EMPLOYMENT TRIBUNALS

Claimant:	**Mrs E K Bell**	
First Respondent:	**Royal Mail Group Limited**	
Second Respondent:	**Robert Braddock**	
Third Respondent:	**Philip Lund**	
Fourth Respondent:	**Mark Owen**	
Heard at:	**Sheffield**	**On: 14 and 15 May 2019** **16 May 2019 (in chambers)**
Before:	**Employment Judge Brain** **Mrs J Cairns** **Mrs S Robinson**	

Representation

Claimant: Miss R Mellor, counsel
Respondent: Mr J Jenkins, counsel

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

1. Upon the complaints solely made against the first respondent:
   - 1.1. The complaint of indirect discrimination brought under sections 19 and 39(2) of the Equality Act 2010 stands dismissed upon withdrawal.
   - 1.2. The complaints of a failure to make reasonable adjustments (brought under sections 20 and 39(5)) succeed. They was presented outside the limitation period provided for by section 123 of the 2010 Act but it is just and equitable to extend time to vest the Tribunal with jurisdiction to consider them.
   - 1.3. The complaint of unfavourable treatment for something arising from disability (brought under sections 15 and 39(2)) succeeds. It was presented within the limitation period.

1.4. The complaints of harassment (brought under sections 26 and 40) fail on the merits

1.5. The complaints of victimisation (brought under sections 27 and 39(4) fail on the merits.

2. The complaints of harassment (brought under sections 26 and 40) and victimisation (brought under sections 27 and 39(5)) against the first and second respondents were presented outside the limitation period provided for by section 123 of the 2010 Act. It is not just and equitable to extend time to vest the Tribunal with jurisdiction to consider them. The complaints fail on the merits.

3. The complaints of harassment (brought under sections 26 and 40) and victimisation (brought under sections 27 and 39(5)) against the first and third respondents fail on the merits.

4. Upon the complaints against the first and fourth respondent:

4.1. All of the complaints were presented outside the time limit provided for by section 123 but in circumstances in which it is just and equitable to extend time to vest the Tribunal with jurisdiction to consider them.

4.2. The complaint of direct discrimination brought under section 13 and section 39(2) fails.

4.3. The complaints of harassment brought under section 26 and 40 fail.

4.4. The complaints of victimisation under section 27 and 39(4) fail.

REASONS

1. The Tribunal heard evidence on this case on 14 and 15 May 2019. We received helpful oral submissions from each party's counsel on the afternoon of 15 May 2019. The Tribunal reserved judgment and deliberated in chambers on 16 May 2019. We now give our reasons for the Judgment that we have reached.

2. The first respondent is a very well-known postal service and courier company. The claimant has worked for the first respondent as a post woman since 28 July 1986. All of the material events with which we have been concerned occurred at her place of work at the Sheffield Mail Centre, Brightside Lane in Sheffield.

3. The claimant presented her claim form against the first respondent and Robert Braddock, the second respondent, on 24 June 2018. Before commencing proceedings, she obtained early conciliation certificates pursuant to the Employment Tribunals Act 1996. The certificate as against the first respondent was dated 25 May 2018 and as against the second respondent was dated 19 June 2018. On 24 June 2018 she issued a separate claim form against the first respondent and Philip Lund, the third respondent. She obtained an early conciliation certificate as against the

third respondent on 25 May 2018. She then issued a third claim, also on 24 June 2018, against the first respondent and Mark Owen, the fourth respondent. An early conciliation certificate was obtained against Mark Owen on 19 June 2018.

4. For convenience, we shall now refer to the first respondent as "the respondent". We shall refer to the second, third and fourth respondents by name.

5. For sake of completeness, claims were also brought against the Communication and Workers' Union. Those claims were dismissed by the Employment Tribunal by way of a Judgment dated 26 April 2019 following withdrawal of them by the claimant.

6. This matter benefited from two case management preliminary hearing that came before Employment Judge Little on 19 October 2018 and 20 December 2018. It was recorded that the three claims were now being treated as combined claims (with case number 1806874/18 being the lead number).

7. Employment Judge Little said in the minute of the meeting of 19 October 2018 that, "*between them the claims were directed at the five respondents referred to in the heading to this order* [we interpose here to say that the named respondents as identified in the case management summary are the first respondent, Mr Braddock, Mr Lund, Mr Owen and the CWU]. *Although not using precisely the same wording, the thrust of each claim was in respect of the first respondent's alleged failure to provide car parking facilities at work for the claimant in circumstances where she needed to have a disabled parking place because she suffers from multiple sclerosis and in turn has mobility issues. This would suggest that the claim is about an alleged to make reasonable adjustments*".

8. Employment Judge Little also recorded at paragraph 2 of the minute of the hearing of 19 October 2018 that, *"the first respondent, and presumably all the individual respondents, who are employees of the first respondent, do not dispute that the claimant's physical impairment of multiple sclerosis means that she has at all material times been a person with a disability within the definition given in the Equality Act 2010".*

9. At the outset of today's hearing, Mr Jenkins (who acted upon behalf of all of the respondents) said that no issue was being raised by the respondents upon the question of knowledge by them of the claimant's disability for the purposes of any of her claims.

10. The claimant pursues the following complaints:

    10.1. Discrimination for something arising in consequence of disability. This is a claim brought under section 15 and 39(2) of the 2010 Act and is a complaint against the respondent.

    10.2. A failure to comply with the duty to make reasonable adjustments. This is a complaint brought under sections 20 and 39(5). This complaint is brought against the respondent.

    10.3. A complaint of direct discrimination brought under sections 13 and 39(2). This is a complaint brought against the respondent and Mr Owen.

10.4. Disability related harassment. This is a complaint brought under sections 26 and 40. It is brought against all four respondents.

10.5. Victimisation. This is a complaint brought under section 27 and 39(4). This is a complaint brought against all four respondents.

11. The Tribunal was not handed an agreed list of issues. However, it was common ground that the schedule of complaints at pages 100 to 104 of the bundle effectively stood as a list of the matters to be determined by the Tribunal. We shall consider this in further detail in due course. Before doing so, we shall set out our findings of fact followed relevant law. We shall then look at the schedule of complaints in further detail before going on to our conclusions.

12. We heard evidence from the claimant. We also heard evidence from:

12.1. Mr Braddock. He is employed by the respondent as the talent and resourcing manager. He has held that position since 1 April 2019. Between 2 November 2012 and 1 April 2014, he was employed as HR manager at Sheffield Mail Centre. From April 2014 he was employed as the production supply manager until 2 October 2015 when he took up the role of workforce planning manager in the north HR regional team.

12.2. Mr Owen. Mr Owen has now retired after having worked for the respondent for 36 years. He worked latterly as the plant manager at the Sheffield Mail Centre with effect from April 2015.

12.3. Graham Hammond. He is employed by the respondent as the early shift work area manager and splits his days between Sheffield Mail Centre and Doncaster.

12.4. Mr Lund. He is employed by the respondent as service delivery leader at South Midlands Mail Centre.

12.5. Paul Whitehouse. He is employed as the plant manager at Sheffield Mail Centre, a position that he has held since March 2018. He has been employed by the respondent for 38 years in total.

Findings of fact

13. We now set out our findings of fact. The claimant's role involves her sorting letters on the early shift at the Sheffield Mail Centre. The mail centre has the benefit of a large staff car park. This can accommodate 220 vehicles.

14. It is not a matter of dispute that the claimant's disability causes mobility problems. Because of these, she is the holder of a blue badge. This entitles her to park in disabled parking bays.

15. At the commencement of the events with which we are concerned, in the summer of 2015, the staff car park at the Sheffield Mail Centre had eleven disabled bays. Six of these were for employees and five were for visitors. There are an additional four disabled bays at the reception area.

16. The claimant's evidence, which was not in dispute, is that the provision of six disabled bays for employees working upon the early shift in the mail centre is adequate for the number of blue badge holders. (The four

disabled bays at reception are of little utility given the distance between the reception area and the mail centre area where the claimant worked).

17. Uniquely amongst the respondent's mail centres, the Sheffield Mail Centre operates what is known as 'the yellow badge scheme'. Mr Owen explains, at paragraph 7 of his witness statement, that, "*this is a temporary badge which the office gives to the employees when they are requiring further assistance with parking due to a temporary impairment".* Those holding a yellow badge may also park in the designated parking bays.

18. The operation of the yellow badge scheme in this way impacts upon those such as the claimant who hold blue badges. This is because the combined number of those holding blue and yellow badges is greater than the number of disabled bays.

19. The claimant had a period of absence from work due to her disability between 18 June 2015 and 1 July 2015. An occupational health referral was made by the respondent. The purpose of this was to obtain advice upon the support that may be offered to the claimant in the light of the symptoms that she was experiencing at that time. The report is dated 13 July 2015 (pages 142 and 143). The occupational health advisor who prepared the report recommended that *"an empathetic and supportive approach"* be taken.

20. The claimant says, at paragraph 5 of her witness statement, that she approached Mr Braddock in July or August 2015 to complain that she was finding that there was rarely a parking space available for her upon her arrival at work. She says that she told him that she needed to be close to the staff entrance. She says that, "*his response, around August was to give me a piece of paper he had clearly printed off the internet (at pages 136 and 136A of the bundle). It said Eversheds on it. I did not realise that it was something to do with the Royal Mail's solicitors. He had highlighted it in green marker at the top so I could read it (page 136A shows the highlighted text). I was amazed. I kept it and at a later date put it on my Stage 3 grievance as an attachment."*

21. The document at pages 136 and 136A appears to be a printout from the internet. It bears the name Eversheds. (We observe that Eversheds do not in fact act for the respondent in this case). The article is headed '<u>UK Discrimination Law Review: Legal issues and obligations relating to disabled parking facilities both for employers and service providers – August 2012</u>'. Under the heading 'The number of parking spaces that must be allocated to disabled users?' the following appears:

    "There is no statutory requirement under the Equality Act 2010 to make provision for a certain number of disabled parking spaces either in a building in its construction or during the course of subsequent use."

22. It was the words in italics in the above paragraph that Mr Braddock accepted he highlighted when he handed the paper to the claimant. In evidence given under cross-examination Mr Braddock said that he took the paper to the claimant while she was on the shop floor. He accepted that he was conveying to the claimant the message that there was no obligation upon the respondent to build or create more spaces to accommodate disabled users. Mr Braddock denied that his actions were

intimidating. He also said that the claimant's colleagues would not have been able to see the interaction as the claimant was hidden by a screen.

23. Mr Braddock accepted that his understanding of the Eversheds paper was that there was no obligation upon the respondent to provide additional spaces. The paper in fact reads to the contrary as it says that, *"There could of course be a situation where there is a need amongst the tenants for more disabled spaces than are currently available – this could be due to an increased number of disabled employees or based on some feedback/analysis of demand for more disabled parking for visitors".*

24. Mr Braddock took the view that the root cause of the problem was the yellow badge scheme. His view was that that needed to be reviewed. Mr Braddock said that he expressed that view to Lisa Lavin at the time. Lisa Lavin is (or was at the material time) the plant manager support to Mr Owen. Mr Braddock said that the claimant had told him that she did not want there to be a review of the yellow badge scheme. It was not in dispute that this was a view maintained by the claimant throughout. In general terms, the claimant considered the yellow badge scheme to be worthy and did not want to see her colleagues lose the benefit of it. Being aware of that, Mr Braddock suggested that Lisa Lavin undertake a review of the yellow badge scheme and its operation without telling the claimant that this is what he had recommended.

25. In the event, no comprehensive review of the yellow badge scheme was ever undertaken by Lisa Lavin. Mr Braddock confirmed that he did not attend any meeting with her in order to assist with any such review.

26. It was plain from the tenor of Mr Braddock's evidence that he took the view that the claimant's request for additional car parking bays to be provided was not a matter for him. In the summer of 2015 he was employed as the production supply manager. The claimant acknowledges that Mr Braddock told her that this issue was not part of his responsibility. However, she goes on to say that Mr Braddock "*did not refer me to anyone else who would deal with the issue".* In evidence given under cross-examination Mr Braddock fairly acknowledged that he had not directed the claimant to anybody who could help her with the issue. As Mr Braddock put it, *"with hindsight I could have articulated it better … I made it clear I was not the correct person to deal with it. Maybe I didn't articulate it properly".*

27. After receiving the Eversheds printout, the claimant contacted Sheffield City Council on 24 August 2015 (pages 144 and 145 of the bundle). In her email to the planning department (at page 145) she says, *"I have a blue badge and was unable to find a parking space at Sheffield Mail Centre where I work. I was given a piece of paper which says under the Equality Act disabled parking did not have to be provided … all I want is the paperwork relating to disabled parking on the site …"* Sheffield City Council replied 24 August 2015 (page 144). The council attached the decision notice and layout plan which both indicate the presence and need for disabled car parking spaces which were highlighted in yellow. It is unfortunate that the copy of the plan within the bundle is not coloured. It is difficult to discern from the plan the location of the disabled parking bays. However, we proceed upon the basis that the respondent did provide

disabled parking bays in accordance with the planning conditions (it not being in dispute that the respondent did provide disabled parking bays) and that the number of them would have been adequate but for the operation of the yellow badge scheme.

