms Natarajan to help with her application for a parking place, which she agreed to do. Whilst the matter was proceeding, Ms Natarajan encouraged the claimant to continue using one of the visitors' parking spaces, although this was not approved by those managing the site.

93 The claimant took time off on 9 and 10 January, 2017, because of the effect on her of her niece giving birth to a still born baby. Ms Natarajan had suffered a similar experience and offered to speak to the niece, if this would help. The claimant also asked for time off on 11 January, 2017, to care for her father. The claimant asked for 9 and 10 January, 2017, to be treated as working from home. Ms Natarajan allowed one of those days to be so classified but was concerned that it should not happen too often in case the claimant became isolated from her colleagues.

94 In due course, Mr Atkinson became aware of the parking problem. Although Mr Atkinson normally left such matters to those with immediate responsibility for the employee involved, he took a personal interest in the claimant's problem over obtaining a dedicated parking bay. He was aware of the claimant's condition and that she had had a dedicated bay at Washington. He had the impression that dedicated bays were only provided on medical grounds to blue badge holders. However, he contacted Kath Scott from the PT Operations Customer Services Delivery Area and asked that an exception be made for the claimant. In response, he was informed that an exception would be made but only so that the claimant could use an essential user parking bay, which was near the entrance normally used by the claimant, whenever she wished. This would be cleared with security so that the claimant only had to sign in when using one of these bays. The claimant would not have to declare her condition when using a space and security would not be made aware of it. It was also arranged that the claimant could park in a layby near the offices in an emergency. Normally, this would incur a parking violation but security would be made aware of the claimant's vehicle registration number so that this did not occur. However, the claimant would be required to move the vehicle when she was able. Mr Atkinson considered that this was an achievement in that he thought he had obtained a concession that was a departure from normal practice. It did not appear that he had ever read the actual policies relating to the car park.

95 On 30 November, 2016, the claimant sent her reasonable adjustment passport to Ms Natarajan, which was the first time that she was aware of the claimant's condition. Ms Natarajan took the view that the passport was intended to be passed to a

new manager and that it was the responsibility of the employee concerned to do this, if they so wished. If the passport was passed on, there was not any need for the employee to go into their condition in detail.

96 On 16 January, 2017, the claimant made a formal request for a reduction in her working hours. This had to go through a formal process as it could have an adverse effect on other team members and the effectiveness of the team. However, Mr Atkinson expedited consideration of the request and it was approved.

97 On 16 and 17 January, 2017, Ms Natarajan had a series of meetings with the claimant and other members of her team. On 17 January, 2017, Ms Natarajan had a 1-to-1 meeting with the claimant. During the meeting, the claimant indicated that she was not being adequately supported. Ms Natarajan went through various things that had been done for the claimant. As part of this, Ms Natarajan compared the amount of support that the claimant had received with another new business analyst. The intention was to show that Ms Natarajan was willing to put in more effort to support the claimant. However, the claimant assumed that she was being criticised for requiring additional support. The claimant had become upset during the meeting and left the meeting after the comparison was made and then left the site.

98 The claimant sent an email to Ms Natarajan with a copy to Stephen Durrant, deputy director, which had attached to it, among other things, correspondence and a photograph relating to a stillborn baby. The claimant made various complaints and a copy of the email and its attachments were forwarded to Ms George. From the email, it appeared that the claimant's relationship with Ms Natarajan had broken down.

99 Mr Atkinson also reported the situation to Ms George who decided that she should become involved. Ms George had not previously been aware of the claimant's health problems as they were being dealt with by her line management.

100 The claimant was not at work the next day but Ms George pursued the matter with Ms Natarajan. Ms George considered that Ms Natarajan had been attempting to demonstrate her concern for the claimant but had done it by comparison within another and this had caused offence. Ms George considered that what Ms Natarajan had done was bad practice but understood that she was trying to demonstrate support for the claimant, if in a poor manner.

101 Ms George arranged to meet the claimant on 23 January, 2017, whilst the claimant was still absent from work. Ms George wanted to hear the claimant's version of events in the same manner that she heard Ms Natarajan's side. She hoped that she would be able to go through the issues and find a way forward.