28. The claimant's evidence is that she left the papers that she received from Sheffield City Council upon Mr Braddock's desk. She says that she did not speak to him about the plans as *"it was speaking to a wall".* Mr Braddock says at paragraph 8 of his witness statement that, *"I recall that Mrs Bell came to my desk with the council's building plans saying that we should have 10 spaces and we haven't."* He goes on at paragraph 10 to say, *"I then explained to her again that I was not the correct person to deal with the issue but did inform her that [we] did have 10 spaces which included the spaces at the reception area so I did not feel we had any extra responsibility but explained that she needed to raise it with someone more appropriate at which point she said to me that my response was also down to the fact I was leaving my role to go to a new role as well. I refute this. Yes, I was leaving the mail centre but I believed I dealt with everything raised to me whilst I was still in situ".*

29. In our judgment, it is unnecessary to resolve the apparent conflict of evidence between the claimant and Mr Braddock about whether or not there was a discussion at the time that she handed the plans to him. Whether such a discussion took place at that particular time or not, the fact remains that it is undisputed that the claimant did supply him with copies of the plans and that Mr Braddock had conveyed to the claimant the message (at some point in July and August of 2015) that the respondent had provided 10 parking spaces (being four in the reception area and six in the area where the claimant wished to park) and had therefore fulfilled its duties and that as far as Mr Braddock was concerned the respondent was not obliged to do more.

30. Mr Braddock ceased working at the Sheffield mail centre on 2 October 2015. He moved to take up the role of workforce planning manager in the north HR regional team. He did not revert to the claimant after the discussions in July and August 2015. Nothing appears to have been done by the respondent to address the claimant's complaint. As we say, there is no evidence of any review being undertaken by Lisa Lavin. There was no communication with the claimant. The respondent has produced no evidence of any internal actions.

31. The next event occurred on 2 December 2015. The claimant could not find a parking space that day. She says in paragraph 6 of her witness statement that, *"there were no spaces, not just no disabled spaces but no spaces at all. There were extra casual staff in for Christmas. I had no choice but to park in the ambulance parking bay. My car registration got called over the tannoy and one of my colleagues said 'Liz, it's your car'. I saw Steve House (postman and a CWU H&S rep) and said it's my car. I couldn't get parked anywhere. He said if he had known it was mine, he would not have called it out. Graham Hammond, manager and sometimes shift manager, just said that Royal Mail did not have to provide parking and that I could park off site. It was 6 am on a wet dark December morning and I have mobility issues. I had an MS hospital appointment. I had to*

contact my MS nurse and inform him that I would not be attending. I believed I would not be able to park again on my return".

32. In Mr Hammond's witness statement he comments upon the claimant's allegations that he asked her to move her car and said that the business has no obligation to provide car parking and that she could park off site. Mr Hammond said at paragraph 4 of his witness statement that, *"I cannot recall it happening and on this date".* He denies having said to the claimant that the respondent doesn't have to provide car parking and that she could park off site. He says, *"we do not offer offsite parking and secondly it is not within my nature to say something like this".* He says he would not be dismissive of the claimant as she alleges. Mr Hammond says that in his experience he would expect there to be sufficient disabled persons anyway at the time that the claimant will arrive to work to start upon the early shift.

33. Mr Hammond maintained this position notwithstanding that he in fact arrives in work at 5.15am and therefore 45 minutes elapses before the start of the early shift. It was put to him that in the meantime the parking spaces could be taken. Mr Hammond said that he would routinely move his car shortly before 6 o'clock and there always seemed to be spare spaces. He accepted that he had no recollection of the incident recounted by the claimant in December 2015. It was suggested to him that he may have indicated to the claimant that the respondent does not have to provide disabled car park spaces if the culture within the respondent was that it had provided a sufficient number already. Mr Hammond said that it was not within his nature to speak to the claimant as she alleges that he did that day.

34. Following the incident, a meeting was arranged for 9 December 2015. Present at the meeting were Mr House, Andy Kipling (also of the CWU) and Mr Owen. It seems that Mr Owen convened the meeting because the claimant challenged him on the shop floor about being unable to park.

35. The Tribunal prefers the evidence of the claimant over that of Mr Hammond as to what was said on 2 December 2015. Firstly, Mr Hammond had no recollection of the events of the day. In contrast, the claimant had a very clear recollection. This is credible as it would be a very memorable incident for anybody to face the ignominy of their car registration being read out over the tannoy about parking in a prohibited space. Secondly, the claimant said in evidence under cross-examination that Mr Hammond, by saying what he did, was *"using Mr Braddock's words".* What she meant by this was that Mr Braddock had formed the view that the respondent had complied with its obligations and that that was a belief held by some within the respondent's organisation. The message being portrayed by Mr Hammond was consistent with that which had been portrayed by Mr Braddock and it is therefore credible that he said those words. Thirdly, the claimant felt sufficiently strongly about the matter to confront Mr Owen and procure a meeting between him, her and two trade union representatives. It is against the probabilities for the claimant to have gone to such lengths had she encountered no difficulties with parking at the time (and in particular on 2 December 2015).

36. It appears that there are no notes of the meeting of 9 December 2015. We therefore have to rely upon the evidence of Mr Owen and the claimant as to what transpired at the meeting (we have no evidence from Mr Kipling or Mr House). There are also notes of a meeting held between Mr Owen and Steve Caudwell, Sheffield plant engineer on 7 December 2016. This meeting was held as part of Mr Caudwell's investigations into a grievance raised by the claimant on 7 November 2016 (and which was dealt with by the respondent at Stage 2 of its grievance procedure). In these meeting notes Mr Owen gives an account of the meeting.

37. In Mr Owen's witness statement he says that the following issues were discussed at the meeting:

    37.1. That a temporary arrangement would be made to alleviate the claimant's parking difficulties. She was to be permitted to park with the office staff in the delivery van area at the back of the mail centre and be provided with a yellow 'high-viz' jacket to wear for safety reasons.

    37.2. A suggestion was made of designating a specific disabled parking bay space for the claimant which would bear her name. The claimant was concerned that this would draw unwanted and unwelcome attention to her. This idea was not pursued.

    37.3. It was suggested that some individuals were abusing the disabled parking bays. There was a discussion about a married couple both of whom worked for the respondent. Mr Owen's evidence is that upon investigation it transpired that one of them was the holder of a blue badge anyway and it was therefore deemed appropriate for them to park in one of the designated disabled bays.

    37.4. It was agreed by Mr Owen that the yellow badge scheme should be reviewed by Lisa Lavin.

38. Mr Owen says about the meeting (at paragraph 10 of his witness statement) that, "*It was also raised by Mr House that as he was disabled (due to a stroke) he had found the Access to Work scheme very helpful and he suggested that Mrs Bell may wish to consider this option. This matter was discussed outside of the meeting between Mrs Bell and Mr House. Mr House provided feedback following further discussions with Mrs Bell that this is not something she wished to pursue as she wanted to maintain her independence".* At paragraph 7 of her witness statement, the claimant mentions the issue of the Access to Work scheme and the provision of taxis pursuant to it. This idea was rejected by the claimant. She says, *"I wanted to be independent and normal like everyone else but to be able to park in the disabled parking spaces. I did not want to lose my independence by using the taxi scheme or to be singled out".*

39. The claimant's evidence is that, "*the outcome of the meeting was that Mark agreed to contact head office to get more disabled spaces. I had asked for two more spaces. He further agreed to arrange a review of disabled parking and the yellow badge/blue badge system".* After making mention of the temporary parking arrangement the claimant goes on to say that she *"left the meeting feeling confident that the issue would be resolved after the Christmas period. I remember crying with relief".* She goes on to say

that, *"everybody was going to be referred back to occupational health and Royal Mail would then see how many places they would need to add".* By this, the claimant meant that it was her understanding that the yellow badge review would entail those that hold a yellow badge undergoing an occupational health assessment of some kind in order to assess continued eligibility.

40. In the meeting notes of 7 December 2016 (at pages 178 and 179) mention is made of an issue raised at the meeting of 9 December 2015 in addition to those referred to above. According to these notes, Mr Owen said to Mr Caudwell that in the meeting of December 2015 he had raised the possibility of the claimant parking in one of the reception disabled bays. He said that the claimant rejected this as an option because reception does not open early enough and that the walk up to the staff entrance would be too much.

41. The notes at pages 178 and 179 appear to record Mr Owen expressing some scepticism about the claimant's ability to cope with the walking distances involved as he says that she *"actually works at the far end of the mail centre which the furthest distance away from where she currently parks which does not seem to be an issue".*

42. When asked in cross-examination about this possibility the claimant discounted it as impractical. This was because the reception doors don't open until 8am which is two hours after she arrives at work to start the early shift. If special arrangements were made to open the doors to allow her in then this would have the effect of singling her out. Further, entering the building this way means ascending 25 steps. As the claimant put it, *"this would be idiotic. They are paranoid about accidents".* The claimant fairly accepted that there was a lift to avoid the need to use the steps but wondered who would be prepared or be around to open the doors for her to let her in to a different part of the building to where those present were working.

43. On 6 January 2016 Lisa Lavin lodged a requisition request form with the North Asset team. The email of that date is at page 184 and the form itself is at pages 185 and 186. The order detail says, *"To have 13 standard car parking bays converted into disabled bays at the top right hand side of a staff car park adjacent to the existing five disabled car parking bays as insufficient capacity at present".* The reason given for the request was that, "*there has been an increase in the total amount of disabled staff within the MC/mail centre who currently hold blue badges and having to walk longer distance than recommended by either their doctor or ATOS, however we are not currently able to accommodate their needs."* The form also refers to, "*complaints from staff having to park at the far end of the car park when struggling to walk and who hold blue badges".*

44. Mr Owen's evidence was that the requisition was submitted by Lisa Lavin on his behalf. When asked why he was asking for an increase in the number of disabled parking bays Mr Owen said that there was "*no legal requirement but it would be good. There were enough spaces for blue badge holders".* Mr Owen fairly conceded that the yellow badge scheme confused matters.

45. It was put to Mr Owen that the requisition was not in fact actioned. He explained that the North Asset team (which seems also to be known as the NPI team) wrote to ask for further documentation to support the request but received no response. That this is the case is confirmed in an email from Fiona Carr (who held or holds the position of administrator: demand challenge north) to Mr Caudwell of 8 December 2016 (page 205). This email was sent by Fiona Carr as part of Mr Caudwell's grievance investigation. Fiona Carr said, "*When we receive the email from Lisa back in January [*that being the one at page 184 of the bundle*] we wrote back asking for documentation to support the request which is what is required for all NPI requests. We received no response to this despite sending a reminder in February and therefore the request was closed".* She goes on to say that, *"as you are now looking to re-raise the request, I have forwarded onto Group Property asking if it is something that they would deal with".*

46. Mr Owen conceded that the claimant was not kept informed about progress (or lack of it) regarding the provision of additional disabled car parking spaces. It appears therefore that the requisition for additional car parking spaces was made in January 2016 and closed in February 2016 and about which events the claimant was in ignorance.

47. Mr Owen said that he had given a verbal instruction to Lisa Lavin to review the operation of the yellow badge scheme. She told Stephen Caudwell in her email of 23 December 2016 (at page 220) that, "*There are no three monthly checks that take place* [of the yellow badge scheme]*. Around nine months ago approximately I did ask all shift managers to refer all those that requested or already had a yellow pass be referred to ATOS to see if they would support their requests. All of the early shift referrals were completed but this however was the only shift despite follow up emails chasing this".* Again, this information from Lisa Lavin was provided to Mr Caudwell as part of his grievance investigation.

48. Lisa Lavin's reference to having asked (around nine months prior to her email of 23 December 2016) shift managers to refer all those that requested or already held a yellow badge to be referred to ATOS does fit with the timescale and with Mr Owen's evidence that he put in hand a review of the yellow badge scheme. Approximately nine months back from December 2016 would be the early part of 2016 and would fit with Mr Owen's evidence that some follow up action was taken following the meeting with the claimant and the trade union representatives held on 9 December 2015. However, on any view this follow up action was inadequate. The respondent failed to produce a comprehensive review of the yellow badge scheme. Not only that, the evidence uncovered by Mr Caudwell as part of his grievance investigation was that the respondent was not even carrying out a review of its operation and how it was being policed. There was no evidence that the respondent even knew how many employees had been issued with a yellow badge.

49. Rightly or wrongly, Mr Caudwell's grievance enquiry was treated by the demand challenge north team as being a repeat of Lisa Lavin's requisition of February 2016. On 20 December 2016 Iain MacGregor (demand challenge manager: north) emailed Lisa Lavin. This is at page 211. He

said, *"we do not provide disabled parking for staff that are not in possession of a blue badge as this would be classed as a benefit in kind".* On 13 December 2016 Richard Bennion (property risk and compliance manager – asbestos and fabric) sent an email (pages 213 and 214). He drew attention to section 20 of the 2010 Act. He wrote that this provision *"requires service providers to take reasonable steps to ensure that disabled people are not put at a substantial disadvantage compared to those who do not share the disability when accessing services. This requirement has implications for car park operators who may have to demonstrate that, as well as marking out disabled parking spaces, they have taken reasonable steps to ensure that they are available to disabled people".* Mr Bennion then drew attention to guidance issued by the Department of Transport. This says that where a car park is used for employees and visitors to business premises with capacity of over 200 bays, the recommended number of disabled bays to be provided was six plus 2% of the capacity. Upon this basis therefore, the respondent was already complying with Department of Transport guidance.

50. Lisa Lavin responded to Mr MacGregor on 20 December 2016 (also at page 211). She asked if he was recommending that she request *"all the yellow badges back?"* Mr MacGregor said at the same day (at page 210), *"not necessarily, if that is how you wish to allocate spaces within your unit. What I'm saying is that the business will only provide disabled parking for persons with disabled blue badge holders provided by the relevant body, which is usually the local council".*

51. The claimant was assessed again by occupational health on 19 January 2016. This report is at pages 148 and 149 and was prepared by Janet Hardy, occupational health advisor.

52. About the claimant's current health situation Ms Hardy said, *"Mrs Bell advised me that she has a relapsing remitting form of multiple sclerosis (MS) and is under the care of a specialist as well as an MS specialist nurse. Mrs Bell has appropriate medications to take and as a result of increasingly worse fatigue, she has commenced a new medication for this last week. It is too early to tell if this will be of benefit. Mrs Bell states that she is a bit wobbly and dizzy on her feet so she is using a walking stick. Mrs Bell has also been having some breathing difficulties and her MS nurse feels she may be having a further episode and as a result she is seeing a neurologist in the near future to discuss the possibility of changing her medications".*

53. About capability for work, Ms Hardy said that the claimant "*should have an allocated parking bay close to the entrance as a result of her mobility limitations".* She confirmed that the claimant's condition was considered as falling under the 2010 Act.

54. The claimant was on holiday for a week in January 2016. Upon her return to work she asked Mr House for a progress report. Her evidence is that Mr House said to her *"of course it will be done, it's the law".* The claimant says that she then had a relapse and was off work from 4 February until 22 March 2016. According to Liam Rice, nurse specialist at the Royal Hallamshire Hospital Sheffield, the relapse was due to fatigue. There is a letter from him to this effect addressed "to whom it may concern" at page 150.

55. Following her return to work, the claimant was referred again to occupational health. A report was prepared by Julie Arnold, occupational health advisor. The report is dated 23 March 2016 (pages 153 to 155). Miss Arnold reported significant restrictions upon the claimant's mobility in that *"she can walk, stand and sit for short periods of time (5 to 10 minutes only) and needs to vary her position regularly."* She was supportive of a phased return to work plan.

56. The claimant met with Chris Frisby, her line manager, for a return to work meeting on 24 March 2016 (pages 258 to 260). Box 5 in the form asks the employee about issues or concerns which may be affecting health. The claimant wrote, *"getting parked in morning still a problem".*

57. She underwent an attendance review meeting on 19 April 2016 (pages 261 to 263). This was conducted by Mr Frisby. He decided to refer her back to occupational health services in particular with a view to ascertaining whether acupuncture would be available. The claimant had said that this may help with her multiple sclerosis.

58. This led to an assessment and report by Vanessa Lewis, occupational health advisor on 25 April 2016 (pages 159 and 160). She was in fact unable to recommend acupuncture for the claimant's condition. However, Vanessa Lewis expressed the opinion that the claimant would benefit from a disabled space in the car park.

59. The claimant had heard nothing from Mr Owen following the meeting of 9 December 2015. An issue arose as to whether Mr Owen had referred to the claimant as a troublemaker. In evidence given under cross-examination she said that she had not spoken to him after 9 December 2015. She fairly accepted that Mr Owen had never referred to her as a troublemaker (or at any rate she had no evidence that he had done so). She said that she approached Mr Frisby in July 2016 to ask Mr Frisby to contact Mr Owen. She says that Mr Frisby said to her that she was *"causing trouble".* She says that she prevailed upon Mr Frisby to send a chasing email to Mr Owen. A copy of that email is not within the bundle and was not produced for the benefit of the Tribunal by the respondent. There is no evidence that Mr Owen replied to Mr Frisby. In general, Mr Owen conceded in cross-examination that his communication with the claimant *"could have been better".*

60. The Tribunal accepts that Mr Owen undertook some action following the meeting of 9 December 2015. He asked Lisa Lavin to requisition the provision of more disabled parking spaces at the Sheffield mail centre. Lisa Lavin did so. He also asked Lisa Lavin to conduct a review of the yellow badge system. However, the requisition was closed down in February 2016. The review of the yellow badge system was not completed and no regular reviews of it were being retained by Lisa Lavin. The claimant was not kept informed of what was happening. She heard nothing after 9 December 2015. Further, between December 2015 and July 2016, the claimant had had a relapse, a significant period of absence from work and the respondent had obtained two occupational health reports both of which recommended the claimant be allocated a designated disabled car parking bay.

61. To Mr Owen's credit, he did not pursue three initiatives which did not find favour with the claimant at the 9 December 2015 meeting. These were the idea of taxi provision pursuant to the Access to Work scheme, arranging a disabled bay for the claimant outside the reception area (with the attendant difficulties of access to the building at around 6.00 in the morning) and providing her with a designated parking bay with her name upon it. As far as the latter is concerned, in evidence given under cross-examination, Mr Owen accepted that car parking was a sensitive issue within the mail centre and that the claimant was wary about being perceived amongst colleagues as responsible for the revocation or disadvantageous variation of the yellow badge scheme. As the claimant put it, when explaining why she declined to have a space with her name upon it, *"I'd get no end of hassle. It would highlight me to everyone. The mail centre is like a big schoolground".*

62. At paragraph 10 of her witness statement the claimant says that, *"In August 2016 I actually saw and spoke to Mark Owen and asked him about the disabled parking. He said I thought you were getting a paid taxi. He had done nothing in eight months. Later that month, I was unable to park and the shift manager was Richard Saxby, usually the weekend shift manager. He came out with me to confirm what I had said, he said he would mention in the top team meeting. The crying from now on was constant, I was tired and very stressed."*

63. On 8 August 2016 Mr Rice wrote another letter addressed "to whom it may concern" (pages 151 and 152). Like the one of 23 February 2016, this was provided to the respondent. Following a review of the claimant's history and symptoms Mr Rice concluded, "*I would be most grateful if you could take into consideration the above information when making your decisions regarding parking priority and how it affects an individual with MS".* This comment was made in the light of a complaint raised with him by the claimant about the car parking issues that she was experiencing in the workplace.

64. The claimant sought the assistance of her Member of Parliament Louise Haigh. There is a letter addressed to the claimant from Miss Haigh dated 16 August 2016 (page 161). She opens the letter, *"Thank you for contacting me in relation to disabled parking at your place of work on Brightside Lane. I appreciate you bringing this to my attention and I was concerned to hear about the distress it has caused you".* Louise Haigh wrote to Moya Greene, chief executive of the respondent. The letter to Moya Green of 16 August 2016 is at page 162. (It appears that Louise Haigh also wrote to Dave Ward of the CWU with concerns about the service being provided to the claimant by the trade union. That correspondence is not within the bundle).

65. On 7 September 2016 Moya Green wrote to Louise Haigh (page 163). It is worth citing passages from this letter in full:

"*Several years ago, the plant manager of Sheffield Mail Centre introduced a local scheme for employees whereby a local permit was issued to enable colleagues who have mobility or respiratory difficulties to park in designated disabled bays near to the building entrance. This arrangement was only introduced for Royal Mail employees and any other visitors such*

as members of the public who are blue badge holders have access to a separate parking area which has disabled bays provided.

In total 21 permits have been issued to staff members, who work variable hours and shift patterns across a 24 hour operation. The mail centre provides 220 parking spaces for Royal Mail employees, with six of these being designated disabled bays. Colleagues based at Sheffield mail centre who have been issued with a claimant do include those who are blue badge holders. The permits are reviewed on a three to six month basis and any permit given to a colleague who no longer meets the criteria will be taken back and can be re-allocated to another colleague in need of access to the parking area.

The decision to offer a local permit was made to support staff members who have known mobility issues, however my team have asked Mark Owen, the plant manager to review this arrangement and understand if changes need to be made for colleagues with blue badges, and ensuring we have suitable parking to meet their needs".

66. We know that Mr Owen did not undertake a review of the operation of the yellow badge scheme. We also know from the emails to which we referred above (in particular that at page 220 from Lisa Lavin dated 23 December 2016) that no regular checks of the operation of the yellow badge scheme were carried out by the respondent.

67. On 26 September 2016 Louise Haigh wrote to the claimant (page 164). She referred to the letter from Moya Greene of 7 September 2016. She also made mention of having received a response from Mr House. She says that Mr House told her that he had discussed with the claimant that she consider Access to Work. This of course had been declined by the claimant upon the grounds that it would compromise her independence. Louise Haigh said, *"I am told that you met with Mark Owen who agreed that you can park around the back of the office in the event that the disabled bays are fully occupied. If you are unhappy with this arrangement, I would urge you to speak to Mark and Steve again in order to negotiate an alternative, especially in light of the response from the chief executive".* (This appears to be a reference back to the temporary solution which had been arrived at in December of 2015 and which now had run its course. It was not clear exactly when that temporary arrangement ended. However, we are satisfied from the evidence that it came to an end at the expiry of the Christmas period as the claimant experienced parking difficulties again early in the course of the new year which caused or contributed to her relapse and the complaints that she raised with her line manager about parking difficulties).

68. The claimant's evidence, at paragraph 11 of her witness statement, is that in September 2016 one of her colleagues said that she had been causing trouble and that she (the claimant) had complained about yellow badge holders. The claimant says, *"from then on, going to work was like going to war, people I'd known for years stopped speaking to me".* She went on to say that, *"luckily, the people who I work with in my area knew me well enough that I would not do that. They had seen how Mark Owen and the CWU had behaved and support me mentally with my complaint. The exception was two ladies who had come from Doncaster. One had a*

yellow badge and the other's husband had a yellow badge. These women were in their 50s shouting spiteful things about me to each other so loud that we could hear them over the machines. It got to the stage that I would not speak. I put the headphones in my ears, but not with the music on. You could actually feel the atmosphere change when they came in.

69. The claimant considers that her complaint through her MP made things worse for her in the workplace. The Tribunal accepts the claimant's account that she was experiencing difficulties with some work colleagues in or around September 2016. The claimant in fact makes mention of this in her grievance of 7 December 2016 (at pages 171 to 173). She attributed this to yellow badge holders being subjected to scrutiny from occupational health. We know from Lisa Lavin's email of 23 December 2016 (page 220) that those on the early shift were reviewed by ATOS. It is credible that this would lead some of the yellow badge holders to fear the loss of the yellow badge and the parking privileges that came with it. Mr Owen readily acknowledged parking to be a sensitive issue at the mail centre. Therefore, we conclude to be credible the claimant's evidence that she reasonably perceived hostility from some of her colleagues.