102 The claimant complained that there had not been a warm handover between the former manager and Ms Natarajan. Ms George took the view that this would not be usual and that the employee would be expected to raise with the new manager any matters of concern, including any adjustments necessary. With regard to parking, Ms George confirmed to the claimant that Mr Atkinson was continuing to pursue the matter. In respect of the claimant's personal problems, Ms George expressed sympathy for the problems that the claimant faced in respect of caring for her father and the still birth of her niece's baby.

103 The claimant indicated that she wanted to work less hours, as she had previously mentioned to Mr Atkinson. She was told that she needed to make a written application which she had not done at that time.

104 They also discussed the claimant's request for a reserved seat. Ms George was not told that this was made because the claimant wanted to be near the toilet. However, she was prepared to arrange for the claimant to sit where she would be in close proximity to her mentor and other colleagues.

105 Ms George explained that she had already spoken to Mr Dunn and that a move to his team would be put in hand because of the breakdown in the relationship between the claimant and Ms Natarajan. The claimant did not raise any objection.

106 The claimant wanted an apology from Ms Natarajan because of the hurt that she had felt. Ms George considered that Ms Natarajan's comment had been inappropriate but was intended to demonstrate that the claimant was receiving additional attention to help her.

107 They discussed the claimant's resilience and the claimant said that she had demonstrated resilience in a previous role of debt collecting. She thought that she could cope with her present role and did not refer to wanted to move to a less confrontational role, the length of her commute or her wish to work from home.

108 In January, 2017, Mr Atkinson informed Mr Dunn that there were issues between the claimant and Ms Natarajan, and that a move to his team was being considered. Mr Dunn agreed to take her into his team and had a handover meeting with Mr Atkinson. This included covering the claimant's condition, her parking arrangements and her intention to reduce her hours of work.

109 The claimant had a welcome meeting with Mr Dunn and they discussed the claimant's earlier perceived problems and how her attendance could be managed. A further occupational health referral was to be made. Mr Dunn was able to confirm that the claimant's application to work reduced hours was approved. Although Mr Dunn's team normally had a 'hot desk' working arrangement, Mr Dunn indicated that he would reserve a seat for the claimant near the toilet.

110 The claimant was to deal with suppliers, which would not involve confrontation but support in respect of this was available if needed.

111 The day after the welcome meeting, the claimant commenced a period of absence which lasted from 24 January, 2017, until 13 February, 2017. Mr Dunn was concerned because the claimant appeared to be struggling to attend work although she had only just started in a new team.

112 The occupational health report prepared on 27 January, 2017, indicated that the change of team and of hours had helped the claimant. However, concern was expressed over the length of the claimant's commute to work. The claimant had not raised this as an issue with Mr Dunn and he was aware that the claimant had applied to work at the site. The report also recommended flexible working and easy access from parking to toilets. Mr Dunn discussed the report with the claimant, who seemed satisfied with it.

113 A further occupational health report dated 9 February, 2017, stressed the need to reduce the claimant's stress and provide easy access to toilets. It was also recommended that the claimant had a phased return to work. Normally, with an illness of this duration, a phased return would not have been considered but Mr Dunn was prepared to agree to this for the claimant. The report did not suggest that the claimant was concerned about confrontation in the then current role.

114 During the return to work meeting on 14 February, 2017, the claimant raised the possibility of working from the Washington office or at home. Working from home would be exceptional but Mr Dunn was prepared to consider it for the claimant. He was concerned that the claimant was still under training and needed to integrate into the team. With regard to working in Washington, the claimant would not be supported if she worked there.

115 The next day, Mr Dunn met with the claimant to discuss her stress reduction programme. He wanted the claimant to use flexible working, as she did, to assist her but was prepared to have her work from home or Washington on an exceptional basis. However, this would only be on a temporary basis as Mr Dunn wanted the claimant to be integrated in the team and to have proper support, especially during her training.

116 They discussed the claimant's relationship with Ms Natarajan but the claimant was not prepared to settle their differences and just wanted to get on with her current job.

117 Later, they discussed the reasonable adjustment passport. Mr Dunn was not aware that the claimant had ever needed to use the special parking arrangements and believed that the claimant was satisfied with the situation.