70. The claimant then had a further period of absence from work. She says at paragraph 12 of her witness statement that, "*It all got too much and I ended going off sick again. My fit note dated 19 October (page 251 of the bundle) records that I may be fit for work if there was convenient parking. I was signed off until 14 November (page 252 of the bundle). Another occupational health report was requested in October 2016 (page 165 of the bundle).*"

71. This report is dated 1 November 2016 (pages 166 to 168). It was prepared by Valerie Sithole, occupational health advisor. She said that, *"It is essential that the issue relating to parking bays are addressed or it will be unlikely the employee will return to work. She also expressed feeling anxious at how some of her colleagues will view a situation if she is offered a parking bay and they are not. I advise that management discuss this with her and allay her fears".* Valerie Sithole went on to say that relapses may often occur without warning but are sometimes associated with a period of illness or stress. She said that the claimant was "*experiencing heightened stress due to issues relating to parking bays at work. Her MS nurse [*Liam Rice*] supports her in this."*

72. The claimant undertook a further welcome back meeting on 16 November 2016 (pages 265 and 266). The second box of the *pro-forma* is headed "tell me about your absence and the cause of it?" The claimant said, *"MS relapse brought on by stress, due to work car park issues".* In answer to the question in the fifth box (about issues or concerns at work) the claimant said, *"just car park issues at work".* She had told Chris Frisby on 18 October 2016 that she believed that she had had a relapse regarding her MS brought on by work related stress.

73. The claimant says at paragraph 14 of her witness statement that, *"Having got back to work I felt I had no option but to raise my issues as a grievance. I tried to resolve the issue with the mail centre manager and with the assistance of the union but to no avail. So, I wrote the stage 2 grievance*

dated 7 November 2016 and we sent it to Moya Greene (see pages 171 to 173 of the bundle".

74. In the third paragraph of the grievance letter the claimant says, *"whilst there is adequate disabled parking provision for the number of disabled badge holders on my shift (approximately three badge holders to six spaces) the introduction of the "yellow badge" system allowing additional staff who require short-term support to park in these disabled bays on a "first come, first serve basis" along with disabled employees, means that I am often unable to secure a suitable parking space. (There are now approximately 10 eligible blue/yellow badge holders for the six spaces)".*

75. The claimant then goes through the history of matters. In our judgment, the claimant gives an accurate summary of her interaction with Robert Braddock, Mark Owen, Graham Hammond, the CWU representatives and others involved in the matter. The claimant sought the following actions consequent upon her grievance:

    - The implementation of disability awareness training for management.
    - A system/process to enforce the use of disabled parking bays for those with entitlement only.
    - A three to six monthly review of yellow badge holders to monitor their requirements (as this has not previously happened)

76. At some point in November 2017 an attendance review meeting was carried out. The notes of this are at page 283. This says that, "*The absence dated 18 October 2016 for 30 days was for MS. Mrs Bell explained that she has issues at wok relating to getting her car parked in a disabled place. Her MS nurse explained to her that the stress of this was bringing on a relapse of her MS".*

77. Mr Caudwell was appointed to consider the claimant's grievance. At paragraph 15 of her witness statement the claimant says, *"I was surprised [*at his appointment*] as he was an engineer's manager and has no HR experience and HR is based in Sheffield".* Furthermore, the grievance was about Mr Owen. The claimant said that Mr Owen was Mr Caudwell's line manager. She says that Mr Owen "*scores [Mr Caudwell's] performance development review (PDR) and if he went for another job within or outside Royal Mail, he would have to ask Mark Owen to write his reference. I did not believe that a manger who reported to Mark Owen was appropriate and had sufficient independence (as anticipated by the first respondent's grievance policy at pages 127 to 130 of the bundle particularly page 129) to challenge decisions or lack of decisions made by* [Mr Owen]. *Evidently, I did not believe the business was not taking my complaint seriously, which it was not".* [We interpose here to say that we think the claimant means to say that she formed the view that the respondent was not taking her complaint seriously].

78. The claimant met with Mr Caudwell on 7 December 2016. Notes of the meeting are at pages 176 and 177. Mr Caudwell asked the claimant which adjustments she required to be made. The claimant said, *"a parking space. I have a blue badge, however I cannot always get parked in the*

designated bays due to these being used by the yellow pass scheme parkers for those who are on rehab returning to work etc". Mr Caudwell asked whether Mr Owen had offered the claimant any adjustments. The claimant said that he had *"offered me a personal space, however I don't feel this is appropriate as this would single me out and I do not want to draw any more attention to myself and my disability if this was in place".* The claimant said, *"I would like a place to park not impacting upon others. Is it possible to create two more disabled bays in the staff car park? This would support the increasing numbers of employees with medical conditions/rehabs."* She went on to add, *"the yellow pass system is a great process to have. I don't want to see this disappear".* The claimant also expressed scepticism as to the view expressed by Moya Greene that the yellow pass system was the subject of regular reviews.

79. Mr Caudwell then interviewed Mr Owen. As we have seen, this interview also took place on 7 December 2016 (pages 178 and 179). We have referred to this already. Additional points from the interview notes are:

    - That the claimant had asked Lisa Lavin to request additional parking spaces.
    - Mr Owen maintained that there was a three-monthly regular review of the yellow badge system. In fact, he said that Lisa Lavin had completed one in April and September 2016. (There is no evidence that this was in fact the case. Lisa Lavin (from whom the Tribunal did not hear evidence) says quite to the contrary on 23 December 2016 (page 220)).

80. On 7 December 2016 Mr Caudwell emailed Mr Braddock. He raised some questions about his dealings with the claimant. In our judgment, Mr Braddock provided Mr Caudwell with a truthful account of his dealings with the claimant (including his providing her with the Eversheds printout and the claimant providing him with a copy of the planning permission for the mail centre). Mr Braddock says that he expressed the view to the claimant the root cause of the issue was the yellow badge system and that that should be reviewed. Mr Braddock acknowledged the claimant's concern that she did not wish such a review to impact upon others and therefore did not want it to be reviewed (at any rate in a way that disadvantages colleagues). Mr Braddock says that although the claimant did not wish there to be a challenge to the yellow badge system he nonetheless recommended to Lisa Lavin that it be reviewed.

81. On 8 December 2016 Mr Caudwell interviewed Mr House of the CWU. Mr House says that he raised the Access to Work scheme with the claimant but that she was not receptive fearing it may compromise her independence. Mr House told Mr Caudwell what had happened at the meeting of 9 December 2015. He says that a number of options were explored. The first of these was the creation of a designated parking space for the claimant which she declined for fear of being singled out. The second option was the temporary solution of parking around the back of the building over the Christmas period.

82. Mr Caudwell also put in hand enquiries of Lisa Lavin and with the north asset team which led to the emails at pages 184 to 220. We have referred to the salient emails within this section of the bundle already.

83. On 23 December 2016 Mr Caudwell wrote to the claimant (page 221). He updated her with the progress as to his investigations into her grievance.

84. He then concluded his report on 5 January 2017. It appears that the claimant was not sent anything other than the 'deliberations and conclusion' document at pages 222 to 224.

85. Mr Caudwell rejected the claimant's grievance that two more disabled spaces should be provided. He took the view that the respondent provided an adequate number of disabled parking spaces. He upheld the claimant's grievance that the respondent had not properly managed the yellow badge system. He rejected the claimant's complaint that the respondent was not properly operating a parking system for those holding blue badges. The rejection was upon the basis that the respondent does not have an obligation to provide disabled parking bays. Mr Caudwell said, "*This position is supported by UK discrimination law which clearly states that there is no statutory requirement under the Equality act 2010 to make provision for a certain number of disabled parking spaces either in a building in its construction or during the course of its subsequent use".*

86. He then concluded as follows:

"Based on the information and evidence I have to hand Sheffield mail centre has enough provision for disabled bays. There is no viable opportunity to increase the number of disabled bays at the plant. This option has been explored twice now. There are two options I can see which the business can offer to facilitate Mrs Bell's attendance to work. Firstly, remove the yellow pass system. This in my opinion should not be considered as it facilitates the business in supporting the wider population with mobility issues to attend work and the fact Mrs Bell also agrees this is a great system and she would not like to see this removed either. I would however point out that this process is not being monitored appropriately across all shifts, however in Mrs Bell's case (the early shift) the process is being followed albeit not to the three monthly review as required. Secondly for Mrs Bell to re-consider utilising Access to Work scheme. Although not palatable the first time it was suggested back in December 2015 it might be the most appropriate solution at this time".

87. At paragraph 19 of her witness statement the claimant says, "*I was devastated by the decision on my grievance. I believe that Steve Caudwell was unable to properly address my grievance because to do so would have meant challenging the decisions and conduct of his line manager, [Mr Owen]. I lost all confidence that I would be treated fairly. Whilst [Mr Owen] remained in post, I could not see how I could obtain the reasonable adjustment I sought. On 26 January 2017, I sent an email to the CWU (page 340 of the bundle) in which I said that the Royal Mail was trying to constructively dismiss me. I believe I was being broken down to force me to leave. I recall walking on the corridor some time in February 2017 and met Steve House. I got really upset and cried about the parking. He took me into the union room. We sat down and I had one of the most devastating outbursts from Richard Isdell (one of the union officials). He said could all disabled people could walk further than the blue badges allowed. [*Sic*]. Three of the blue badge people on shift were CWU H&S reps, Steve House being one of them. Richard Isdell informed me if I*

continued to appeal the grievance decision with a stage three all the disabled spaces would be removed just leaving a parking space just for me".

88. The claimant goes on at paragraph 20 of her witness statement to say that, *"I felt bullied and harassed by both my employer, [Mr Owen] and the union, just because I wanted enough disabled parking spaces so that I could park each day. My body was super stressed, and I realised that with one more relapse and I was finished. Steve and I both left the union room and never discussed the parking again until 2018 and the* [appointment of the*] new mail centre manager. They were even comfortable sending out information to a sitting MP that was not correct (page 163 of the bundle)."* (We have already observed that there is some merit in the claimant's complaint given that, contrary to what was said on 7 September 2016 by Moya Greene to Louise Haigh MP, the respondent in fact carried out no regular reviews of the operation of the yellow badge scheme).

89. The claimant had a further short period of absence from work between 6 and 8 October 2017. The welcome back meeting notes at pages 278 and 279 refer to issues at work. The claimant says in evidence that this was a reference to comments directed at her by work colleagues (in particular the two work colleagues to whom she refers at paragraph 11 in her witness statement cited above). The claimant says that Mr Frisby was aware that the disabled parking issue continued to be of great concern to her as recorded in the attendance review meeting notes to which we have already referred at page 283.

90. The claimant began to experience less problems in finding a parking space during 2017. This was because sickness absence at the mail centre amongst other employees was high. She says that, *"most days I could get parked but there were still occasions I could not. Then as the year has gone on people started to return. I started to feel a little better".*

91. At paragraph 22 of her witness statement the claimant says that, *"In January 2018 I started to feel my health was a little better, and parking was starting to be more of a struggle. Then the word went round that Mark Owen was leaving. I believed he was the blockage addressing my parking issue and decided that if he left, I may stand a chance that it would be fairly address. So, on 31 March 2018 I put a stage 3 grievance in and told nobody at all. My letter was again addressed to Moya Greene (at pages 234 to 238 of the bundle)."* The letter says, in the second paragraph that, *"The CWU asked me not to put my appeal in last year. By email they informed me that the CWU and the Royal Mail were going to sort out my parking issues at a local level. At the time I believed the information given to me so I agreed, as going to an Employment Tribunal would be a last resort".* She goes on to say that, "*obviously the CWU are no longer involved at any level in my complaint".*

92. We observed, in the introductory passages to this Judgment, that the claimant had brought proceedings against the CWU. The Tribunal is not privy as to what happened between the claimant and the CWU. It is plain that she is and was unhappy with their representation of her. It also appears that some documentation has been removed from the bundle. For example, paragraph 19 of the claimant's witness statement refers to

an email at page 340 of the bundle which is not before the Tribunal. We also do not have the email referred to by the claimant in her grievance letter addressed to Moya Greene confirming that it had been agreed between the CWU and the respondent that the parking issue would be sorted "*at a local level".*

93. Again, the claimant in her stage 3 grievance letter gives what in our judgment is an accurate summary of the history of matters. She then refers again at page 237 to having been informed in writing by the CWU that it had been agreed with the respondent *"to sort out the parking at a local level"*. The claimant then refers to the sickness absence of three yellow badge holders in the summer of 2017 which freed up more parking spaces.

94. On 6 April 2018 the claimant was notified that the Stage 3 grievance would be dealt with by Mr Lund. A letter confirming this is at page 239. On 12 June 2018 Mr Whitehouse wrote to the claimant (page 240). He invited her to attend a grievance meeting on 19 June 2018.

95. Mr Lund says that, *"I am unable to provide an explanation as to why a letter was sent from the business to Mrs Bell informing her that I had been appointed to deal with her Stage 3 grievance because this was incorrect. In my position as service delivery leader it is very rare for me to deal with grievances. The correct process is for it to pass through the line and in this case, a person of a higher grade than Mr Steve Caudwell be appointed to deal with Mrs Bell's Stage 3 grievance. The correct person was accordingly appointed to deal with Mrs Bell's Stage 3 grievance: Paul Whitehouse".*

96. Mr Lund accepted, in evidence given under cross-examination, that there was no explanation to the claimant given for the delay in dealing with matters between 6 April and 12 June 2018. Mr Lund also confirmed that Mr Waterhouse was at the same managerial level as was Mr Owen.

97. In his witness statement, at paragraph 9, Mr Whitehouse says that Mr Lund was not the correct person for the grievance to have been passed to. He goes on to say that, *"It is also worthy of note that even though the time limit to appeal a grievance decision had passed as per Royal Mail's grievance procedure, the business still chose to deal with Ms Bell's grievance appeal. I also recognise this at the start of my interview with Ms Bell".*

98. The grievance interview in fact took place on 20 July 2018. Mr Whitehouse clarified with the claimant that the following were her grounds of appeal:

- That Mr Braddock had not taken her condition seriously and had misquoted the law by reference to the Eversheds print out.
- That Mr Owen had not taken her condition seriously and had failed to provide the two additional parking spaces that had been agreed informally with her.
- That there were insufficient parking spaces at Sheffield mail centre and the policing of the disabled spaces was not adequate.

- That the respondent did not recognise individuals covered under the 2010 Act.

99. The claimant also raised with Mr Whitehouse the length of time that this matter had taken. She complained that it had had a detriment impact upon her health.

100. Mr Whitehouse did not carry out any investigation of his own. He considered that he had sufficient information in his possession to adjudicate upon her grievance.

101. On 12 July 2018 Mr Whitehouse wrote to the claimant with his conclusions. These were as follows:

  - He did not uphold her complaint that Mr Braddock did not take her condition seriously and that he had misquoted the law.

  - Mr Whitehouse partially upheld the claimant's grievance against Mr Owen. He agreed with the claimant that there had been a failure of communication which led the claimant to reasonably perceive that he was not taking her condition seriously. He also noted that provision had now been made for further disabled parking spaces at Sheffield Mail Centre.

  - Mr Whitehouse upheld the claimant's complaint that the policing of the disabled spaces was not adequate. He says that, *"It is clear that there is no process in place to manage the usage of both the car park and disabled spaces. It appears that the car parking has been very much on a "trust basis". To resolve this situation a formal communication has now gone out across the mail centre to outline who should be using the disabled spaces and what needs to be displayed in the vehicle when parked in these spaces. Furthermore, all employees who use the staff designated car park have been requested to provide details of their car registration and model that can be placed on local record to enable Royal Mail to oversee the correct use of all parking facilities. I have made the decision to uphold this element of your grievance in that there was insufficient policing of the car park and disabled spaces but I feel this will now be rectified with the communication to all staff and the local record of staff vehicles".*

  - Mr Whitehouse did not uphold the claimant's complaint that the respondent does not recognise individuals covered under the 2010 Act.

102. When upholding part of the claimant's grievance, Mr Whitehouse made reference to a provision of further disabled parking spaces at Sheffield Mail Centre. Mr Whitehouse in fact arranged this himself before he concluded the grievance. He told us that within each mail centre there are several individuals who are noted to be "*handymen".* These are regular employees with other duties to whom colleagues may turn if small jobs need doing. Mr Whitehouse therefore asked one of the handymen if he had any ground paint and if so whether he could mark out some additional bays. Mr Whitehouse did not follow the same route as Mr Owen. He said that it *"takes time to get through authority levels".* Mr Owen had when he

gave evidence, referred to a directive from a senior officer within the respondent to the effect that the practice of using local handymen was to cease. Mr Whitehouse confirmed he was aware of that directive but said that he had carried out a risk assessment and authorised the local handyman to proceed to mark out four additional disabled bays.

103. The claimant describes these as *"dinky bays".* By this she means that the markings of the type to be seen in the document at page 195 are not present. These markings are there to stop others parking so close to a disabled person's vehicle as to make access and egress with a wheelchair or other equipment difficult or impossible.

104. Nonetheless, Mr Whitehouse's solution appears to have resolved matters. The claimant has been able to park without difficulty since June 2018.

The law

105. We now turn to a consideration of the relevant law. The statutory provisions as to prohibited conduct are to be found in chapter 2 of part 2 of the 2010 Act. The relevant sections for our purposes are: section 13 (direct discrimination); section 15 (discrimination arising from disability); section 20 (duty to make reasonable adjustments); section 26 (harassment); and section 27 (victimisation). The prohibited conduct is made unlawful in the workplace by provisions to be found at part 5 of chapter 2 of the 2010 Act. The relevant provisions for our purposes are to be found at sections 39(2), (4), (5) and 40.

106. We shall deal firstly with the reasonable adjustments claim. An employer's duty to make reasonable adjustments arises where a *"provision, criterion or practice"* (meaning broadly any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions) puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with those who are not disabled. The employer must then take such steps as it is reasonable to have to take to avoid the disadvantage.

107. Having identified the relevant PCP (as we shall now refer to the provision, criterion or practice in question) the Tribunal must then go on to consider the nature and extent of the substantial disadvantage suffered by the claimant in comparison to non-disabled comparators. *"Substantial"* in this context means *"more than minor or trivial".*

108. The claimant bears the burden of proof to establish a *prima facie* case that the duty has arisen and that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. There must be evidence of apparently reasonable adjustments which could be made. The claimant must therefore identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage (or at least have a reasonable prospect of doing so). Having done so the burden will then shift to the employer to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make.

109. The duty to make adjustments arises only in respect of those steps that it is reasonable for the employer to have to take to avoid the disadvantage experienced by the disabled person. The test of reasonableness in this

context is an objective one. As the reasonable adjustment provisions are concerned with practical outcomes rather than procedures the focus must be on whether the adjustment itself can be considered reasonable rather than on the reasonableness of a process by which the employer reached the decision about a proposed adjustment.

110. It is unlikely to be reasonable for an employer to have to make an adjustment that involves little benefit to the disabled person. However there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one. It is sufficient for a Tribunal to find simply that there would have been a prospect of it being alleviated.

111. A significant change brought about by the 2010 Act is the omission of specific factors to be considered when determining reasonableness. The Disability Discrimination 1995 (when that was in force) stipulated that in determining whether it was reasonable for an employer to have to take a particular step in order to comply with the duty, regard should be had to a number of factors. Those factors are not mentioned in the 2010 Act. However, paragraph 6.28 of the Equality and Human Commission's Employment Code gives examples of matters that the Tribunal might take into account.

112. The code stipulates that what is a reasonable step for an employer to take will depend on all the circumstances of each individual case. The factors to have in mind include for example the extent to which taking the step would prevent the effect in relation to which the duty was imposed, the impracticality of such step, the costs that would be incurred by the employer in taking that step and the extent to which it would disrupt any of its activities.

113. Other factors that need to be taken into account include the extent of the employer's financial and other resources, the nature of the employer's activities and the size of its undertaking.

114. Paragraph 6.33 of the code lists a number of adjustments that might be reasonable for an employer to make. These include making adjustments to premises (such as structural or other physical changes like widening a doorway, providing a ramp or moving furniture for a wheelchair user).

115. A duty to make reasonable adjustments also arises in circumstances 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. The code states that physical features can be temporary or permanent (see paragraph 6.11). According to the code, physical features include (but are not restricted to) parking areas (amongst other things). When considering a reasonable adjustment claim concerning physical features the Tribunal needs to consider whether the claimant was put at a substantial disadvantage by the physical feature complained of. If not, the duty to make adjustments does not arise. Secondly, the Tribunal must consider whether the adjustment would reduce or avoid the disadvantage to the claimant. Thirdly, the Tribunal must consider whether the adjustment was a reasonable one to make.

116. I now turn to the complaint of discrimination for something arising in consequence of disability. This is a complaint that may be raised where an employer treats an employee unfavourably because of something arising in consequence of the employee's disability which the employer cannot show to be a proportionate means of achieving a legitimate aim. We do not understand the respondent to be raising a justification defence in this case in answer to this part of the claimant's complaint.

117. Again, the burden is upon the claimant to show a *prima facie* case. She must show unfavourable treatment because of 'something' and that 'something' must arise in consequence of her disability.

118. We now turn to the complaint of direct disability discrimination. This is a complaint which arises where (in this case) an employer treats an employee less favourably than the employer treats or would treat others because of a protected characteristic (which in this case is disability). This is a comparative exercise. Therefore, there must be no material difference between the circumstances of the claimant's case and the circumstances of a case concerning an actual or hypothetical comparator.

119. That said, the circumstances of the claimant which are relevant to the way in which her case was dealt with does not have to be precisely the same as that of the actual hypothetical comparator. They must not be materially different. One has to compare like with like. The treatment of a person who does not qualify as a statutory comparator because the circumstances are in some way materially different may nevertheless be evidence from which a Tribunal may infer how a hypothetical statutory comparator would be treated. Inferences may be drawn and one permissible way of judging a question such as that is to see how unidentical but not wholly dissimilar cases were treated in relation to other individual cases.

120. Upon the direct discrimination claim, the crucial question is whether the claimant received less favourable treatment in comparison to somebody else who was not disabled and who was in the same or similar circumstances and if so was the less favourable treatment upon the grounds of disability of some other reason? The focus primarily must be on why the claimant was treated as she was.

121. We now turn to the harassment claim. To succeed with such a claim three elements need to be shown. The first of these is that there was unwanted conduct. The code says (at paragraph 7.8) that this means essentially the same as "unwelcome" or "uninvited".

122. Secondly, the unwanted conduct must be shown to have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Accordingly, conduct that is intended to have that effect will be unlawful even if it does not in fact have that effect. Conduct that in fact does have that effect will be unlawful even if that was not the intention.

123. Therefore, a claim brought on the basis that the unwanted conduct had that purpose involves an examination of the perpetrator's intention. A claim brought upon the basis that that was the effect of the alleged perpetrator's behaviour involves a consideration of the perception of the claimant, other circumstances of the case and whether it was reasonable

for the conduct to have that effect. The test therefore has both subjective and objective elements to it. The objective aspect of the test is intended to exclude liability where a claimant is hypersensitive and unreasonably takes offence. Importantly however the Tribunal must consider whether it was reasonable for the conduct to have that effect on the particular claimant.

124. Finally, in order to constitute unlawful harassment, the unwanted and offensive conduct must be related to a relevant protected characteristic which in this case is of course disability. The Tribunal must identify the real reason or motive for the impugned conduct. The context in which the conduct occurred is therefore of crucial important.

125. We now turn to the victimisation claim. It must firstly be shown that the claimant has done acts which are protected within the definition of section 27(2) of the 2010 Act. It must then be shown that the claimant was subjected to a detriment because she had done protected acts or the respondent believed that she had done them.

126. The code says that a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. It does not necessarily entail financial loss, loss of opportunity or even a very specific form of disadvantage.

127. To succeed in a claim of victimisation the claimant must show that she was subjected to the detriment because she did a protected act or because the respondent believed that she had done so. If there has been a detriment and a protected act but the detrimental treatment was due to another reason then the claim will not succeed. The code provides (at paragraph 9.10) that the protected act need not be the only reason for detrimental treatment for victimisation to be established. Indeed, it is not necessary for the protected act to be the primary cause of a detriment so long as it is a significant factor.

128. Detriment cannot be because of a protected act in circumstances where there is no evidence that the person who allegedly inflicted the detriment knew about the protected act. In the absence of clear circumstances from which such knowledge can be inferred the claim for victimisation will fail.

129. The burden of proof provisions at section 136 apply to all of the claims brought by the claimant. Therefore, it is for the claimant to show that the allegedly discriminatory treatment actually happened and that the respondent was responsible. It is for the claimant to prove that she suffered the treatment and not merely to assert it. Only after hearing all of the evidence including the respondent's explanation can Tribunal decide whether a *prima facie* case has been shown. If a *prima facie* case has been shown then the burden will pass to the respondent to show that it did not contravene the relevant provision. Thus, if a *prima facie* case is shown then the respondent must prove on the balance of probabilities that its treatment of the claimant was in no sense whatsoever based on the protected ground.

130. An employer is liable for acts of discrimination, harassment and victimisation carried out by its employees in the course of employment. An employer will have a defence however where it can be shown that it took

all reasonable steps to prevent the employees from committing the conduct in question. In this case, the respondent has not raised the statutory defence and accepts liability should the Tribunal determine that the named respondents (Mr Braddock, Mr Lund and Mr Owen) acted in a discriminatory way towards the claimant.

131. Where an employer is liable for the discriminatory acts of employees then the employees may themselves be personally liable for acts of discrimination. Where more than one respondent is found liable for the same act of unlawful discrimination the Employment Tribunal is entitled to make an award for compensation on a joint and several basis. There is no scope for apportionment in cases of individual damage caused by discrimination. This is a complex matter in this case because different allegations have been raised against different named respondents but in respect of which the first respondent accepts vicarious liability in any event. The Tribunal proposes to deal with this issue at remedy stage.