118 On 7 March, 2017, the claimant emailed Mr Dunn early in the morning saying that she was having a bad morning and did not feel able to travel to work at that time, although she was fit to work. She asked what Mr Dunn wanted her to do. Mr Dunn replied, asking her to contact him by telephone if she was not fit to travel to the office, which was his preferred option. The claimant responded by email saying that she was losing time that would be hard to make up. Whilst she would see how the morning went, she did not know how to make up the time if she could not work from Washington or at home. She had tried to telephone but someone else answered the call and she did not want to tell them about her situation. Mr Dunn replied saying that he would speak to the claimant soon. The claimant then emailed saying that she was starting to panic because she was not responding to her medication. Mr Dunn replied saying that it would be best if the claimant took the day off if she was not responding to her medication but to telephone him if things improved. The claimant then asked if Mr Dunn wanted her to use her own leave as she did not want to be put down as sick and she felt able to use a computer. However, she could not be away from a toilet for an hour, the time it took her to get to the office. Mr Dunn again asked her to telephone him. The claimant responded saying that she was too upset to talk and had hoped to be allowed to work from home. Mr Dunn replied that he needed to speak to the claimant to assess the business needs and the support that she needed to understand if she was fit for work. The claimant did not telephone Mr Dunn so he rang her. He became concerned from what the claimant said that she was not fit to work, especially as she was using the toilet every thirty minutes. The claimant maintained that she could still use emails. Mr Dunn remained concerned about the claimant's health. He

was also concerned that he could not provide work that could be done at home and the claimant would not have any support. The work available would require interaction and learning with colleagues. The claimant was therefore to be recorded as being on sickness absence. Mr Dunn was adamant that he did not require the claimant to attend the office on that day. The claimant set out her views on the discussion in a further email.

119 During her exchange of emails with Mr Dunn, the claimant emailed the respondent's chief executive.

120 The claimant saw her GP the next day and was certified as being unfit for work for two weeks.

121 The Tribunal noted the entry in diary of events kept by the claimant for 8 March, 2017, - 'doctor is coming out to see me so she can determine if I could work from home or not, [Mr Dunn's] response was "well lets hope its great news"…doctor signed me off…' It would therefore appear that the doctor did not consider that the claimant was fit to work, even, at home, which had been Mr Dunn's view.

122 A further occupational health report was obtained which said that the claimant was suffering from work place stress. Mr Dunn discussed the situation with Mr Atkinson. It was agreed that although the claimant had passed various trigger points under the sickness management policy, no action would be taken.

123 However, because of the claimant's continuing absence, a meeting was required under the respondent's attendance management policy. Mr Dunn explained this to the claimant who appeared to accept the situation. The meeting was arranged to take place in Washington on 5 April, 2017. Mr Dunn was accompanied by a note taker and the claimant was accompanied by a colleague, the attendance of her husband having been refused in accordance with the policy. The claimant was driven to the meeting by her brother because a parking place could not be arranged for her.

124 During her absence, the claimant wrote to the respondent's Chief Executive and received a reply from the chief people's officer.

125 Mr Dunn undertook an appraisal of the claimant. He graded her as 'needs improvement' because of the difficulties that the claimant had encountered during the preceding year and her need for continuing support.

126 At the meeting on 5 April, 2017, adjustments were among the issues discussed. The claimant requested permission to park in disabled bays, flexibility to work from home when her condition required, permission to work closer to home and a seat next to the toilets. Mr Dunn explained that parking concessions and a seat near the toilet had already been arranged. Whilst a temporary move to Washington could be considered, a permanent move and working from home were not suitable because of the need for her to be supported during training. The claimant still considered that she could perform her role as long as her condition was under control.

127 They also discussed the events of 7 March, 2017, and the claimant apologised for her depth of emotion, which she attributed to her condition. Mr Dunn indicated that keeping in touch should be done by telephone and not email.

128 Steps to be taken in the future were also discussed.

129 The claimant commenced these proceedings on 12 April, 2017.

130 Two further occupational health reports were prepared in May, 2017. The main suggestion was that a move to Washington be considered. However, this was not practical for business reasons. The claimant asked that a downgrading be considered to enable her to return to Washington but there was not a suitable vacancy as the Washington office was preparing for closure.

131 The contentions of the parties were set out in their closing submissions and the skeleton arguments, which need to be read for their full terms and effects. Briefly, the claimant contends that the respondent has failed to make reasonable adjustments in two respects despite them being recommended by the respondent's occupational health advisers. Further, what the respondent did in respect of these two matters was not adequate or appropriate. The claimant also complains that on two occasions she suffered harassment in the way that she was treated by her managers. The respondent contends that it did not fail to make reasonable adjustments and that its managers did not harass the claimant because of her disability or otherwise.

132 Section 4 of the EA, provides that disability is a protected characteristic. Sections 20 and 21 of the EA deal with the duty to make reasonable adjustments and Section 26 deals with harassment. Section 123 sets out the applicable time limits for commencing proceedings, as to which Section 33 of the Limitation Act, 1980, needs to be considered.

133 Subsections (2) and (3) of Section 136 of the EA provide

> (2) If there are facts from which [the Tribunal] could decide in the absence of any other explanation that a person (A) contravened the provision concerned, [the Tribunal] must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

134 In reaching its decision, the Tribunal had regard to the relevant statutory provisions, the Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability and the guidance on matters to be taken into account in determining questions relating to the definition of disability.

135 In relation to all of the claimant's complaints, the Tribunal had regard to the various authorities referred to in the closing submissions.

136 The Tribunal considered the complete original list of issues before considering the four live issues. The Tribunal found that contrary to the claimant's contentions, they showed that the claimant had received sympathetic and caring treatment from her managers. She accepted that she had not always raised matters of concern to her and her managers could not be aware of them unless and until they were raised. She was frequently moved to new posts and eventually won promotion. It has to be accepted that there was a corporate failure to properly implement the respondent's policy on

providing parking places but individual managers all did what they could to assist the claimant. She was frequently referred to occupational health, reasonable adjustment passports were prepared and agreed with the claimant and she had stress management assessments. She appears initially to get on with each of her managers but then something occurs which leads to her changing team. In many instances she voluntarily takes on problems before complaining about them and asking for changes. The most obvious is where she applies for a post somewhere that she has already moved away from because of commuting problems. Despite wanting to avoid confrontation, the claimant agrees to take it on before asking for the risk of confrontation to be removed. Notwithstanding all of this, the claimant is able to progress with her career and is not held back by her medical condition or her behaviour.

137 The big thing for the claimant is car parking. Without considering the merits of the case, the claimant declined to do the one thing that might have solved all of her problems – she failed to seek a blue badge having already held one. Her reasons for this were contradictory and confused. Obviously, this does not remove the need for the respondent to provide reasonable adjustments but it does raise questions over the claimant's motivation and what she was trying to achieve.

138 Full details were not made available but it was clear that the claimant also faced problems outside work which caused her stress. These included changes in working hours to look after her father and the still born birth of her niece's baby. Given the apparent impact of stress on the claimant, these matters must have been contributing factors in affecting her condition. Again, this does not detract from the respondent's duties to the claimant but it may assist in understanding her reactions.

139 The purpose of a reasonable adjustment is to put a disabled person in a similar position to that which he/she would have been in but for the disability.

140 The first live issue concerns the respondent's alleged 'failure to provide a dedicated/reserved/disabled parking bay at Benton Park View'. The claimant sets out various provisions, criteria and practices which she contends are relevant. In essence, she contends that she was required to attend work without being allowed access to a dedicated reserved parking space and being denied access to such a space. It is not in dispute that she was allowed access to the site in a vehicle and she was allowed to park on the site, if space was available.

141 It has to be accepted that the respondent did not provide such a space. The question for the Tribunal was to decide whether the claimant made a reasonable adjustment having regard to the claimant's disability. The claimant sought such a space because she alleged that her condition required that she had easy access to a toilet in an emergency situation on arrival at her place of work. She claimed that a dedicated parking bay would reduce her anxiety which exacerbated her condition. The Tribunal did not have the benefit of any medical evidence, other than the occupational health reports, which were based on information supplied by the claimant. The Tribunal accepted that the claimant might require access to a toilet when she entered the respondent's site. She was allowed to park in any available space, wherever it was situated, which could be close to one of the buildings, all of which had toilets. She was also allowed to use one of the laybys, which were closer to the buildings and the toilets than the car parks. Although, she then had to move the vehicle, she was allowed

access to the essential user parking bays, where there were likely to be spaces. If she was accused of breaching parking regulations, management had undertaken to deal with this on her behalf.