132. The general rule is that a claim concerning work related discrimination brought under Part 5 of the 2010 Act must be presented to the Employment Tribunal within the period of three months beginning with the date of the act complained of. Conduct extending over a period is to be treated as done at the end of that period. Failure to do something is to be treated as done when the person in question decided upon it. In the absence of evidence to the contrary, a person is taken to decide on failure to do something either when the person does an act inconsistent with deciding to do something or, if they do no inconsistent act, on the expiry of the period in which they might reasonably have been expected to do it.

133. Much of the case law on time limits in discrimination cases has centred on whether there is continuing discrimination extending over a period of time or a series of distinct acts. Where there is a series of distinct acts, the time limit begins to run when each act is completed whereas if there is continuing discrimination, time only begins to run when the last act is completed. In considering whether separate incidents form part of an act extending over a period one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents. However, even if the same individual is involved then this may not be sufficient to link the separate incidents if they are quite distinct from one another and ought to be treated as individual matters.

134. Where a complaint of discrimination concerns a denial of a particular benefit, an employee can reactivate the time limit for presenting a Tribunal claim by making another request for the benefit in question. If the subsequent request is a new application and is considered afresh by the employer then time will start to run within three months of the last occasion upon which the allegedly discriminatory policy was applied. Where the claim is based on the denial of a particular benefit, the time limit will begin to run from the date on which the last request for the benefit is refused.

135. The three-month time limit for bringing a discrimination claim is not absolute. Tribunals have discretion to extend the time limit for presenting a complaint where they think it is just and equitable to do so.

136. However, there is no presumption that the Tribunal should extend time. It is for the claimant to convince the Tribunal that it is just and equitable to extend time. The exercise of discretion is the exception rather than the rule. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable.

137. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent on the one hand and to the claimant on the other. The prospective merits of a claim may be taken into account in weighing the balance of prejudice.

138. The prejudice to the respondent must be more than simply having to answer the claim. If that were to be a decisive factor then the discretion vested in Tribunals as to whether or not to extend time upon just and equitable grounds would largely be devoid of content.

139. In exercising discretion to allow out of time claims to proceed Tribunals may also have regard to the check list contained in section 33 of the Limitation Act 1980. This provision deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all of the circumstances of the case. In particular, regard may be had to the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with any request for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action. However, the section 33 factors are not to be adopted as a check list and the Tribunal does not need to go through all of the factors in each and every case. The Tribunal will however err if a significant factor is left out of account.

140. The focus should not be solely on whether the claimant ought to have submitted his or her claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent on the one hand and to the claimant on the other.

141. In disability discrimination cases, there is an additional factor to be taken into account when considering an application to extend the time limit and that is the disability itself. The impact of the disability may be taken into account in assessing the reason for and length of the delay in presenting the claim.

142. Claimants may also face problems in complying with the three-month time limit where the trigger is the employer's inadvertent failure to make reasonable adjustments. In such circumstances, Tribunals may be expected to have some sympathy with regard to the difficulty created for claimants by the operation of the relevant time limits.

143. The fact that a claimant has awaited the outcome of his or her employer's internal grievance procedures before making a claim is just one matter to be taken into account by an Employment Tribunal in considering whether

to extend the time limit for making a claim. A delay in presenting a claim after the end of the internal grievance process is likely to present a difficulty for a claimant in persuading a Tribunal to grant a just and equitable extension of time.

Conclusions

144. We now turn to our conclusions. The schedule of complaints is at pages 100 to 104.

145. We shall start with the complaint of a failure to make reasonable adjustments. The relevant disadvantaging provision criterion or practice applied by the respondent to the claimant is the operation by the respondent of the yellow badge scheme. The claim was also advanced upon the basis of a physical feature of the respondent's premises, namely that there were insufficient disabled parking bays because of the yellow badge holders' ability to use the disabled bays.

146. We accept that the operation of the yellow badge scheme put the claimant as a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. The relevant matter in question is the claimant's ability to park her car upon turning up at the work place. The operation of the yellow badge scheme operated to the disadvantage of the claimant because non-disabled employees were also able to park in the disabled parking bays. The claimant's multiple sclerosis affected her mobility and walking distance. Therefore, being unable to park in a designated disabled bay placed the claimant at a substantial (that is to say, more than minor or trivial) disadvantage in that if she was unable to park there, she would have to park further away and face a longer walk into her workstation. Because of her disability this was more than a minor or trivial disadvantage when comparing the claimant to somebody without a disability who could more easily have walked a greater distance.

147. We also accept that there were too few disabled parking spaces because of the yellow badge scheme. This physical feature therefore disadvantaged the claimant as she would frequently have to park other than in a disabled bay. A non-disabled comparator doing so would more easily be able to cope with the walk to the workplace than the claimant. This created a disadvantage for her which is more than minor or trivial.

148. The Tribunal makes no criticism of the respondent for operating the yellow badge scheme in and of itself. We agree with the claimant that it was a worthy scheme to assist employees with temporary difficulties in parking their cars and then walking a comfortable distance into the work place. The difficulty that it created for the claimant was that the respondent allowed yellow badge holders to park in designated blue badge disabled bays. This had the effect of squeezing the claimant out of a designated disabled parking bay. As Mr McGregor said in his email at page 210, the respondent *"would only provide disabled parking for persons with disabled blue badge holders provided by the relevant body, which is usually the local council".* Therefore, the operation of the yellow badge scheme was plainly a practice or provision made by the respondent to its employees which unfortunately had a disadvantaging impact upon disabled

employees in that their parking spaces were taken by non-disabled colleagues (or at any rate there was a significant risk that they would be). The yellow badge scheme disadvantaged the claimant because of the physical feature of there being too few disabled bays.

149. We accept that the claimant was regularly disadvantaged by holders of the yellow badge scheme getting into work before her and taking a space that she could otherwise have used. We do not accept the assertion made on behalf of the respondent by Mr Jeffries that the claimant only infrequently experienced problems with parking. This is contrary to the claimant's own evidence. As she said, *"I did not think to keep a tally".* There is no reason why she should have thought to keep a record of the days upon which she could not park. There is ample evidence of complaints made by her to medical practitioners and to her MP as well as to the respondent's management of experiencing frequent problems with parking. It is against the probabilities to conclude that the claimant only experienced minor and occasional inconvenience in circumstances where she has had resort to utilising the respondent's internal grievance procedure, complaining to her Member of Parliament and ultimately bringing the matter before an Employment Tribunal. We also take into account the claimant's only too apparent upset about matters which she articulated before the Employment Tribunal (and which Mr Jeffries very fairly accepted to be genuine).

150. The Tribunal does consider that the relevant physical feature placed the claimant at a substantial disadvantage. The relevant physical feature was the provision of an inadequate number of disabled parking bays. There were in fact a sufficient number of them for blue badge holders. The claimant has never said otherwise. It has always been her case that but for the operation of the yellow badge scheme she would have been able to park in a disabled bay. We have observed already that the number of parking bays provided for by the respondent was in compliance with the Department of Transport recommendations highlighted by Mr Bennion. The Tribunal therefore makes no criticism of the respondent for its disabled parking provision in and of itself or for operating the yellow bade scheme. The difficulty was that the yellow badge scheme coupled with the physical feature of there being too few disabled bays (because yellow badge holders could use them) disadvantaged the claimant.

151. Therefore, it was both the physical feature of the number of disabled bays that disadvantaged the claimant and that provision and practice that non-disabled employees were able to utilise the relevant physical feature (being the parking bays) to park their cars that substantially disadvantaged the claimant.

152. We hold therefore that the yellow badge scheme and the physical feature in question of insufficient provision on the ground to cope with demand disadvantaged the claimant and therefore there falls upon the respondent a duty to make reasonable adjustments. Several of the proposed adjustments referred to throughout the history of the matter (and in particular at the meeting of 9 December 2015) would not in our judgment be reasonable steps to take in order to ameliorate the disadvantage.

153. We hold that it would not be a reasonable adjustment for the claimant to take advantage of taxi provision under the Access to Work scheme. There is much merit in the claimant's subjective wish not to become dependent upon the Access to Work scheme and to lose the sense of personal freedom which driving her car brings to her. We do not understand the respondent to be asserting that that would have been a reasonable adjustment that was turned down by the claimant and upon which basis her claim should not succeed. If that were to be the respondent's position then we would hold that not to be a reasonable adjustment because of the significant disadvantage to the claimant of the loss of personal autonomy. This is all the more so when weighing that adjustment against the practical steps which ultimately were taken by Mr Waterhouse to quickly resolve the matter. We also take judicial note of the fact that an application for Access to Work assistance quite properly involves a detailed application involving a work place assessment.

154. We also hold that it would not be a reasonable adjustment for the respondent to have designated a parking space for the claimant. To assign her name to a designated space would have created real industrial relations issues for both parties. The claimant did in fact experience some hostility from colleagues. Before us, the respondent (in particular Mr Owen) acknowledged the sensitivity around car parking. The hostility may be expected to have been made worse by giving the claimant her own space with her name upon it. Using a number instead of names would be no solution as individuals would quickly recognise that the claimant's car was being parked in the same space all of the time. Anonymity by reason of a numbering system would be very quickly lost in those circumstances.

155. We also hold that it would not be a reasonable adjustment to make any variation to the yellow badge scheme. That would be disproportionate. The claimant in no way advocated for it recognising its benefit to colleagues (as well as the hostility that she would experience if colleagues perceived that she was responsible for its abolition).

156. By far the most proportionate adjustment was that undertaken by Mr Waterhouse when he simply procured the provision of four additional parking bays. This simple step at a stroke resolved the matter. There was then enough space for the blue and yellow badge holders. The additional physical feature of four new bays resolved the disadvantage. This has been proven upon the facts because the claimant has been unable to park for almost a year now following Mr Whitehouse's intervention. That step obviated the need for the claimant to proceed with an application to Access to Work.

157. It obviated the need for the respondent to consider significant variations if not revocation of the popular yellow badge scheme. It obviated the need to designate a particular space for the claimant with all of the consequent disadvantages that this would bring.

158. It also obviated the need for a claimant to park outside the reception area. Again, in our judgment, this would not have been a reasonable adjustment given that it would shine a spotlight upon arrangements having to be made for the claimant which will bring with it unwelcome attention. That would

also inconvenience whichever manager was designated to let the claimant in when she arrived for work.

159. Mr Whitehouse took what on any view was a very practical step. He took a pragmatic approach. It was immediately effective in preventing the substantial disadvantage. It cost very little if any money to implement. Indeed, the Tribunal was told that the individual who did the marking of the new disabled bays did not even have to buy some ground paint as he had some available.

160. Mr Jeffries sought to argue that the adjustment made by Mr Whitehouse was not reasonable because he effectively bypassed the respondent's internal processes. Mr Jeffries submitted that Mr Whitehouse's actions were not reasonable and that Mr Whitehouse had "*broken the rules to do it".* He also said that Mr Whitehouse's solution was a different one to that which the clamant advocated.

161. As to the latter point, the claimant was advocating the provision of two additional parking bays. Therefore, Mr Whitehouse in fact provided more parking bays than the claimant was seeking. It seems to us to be an unattractive argument for an employer to seek to argue that it does not amount to a failure to make reasonable adjustments in circumstances where a simple request from an employee was dealt with in a way that avoided an employee becoming embroiled in the employer's own internal processes. This seems to us to be contrary to the spirit of the statute. It would not be a desirable state of affairs if large employers were able to defeat reasonable adjustments complaints by compelling employees to navigate labyrinthine internal complex processes and arguing that by-passing them was impermissible and thus not a failure to make reasonable adjustments

162. We agree with the claimant that the simple step undertaken by Mr Whitehouse in June 2018 ought to have been undertaken by the respondent much sooner. The requisition procured by Mr Owen on 6 January 2016 (paragraph 43) was made several months after the claimant had first raised the issue with Mr Braddock in July 2015. That delay in itself may be criticised. However, Mr Owen manifestly failed to monitor the progress of the requisition application and effectively suffered it to be closed down. When the matter was deemed resurrected by Mr MacGregor and others in December 2016 (paragraph 49) Mr Caudwell failed to pursue it. Therefore, that too went nowhere.