142 The claimant sought a dedicated parking place. The Tribunal was not satisfied that this was the only possible reasonable adjustment or that it was necessarily the best solution. In an emergency, the dedicated bay might not be in the best position – should it be near an entrance, if so, which one, should it be near the claimant's office or should it just be near a building with a toilet? Accordingly, access to any parking space might actually be an advantage and this would be an option even with a dedicated space. Alternatively, parking in a layby might be helpful if this put the claimant nearer a toilet. This was allowed by the respondent. Support in dealing with any complaint about parking violations was also available. Finally, the claimant was allowed access to parking bays in the essential user parking area, which was at the claimant's preferred entrance to the site.

143 The respondent had clearly failed to comply with its own policy on parking space allocation. However, it was not argued and the Tribunal did not find that this was a contractual right. The rights under the policy were discretionary and could not be depended upon.

144 The Tribunal considered the evidence provided by the claimant and finds that she established facts that supported her allegations in this regard. The claimant was advised by occupational health that she should have a reserved parking space and one was not provided at Benton Park View, despite this being a breach of the respondent's own policies. It follows from the above that there are facts from which the Tribunal could decide in the absence of any other explanation that the respondent contravened the provision concerned so that the provisions of Section 136 of the EA do apply. However, the Tribunal finds that the respondent did make a reasonable adjustment in the arrangements that it made for the claimant at Benton Park View. It may not have been the best and it was not what the claimant wanted but it was sufficient for the respondent to discharge its obligations to the claimant under the EA.

145 The claimant also complains that the respondent failed to allow her to work from home when her condition was too acute to allow her to travel to work on a specific occasion. The provision, criteria or practice as alleged by the claimant is that the claimant was required to work in the office. If she was sufficiently fit this was not a problem but the claimant wanted to be allowed to work elsewhere when she was not sufficiently fit to travel.

146 In general terms this is not correct as the claimant would have been allowed to work from home, if she had suitable work available to her at home and her condition permitted her to do it. This complaint relates to a specific incident. It occurred on a day when the claimant had expected to attend work. There was not any evidence to suggest that the claimant had prepared to work from home on the day in question. Her manager was placed in a position where he had to rely on information supplied to him by the claimant and he was given various indications that the claimant was so unfit that she was having difficulty in handling telephone calls. He made a decision that was available to him on the basis of the information that was available to him, that was that the claimant was not fit to do work. The Tribunal formed the view that the claimant wanted to avoid increasing her amount of sickness absence, whether she was fit

enough to work or not. The next day, the claimant's GP certified that she would not be fit to work for two weeks. Had the claimant thought that she was sufficiently fit to work from home, the day after her discussions with Mr Dunn, she could have raised the possibility with him but she did not and her GP confirmed that she was not fit for work. It can also be argued that, in allowing the claimant to take sickness absence and not requiring her to attend or do work, the claimant was making a reasonable adjustment.

147 The Tribunal considered the evidence provided by the claimant but did not find that she established facts that supported her allegations in part or in their entirety. The claimant was not fit to work and she did not show that she was required to attend or do work. It follows from the above that there are not facts from which the Tribunal could decide in the absence of any other explanation that the respondent contravened the provision concerned so that the provisions of Section 136 of the EA do not apply. If this is not correct, which the Tribunal does not accept, the treatment of the claimant was a proportionate means of achieving a legitimate aim. The respondent was entitled to believe, as was the case, that claimant was not fit for work. She was therefore granted sickness absence and not required to attend or to do work. It is difficult to see what else the respondent could have done in the circumstances.

148 With regard to the allegations of harassment, the two incidents relied on were one-offs and not related in any way, especially as the alleged perpetrator was different in each case.

149 With regard to the first incident, this is alleged to have occurred on 10 November, 2016, which is more than three months before these proceedings were commenced. Leaving aside the issue of liability, the Tribunal finds that this was an isolated incident. Even if the conduct of Mr Smith in his dealings with the claimant, including this alleged incident, amounted to harassment, he ceased to be the claimant's line manager more than three months before the claimant left his team and no further allegations are made against him. It follows that this allegation is brought out of time.