163. Mr Braddock, Mr Owen and Mr Caudwell all appear to have taken comfort from the fact that the 2010 Act does not prescribe a number of parking bays. In that they are correct. However, that is of course not the full picture and we agree with Miss Mellor when she submits that the respondent's managers fundamentally misunderstood the provisions of the 2010 Act. True it is that the respondent appears to have complied with the Sheffield City Council planning conditions to provide a minimum number of disabled car parking spaces. It is also true that the respondent was in compliance with the Department of Transport guidance. What the respondent fundamentally failed to appreciate however was that the operation of the yellow badge scheme was putting disabled car parking spaces under intolerable pressure and in those circumstances (as the Eversheds article

says) the respondent is under an obligation to consider increasing the number of disabled car parking provision on a case-by-case basis. The approach of Mr Braddock, Mr Owen and Mr Caudwell appears very much to have been that because the 2010 Act does not specify a minimum number of disabled car parking spaces, there is no legal obligation to provide any at all. That is a manifestly misguided approach to the legal position.

164. The claimant therefore has a meritorious claim that the respondent has failed to comply with the duty upon it to make reasonable adjustments. However, the Tribunal only has jurisdiction to entertain the claim if the complaint has been brought within the time limit provided for by section 123 of the 2010 Act or it is just and equitable to extend time to enable the Tribunal to consider it.

165. Miss Mellor fairly and realistically accepted the claimant's complaints to have been presented outside the relevant time limit. The time limit will begin to run from the date on which the last request for the benefit is refused. The last occasion upon which the claimant asked for the benefit of additional car parking provision was in the Stage 3 grievance which she raised on 31 March 2018. That application was not refused. On the contrary, it was granted by dint Mr Whitehouse's actions. The date of the last refusal therefore was the date of which the claimant received Mr Caudwell's decision letter following the Stage 2 grievance investigation. This was received by the claimant on or around 5 January 2017.

166. The claimant only commenced early conciliation on 25 May 2018 and 19 June 2018 (as recited at paragraph 3 above). As Miss Mellor readily acknowledged, the claimant's claim has therefore been presented significantly out of time.

167. In our judgment, it is just and equitable to extend time to enable the Tribunal to consider the claimant's claim. Firstly, the balance of prejudice favours the claimant. If we were to hold her claim out of time then it will not be heard. She will be driven from the judgment seat. That is a prejudice which bears considerable weight. The respondent had some difficulty in pointing to any prejudice over and above that of simply having to meet the claim. As we have said, that cannot in and of itself amount to prejudice to be weighed in the balance. If such were able to defeat an application for an extension of time then it would render the Tribunal's discretion largely devoid of content.

168. Mr Jefferies submitted that Mr Owen has suggested there to be some prejudice to the respondent by virtue of the destruction of his notebooks when he left the respondent's business. We agree with Miss Mellor when she submitted that this was somewhat vague and unsatisfactory evidence. Mr Owen did not say what the notebooks would have contained which would have availed the respondent. Further, although Mr Owen has left the respondent's business he was present before the Tribunal to give evidence. Whether this was because he was an individual party or the respondent had prevailed upon him to attend is nothing to the point. The fact of the matter is that Mr Owen was able to attend the Tribunal and give evidence on his own behalf and on behalf of the respondent. There was

simply no evidence or submission made to the effect that (other than the issue around Mr Owen's notebooks) the cogency of any of the respondent's evidence was affected by the claimant's delay in bringing her case.

169. Also weighed in the balance in the claimant's favour is the fact of her disability and the impact of it upon her. On 2 November 2016, the respondent's own occupational health advisor Valary Sithole advised that relapses can often occur without warning. By that stage, the claimant had suffered relapses in February and March 2016 and October and November 2016.

170. The claimant was, we accept, genuinely fearful for her health should she have pursued the matter in the early part of 2017. In our judgment, the unchallenged account that she gave in paragraph 19 of her witness statement (cited above at paragraph 87) is significant. The claimant was plainly being told by her trade union that should she pursue the matter then all of the disabled spaces would be removed from everybody but her. In those circumstances, it would be a very profound move indeed for the claimant to have pursued Tribunal proceedings at that stage. What the claimant was being told by her trade union of the repercussions of her pursuing matters is indeed remarkable. Should she have done so and that threat have been carried out then she would be in the invidious position of being the only disabled person with a car parking space which would plainly signal to colleagues that the claimant was responsible for the loss of their facilities. That would have made the claimant's life simply intolerable.

171. Shortly after the meeting with the trade union in February 2017, the claimant began to experience a relieving of the car parking pressure due to colleagues' absences. This enable her to park more freely than she had done hitherto. Although that is by happenchance, it is a factor that weighs with the Tribunal in assessing the reasonableness and promptness of the claimant's actions.

172. We also consider that the claimant acted reasonably in seeking to resurrect the matter in the spring of 2018 when she learned of Mr Owen's departure. This coincided with a deterioration in the parking situation and further instances of ill health absence. Mr Owen left the Sheffield Mail Centre on 16 March 2018. The claimant issued her Stage 3 grievance on 31 March 2018, barely a fortnight later. She therefore acted reasonably quickly to resurrect matters once the individual whom she considered to be the major obstacle to resolution of the matters had gone.

173. We also attach significance to the fact that the claimant was led to believe by her union that it had been agreed between the union and the respondent that the car parking issue was going to be sorted out *"at a local level".* The claimant said this in her grievance of 31 March 2018. That assertion was not refuted by the respondent. Therefore, the claimant's belief was reasonable. The claimant wished to resolve matters internally. She had been led to believe by her trade union that they would be. Therefore, the claimant's delay in bringing proceedings before the Employment Tribunal is in our judgment reasonable and understandable.

174. Furthermore, the claimant's complaint against the respondent is meritorious. It follows therefore that for all of these reasons the Tribunal considers that it is just and equitable to extend time to enable the Tribunal to consider the complaint of a failure to make reasonable adjustments. Time is therefore enlarged to enable the Tribunal to have jurisdiction to consider it and accordingly that complaint succeeds. The reasonable adjustments complaint is brought only against the first respondent. The Tribunal therefore declares the first respondent to have been in breach of the duty upon it to make reasonable adjustments.

175. We now turn to the complaint brought, again against the first respondent only, of discrimination for something arising in consequence of disability. The unfavourable treatment complained of is the failure to provide the claimant with a disabled parking bay upon a regular basis.

176. The question arises as to whether this constitutes unfavourable treatment for the purposes of section 15 of the 2010 Act. We have recourse again to the code which provides that this broadly means that the disabled person must have been put at a disadvantage (see paragraph 5.7). On any view, objectively, providing disabled parking bays which disabled employees are not able to use because they are being used by others is to put the disabled employees at a disadvantage. This is for very similar reasons to that as considered when we looked at the reasonable adjustments complaint: that it entails disabled employees having to walk further than they otherwise would which may, depending upon the disability, cause significant difficulty for the disabled member of staff.

177. This analysis also addresses the other component parts of the statutory definition. The claimant has in our judgment demonstrated that she has suffered unfavourable treatment for 'something' (by reason of not being able to park in a disabled space which presents a difficulty for her because of mobility issues) and that 'something' arises in consequence of disability (the mobility issue caused by the disability). We therefore agree with Miss Mellor that the claimant has demonstrated that she was unfavourably treated for something arising in consequence of disability. As we have said, no issue has been raised by the respondent that it did not know or could not reasonably be expected to know of the claimant's disability. The respondent has not sought to justify its unfavourable treatment of the claimant for something arising in consequence of her disability. Indeed, it will be very difficult for the respondent so to do given our finding that the respondent failed to make reasonable adjustments open to it which would have alleviated the substantial disadvantage to her.

178. The unfavourable treatment continued up until the point at which Mr Whitehouse took the initiative and painted new disabled bays thus making adequate provision for yellow and blue badge holders. It follows therefore that this complaint was brought in time. Mr Whitehouse arranged for the provision of the additional bays in June 2018. The claimant presented her claim form against the respondent on 24 June 2018. In contrast to the reasonable adjustments complaint, time for the unfavourable treatment complaint does not start to run upon the date of Mr Caudwell's refusal to provide additional parking bays. There remained a

continuing state of affairs which operated unfavourably to the claimant until the point of Mr Whitehouse's intervention.

179. We next consider the complaint of direct discrimination. This is a complaint brought against the respondent and Mr Owen. The complaint of direct discrimination appears to be as follows:

- That the claimant was less favourably treated than other employees, particularly those with the yellow badge, by the respondent and Mr Owen communicating her concerns to other colleagues within the business and treating her as a troublemaker.
- By suggesting that a reasonable solution to the issue was for her to get a taxi.
- By failing to review the blue and yellow badge system every three months as agreed or at all.

180. The allegation that the respondent and Mr Owen treated the claimant as a troublemaker fails upon its facts. We refer to paragraph 59 above in which we found as a fact that the claimant did not at any stage allege that Mr Owen had said to her (or to anybody else for that matter) that he considered her to be a troublemaker. The only reference to the claimant causing trouble was a remark made to her by Mr Frisby, her line manager, when he agreed to send an email to Mr Owen in July 2016 chasing up progress. The Tribunal is not clear what the claimant means by reference to the respondent and Mr Owen *"communicating her concerns to other colleagues within the business".* If this is a complaint about Mr Owen taking up the issue with others, then this is precisely what the claimant had asked him to do (albeit, as we find, he did not do it adequately).

181. The second limb of the direct discrimination complaint is the suggestion that a reasonable solution to the issue was for the claimant to get a taxi. It is the case that this was raised at around the time of the meeting of 9 December 2015 with Mr Owen (paragraph 38) and in January 2017 Mr Caudwell considered this to be a possible solution (paragraph 87). The claimant presented no evidence as to the basis upon which she contends that this suggestion would not have been made to a non-disabled comparator in the same or similar circumstances. Further we did not receive any evidence from which we could infer how a hypothetical comparator in the same or similar circumstances would have been treated (and that no such suggestion would have been made to such a comparator).

182. Leaving aside the difficulty alluded to at paragraph 181 conduct only constitutes discrimination for the purposes of section 39(2) if (amongst other things) the employee is subjected to a detriment. The words "*detriment"* has no statutory definition. However, it has been held to mean "*putting under a disadvantage"* or an action *which "a reasonable worker would or might take the view … was in all the circumstances to his detriment".*

183. It is difficult to see how a suggestion made to the claimant that she get a taxi into work to alleviate the parking problem is something that could

reasonably be said to put the claimant under a disadvantage or which she could reasonably have considered in all the circumstances to be to her detriment. Although the circumstances in which the issue was raised appear to be a little hazy the matter appears to have been initiated by the claimant's trade union representative. The issue was not pursued by the respondent in the light of the claimant's objections. The matter was revisited by Mr Caudwell in his grievance outcome letter but again this was not pursued by the respondent given the claimant's strong objections to it.

184. We may have taken a different view had the respondent proceeded with this initiative in the teeth of the claimant's objections to it. However, the respondent did not do so. When reaching this decision, we take into account that it would in practice render management of issues such as that which presented to the respondent even more difficult if an employer feared a discrimination complaint should an initiative or idea meet with the employee's objection. As we say, we cannot see that an employer raising a possible solution with an employee can be to that employee's detriment save where the employer carries on in the face of strenuous objection from the employee. That is not the case that presents here.

185. The third element of direct discrimination is the respondent's failure to review the blue and yellow badge system every three months. We have found as a fact that the respondent failed so to do. However, that failure affected all the employees. The relevant comparator employees have to be those in the same or similar circumstances. Therefore, as Miss Mellor submitted, the relevant comparators for the direct discrimination complaint must be the yellow badge holders. They are not disabled but are equally likely to be affected by the failure to review the scheme (as they may themselves fall foul of the inadequate number of disabled parking bays). The claimant was therefore not less favourably treated than the yellow badge holders. They were all treated the same. That equal treatment was because of the respondent's poor management of the situation. While it was poor treatment, it was not discriminatory treatment. That complaint therefore fails.

186. We now turn to the harassment complaints. These are brought against the respondent and individual respondents. We shall therefore start with the complaint brought against Mr Braddock. This is that he handed to her an article produced by Eversheds solicitors regarding the provision to be made for disabled parking in a building.

187. We refer to our findings of fact at paragraphs 20 to 23 above. We accept the claimant's case that this was unwanted conduct. From the claimant's reasonable perspective, it was certainly unwelcome or uninvited conduct for Mr Braddock to approach her upon the shop floor (even if we were to accept that this was out of view of many of her fellow employees) and to hand her an article upon which had been highlighted a passage which Mr Braddock (wrongly) believed lent support for his view that the respondent was under no obligation to do anything for the claimant.

188. We do not accept that Mr Braddock did this with the purpose of violating the claimant's dignity or creating an intimidating *etc* environment for her. Mr Braddock's purpose in handing the document to the claimant was to effectively shut the claimant's complaint down.