150 The Tribunal was satisfied that these proceedings were brought in good faith and that this was an incident in the complete history that was before the Tribunal. The Tribunal recognised that the claimant was in an ongoing employment situation and that her circumstances may have been prejudiced if she commenced proceedings every time she felt aggrieved, even though she was aware of the relevant time limits.

151 The Tribunal considered the prejudice that the claimant would suffer if her complaint that she suffered harassment was not allowed to proceed. Leaving aside the merits of the complaint, the complaint is potentially significant for the claimant in terms of the way in which she alleges she was treated and the potential consequences of success. If the complaint does not proceed, the claimant will lose the opportunity she would otherwise have. If the complaint proceeds, the respondent has the task of defending the complaint and the potential financial consequences of losing. However, much of the preparation for defending the complaint was necessary as the other complaints proceeded.

152 Section 33 of the Limitation Act, 1980, needs to be considered. The complaint was submitted around five months after the act of alleged harassment complained of was alleged to have taken place. In the context of these proceedings, this act might

have been found to be part of a series of acts that continued. The reason for the delay in submitting the complaint was the attempts by the claimant to resolve the parking situation. The Tribunal finds that in the context of this complaint the delay in submitting the complaint was not significant. The Tribunal was not satisfied that the delay had a significant effect on the collection of evidence and preparation for a hearing. The Tribunal accepted that the respondent had not been uncooperative in its conduct of the proceedings. During various parts of the period of the delay, the claimant was suffering from ill-health. It is accepted that advice was available for the claimant to take advantage.

153 Having regard to all of the circumstances of this case as discussed above the Tribunal came to the decision that it was just and equitable to extend the claimant's time for submitting this complaint of harassment on the ground of the protected characteristic of disability to the Tribunal to the time when it was actually received.

154 With regard to the incident, there is a chain of correspondence interspersed with a telephone call. The claimant fails to refer to the telephone conversation and the Tribunal formed the view that the allegation comes out of a review of the correspondence with the telephone call being overlooked, especially as the claimant does not refer to the incident in her diary. The Tribunal accepted his evidence that Mr Smith formed an impression of the claimant's state of mind and corresponded on that basis. The way that the claimant now choses to interpret the exchange is not accepted and is without foundation. Mr Dunn did not have the intention of harassing the claimant. The Tribunal did not accept the claimant's evidence that Mr Dunn's conduct had the effect of violating her dignity or that it created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

155 The Tribunal considered the evidence provided by the claimant but did not find that she established facts that supported her allegations in part or in their entirety. It follows from the above that there are not facts from which the Tribunal could decide in the absence of any other explanation that the respondent contravened the provision concerned so that the provisions of Section 136 of the EA do not apply.

156 The other incident involved a relatively inexperienced manager who badly phrased what she said. She had intended to convey to the claimant the extent of the support that she was providing but chose to do it in a way that amounted to bad practice. The Tribunal was satisfied that the claimant was becoming agitating during the meeting and chose this remark as the moment to end it. The Tribunal was satisfied that the remark in itself is factually correct. It was also satisfied that the claimant did require additional supervision and support. There was not any evidence to suggest that Ms Natarajan's manner was hostile or that she was creating an offensive environment. This was a meeting to discuss the claimant's situation and it was reasonable that things might be said that showed that the claimant needed additional support to bring her performance to the required standard. Ms Natarajan did not have the intention of harassing the claimant. The Tribunal did not accept the claimant's evidence that Ms Natarajan's conduct had the effect of violating her dignity or that it created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

157 The Tribunal considered the evidence provided by the claimant but did not find that she established facts that supported her allegation. It follows from the above that there are not facts from which the Tribunal could decide in the absence of any other

explanation that the respondent contravened the provision concerned so that the provisions of Section 136 of the EA do not apply. If this is not correct, which the Tribunal does not accept, the treatment of the claimant was a proportionate means of achieving a legitimate aim. The claimant needed to know that support was required and that it was being provided. It is simply unfortunate that it was done badly. Had the claimant not left the meeting, progress could have been made in ensuring the claimant was able to achieve the required level of performance.

158 It follows from all of the above that the respondent did not fail to make reasonable adjustments and that the claimant did not suffer harassment as alleged or at all. Accordingly, none of her complaints are well founded and they are all dismissed.

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Employment Judge Nicol
19 February, 2018
Date……