189. However, we do accept that it could reasonably be considered that Mr Braddock's conduct had the effect of violating her dignity or creating an intimidating *etc* environment for her. In deciding whether the conduct has that effect the Tribunal must consider the perception of the complainant, the circumstances of the case and whether it is reasonable for the conduct to have that effect. In our judgment, the claimant reasonably believed Mr Braddock's conduct to have that effect. The claimant wanted resolution to the car parking issue. Mr Braddock's conduct in handing the Eversheds paper was reasonably considered by the claimant to be conveying the message that nothing further would be done about it by him. She was experiencing difficulties with parking. She had just gone through difficult health issues attributable to her disability. Being effectively told by the person to whom she had turned to for help that none would be forthcoming would in our judgment reasonably be considered to be creative of an intimidating and hostile environment for her.

190. The next issue is whether Mr Braddock's conduct was related to the relevant characteristic which in this case of course is the claimant's disability. True it is that but for the claimant's disability the interaction between the claimant and Mr Braddock would never have occurred. However, that is not the test. The fact of the claimant's disability and her turning to Mr Braddock for help to resolve the parking issue was the factual background which led up to him handing the Evershed's paper to her. Something more needs to be shown by the claimant. It is for the claimant to show a *prima facie* case that Mr Braddock's conduct constituted harassment (as we find it did) and which was related to her disability as opposed to some other reason.

191. In our judgment, Mr Braddock's conduct was not related to the claimant's disability. It related to his wish to deal with the claimant's complaint as he saw fit. His judgment was that there was no merit to the claimant's complaint and that it was not a matter for him anyway. He therefore wished to close it down. He handed the Eversheds paper to her and he told her that he was not the responsible person for pursuing the matter anyway. While the claimant's disability was the background to this course of conduct on Mr Braddock's part, it was not the reason why he acted as he did. He acted as he did in order to deal with the complaint and rid himself of it.

192. In any event, we find the complaint against Mr Braddock to have been presented outside the relevant time limit. Mr Braddock had no further involvement in the matter after August 2015. Following him handing to the claimant the Eversheds briefing note and then the interaction between them about the Sheffield City Council planning consent issue (paragraphs 27 to 29), there appears to have been no further interaction between Mr Braddock and the claimant. Mr Braddock had no further involvement in the matter save for the provision of some evidence to Mr Caudwell as part of Mr Caudwell's grievance investigation.

193. In our judgment therefore, there is a distinction to be drawn between Mr Braddock's involvement in the matter on the one hand and the other issues primarily involving Mr Owen on the other. Mr Braddock came in and out of the picture relatively quickly. Mr Owen was involved from December

2015 and (as far as the claimant was concerned) held responsibility for it until he left in March 2018. The claimant's harassment complaint against Mr Braddock is therefore, in our judgment, a stand-alone complaint. Time for her to have pursued the claim against him expired in or around November 2015. Well over two years expired before the claimant instituted proceedings against him. The claimant's first relapse did not occur until February 2016. The claimant therefore has a less compelling case for an extension of time upon her complaint against Mr Braddock based upon health issues than she does for her complaints against the respondent and Mr Owen.

194. In our judgment, no satisfactory reason has been given by the claimant for her delay in pursuing a harassment complaint against Mr Braddock (and the respondent which would be vicariously liable for his actions). We also take into account that, in our judgment, the complaint against him is lacking in merit and therefore in the circumstances time is not extended to enable the Tribunal to consider it. It follows therefore that the claimant's complaint against Mr Braddock (and her claim against the respondent arising out of Mr Braddock's conduct) is dismissed as the Tribunal does not have jurisdiction to entertain it and in any event it fails upon the merits.

195. The next harassment complaint that we shall consider is brought against Mr Lund. This is a complaint effectively of the delay by Mr Lund in processing the claimant's grievance (Stage 3) between 6 April 2018 and 12 June 2018. This is a complaint which has been presented in time as the course of conduct complained of expired only a matter of days before the claimant presented her claims to the Employment Tribunal.

196. We accept that the delay in Mr Lund progressing the grievance was unwanted conduct. Having decided to re-activate matters in the spring of 2018, it certainly will have been unwelcome from the claimant's point of view to be subjected to a delay of slightly in excess of two months. We accept that Mr Lund did not delay progression of the grievance with the purpose of violating the claimant's dignity or creating an intimidating *etc* environment for the claimant in the work place. The reason for the delay is that Mr Lund quite simply did not consider that he was the appropriate person to deal with it. He said that it is rare for him to deal with grievances.

197. The Tribunal was given no evidence as to what transpired between 6 April 2018 and 12 June 2018 and how it was that, in practical terms, matters were passed to Mr Whitehouse. Nonetheless, we are quite satisfied that Mr Lund did not act as he did for the impugned purpose. Indeed, Mr Lund says at paragraph 11 of his witness statement that he has never met the claimant. Nothing was put to Mr Lund to suggest that he was acting with the purpose of violating her dignity or creating an intimidating *etc* environment for her.

198. The Tribunal accepts that the delay could reasonably be said to have the effect of violating the claimant's dignity or creating a hostile *etc* environment for her. When reaching this conclusion, we take into account that the claimant was grievously disappoint with Mr Caudwell's grievance decision. She took the view that Mr Caudwell was not the right person to deal with her grievance because it was one involving Mr Owen who was his line manager. In those circumstances, the claimant was, in our

judgment, reasonably entitled to perceive that a further unwanted delay of two months between April and June 2018 was part of a pattern of dealing with her grievance in an unsatisfactory manner thus creating a hostile work environment for her.

199. We are satisfied however that Mr Lund's actions were not related to the claimant's disability. There was no evidence that Mr Lund knew the claimant. Indeed, the contrary appears to be the case. The delay, in our judgment, was solely attributable to Mr Lund seeking to offload the handling of the grievance on to somebody else as he did not consider himself to be the right person to do it and would not normally deal with grievances. Again, it is the case that but for the claimant's disability her and Mr Lund's paths would not have crossed. However, that is not the test. The question is to ascertain the reasons for Mr Lund's actions and in our judgment they were not by reason of the claimant's disability but by reason of the other factors that we have highlighted.

200. We now turn to the harassment complaint against Mr Owen. These are:

- Failing to address the matters agreed at the meeting of 9 December 2015, by disregarding the issues raised by the claimant in that meeting.
- Subsequently by dismissing her with the expectation that she take a taxi.
- Failing to review the blue and yellow badge system as agreed and thus represented to the claimant's MP.
- Failing to address the matter again in July 2016 when it was raised by the claimant's line manager.
- Suggesting that the claimant was "making trouble".

201. The final harassment allegation against Mr Owen can be simply dismissed. For the reasons already given at paragraph 180, we have found as a fact that it forms no part of the claimant's case that Mr Owen had ever said that the claimant was making trouble. That allegation is therefore dismissed.

202. We have found as a fact that Mr Owen did not disregard the issues raised by the claimant at the meeting of 9 December 2015. We refer to the findings above culminating in the summary of the position paragraphs 60 and 61 above. On the contrary, Mr Owen took on board the issues raised by the claimant as he provided her with temporary parking over the Christmas period and undertook to increase disabled parking provision. He also prevailed upon Lisa Lavin to put in hand a requisition. Further, Mr Owen did not press upon the claimant the unwelcome adjustments which had been suggested (involving designating her a named parking bay and compelling her to use a taxi to get into work).

203. It is not clear from the schedule of complaints whether this aspect of the harassment complaint extends beyond the meeting of 9 December 2015 and its immediate aftermath. If it is so confined then it must fail on the facts. If it extends beyond the immediate aftermath of the meeting of 9 December 2015 then there is on the face of it some merit in the claimant's complaint. This is because Mr Owen allowed Lisa Lavin's

requisition for extra parking bays to be closed down in February 2016, failed to implement a review of the operation of the yellow badge scheme and took no other steps to address the claimant's concerns. Plainly, Mr Owen's failures were unwanted conduct as far as the claimant was concerned.

204. We hold that Mr Owen did not so act with the purpose of violating the claimant's dignity or creating an intimidating etc environment for her. In our judgment, Mr Owen was not so motivated because of the claimant's disability. No suggestion was made to him by Miss Mellor that he was.

205. Mr Owen was guilty of mismanagement of the complaints raised by the claimant with him in December 2015. Therefore, we find that Mr Owen's actions reasonably had the effect of violating the claimant's dignity and creating an intimidating *etc* environment for the claimant. In the final analysis, the claimant continued to have to attend for work not knowing whether she would get a parking space or not in the light of deteriorating health.

206. In our judgment, those actions are not related to the claimant's protected characteristic of disability. Again, but for the fact of her disability, the meeting of 9 December 2015 and the subsequent actions and inactions would not have occurred. However, that is not the test. In our judgment, the unwanted conduct that had the effect of creating an intimidating *etc* environment for the claimant was Mr Owen's mismanagement of the situation. That had nothing to do with the claimant's disability and everything to do with Mr Owen's incompetence in allowing matters to drift without resolution.

207. We hold that Mr Owen did not dismiss the claimant with the expectation that she take a taxi. As we have found, the issue of Access to Work was not in fact pursued in the light of the claimant's objections raised at the meeting of 9 December 2015.

208. Our conclusions dispose of the other aspects of the harassment claim against Mr Owen in respect of the failure by him to review the blue and yellow badge system and to take action when he was emailed by Mr Frisby in July 2016. In conclusion therefore, the harassment claims brought against Mr Owen (and against the respondent arising out of Mr Owen's actions) stand dismissed.

209. Several harassment complaints are brought against the first respondent alone. These are:

- Failing to deal with the claimant's grievances promptly.
- Failing to adequately consider the issues in the grievance raised on 7 November 2016.
- Failing to ensure the issues regarding disabled parking at the Sheffield Mail Centre were addressed.
- Failing to address the issue that the claimant was experiencing at work when she was "sent to Coventry by her colleagues and condoning the treatment of her as a troublemaker".

210. It is not clear from the schedule of complaints which grievances the claimant considers were not dealt with promptly. In so far as it is contended that the meeting of 9 December 2015 was held pursuant to a grievance raised by the claimant, we find as a fact that it was dealt with promptly. Indeed, the claimant had the benefit of a meeting there and then at which she was able to air her grievances.

211. We have found that Mr Owen acted reasonably promptly in addressing them. The difficulty for the respondent is that matters were allowed to drift after Lisa Lavin's requisition was closed down in February 2016. Therefore, in so far as that allegation concerns the 9 December 2015 grievance, it stands dismissed upon the facts.

212. Similarly, the complaint about the grievance raised on 7 November 2016 also fails upon the facts. In our judgment, Mr Caudwell got on with matters fairly promptly. He was able to meet with the claimant and key witnesses in the early part of December 2016. He entered into email correspondence with other witnesses and reported to the claimant with the outcome on 5 January 2017.

213. The schedule of issues is under-particularised in that it is not clear to the Tribunal what issues the claimant contends Mr Caudwell failed to address. In truth, it appears that this complaint is that the claimant simply did not agree with Mr Caudwell's conclusion. There may be much merit in what the claimant says about the deficiencies in Mr Caudwell's reasoning. We agree with Mr Jeffries that this in reality lies within the province of the unfavourable treatment and reasonable adjustments complaints.

214. In so far as there were any deficiencies in Mr Caudwell's reasoning, we conclude that this was not done with the purpose of violating the claimant's dignity or creating an intimidating *etc* environment for her. Mr Caudwell did his conscientious best (as he saw it) to address the claimant's complaints. Having said that, we do accept that Mr Caudwell's conclusions were unwanted by the claimant as they did not address the core issue of the inadequate number of disabled parking bays and steps to achieve that and as such was bound reasonably from her point of view to have the effect of violating her dignity and creating an intimidating *etc* environment for her. In our judgment however, that was not related to the relevant protected characteristic of the claimant's disability. Again, as Miss Mellor readily acknowledged, the 'but for' test does not come to the claimant's rescue. True it is that for her disability the grievance would never have been raised and Mr Caudwell would never have got involved. However, Mr Caudwell's conclusions were plainly related to the outcome of his own investigation and his conclusions upon it. It was that process which led to the conduct that was unwanted from the claimant's perspective. Such was not related to the protected characteristic of her disability.

215. The claimant's complaints about being sent to Coventry by her colleagues and condoning the treatment of her as a troublemaker fail upon the facts. We have found that the claimant encountered some hostility from at least two of her work mates (paragraph 68). However, that is a far cry from being *"sent to Coventry".* It is not plain from the evidence what steps the claimant was looking for the respondent to take. There was no evidence

that the respondent condoned the claimant's treatment as a troublemaker and as we have said the only reference from anybody to the claimant creating trouble was that which the claimant attributed to her line manager when sending the chasing email to Mark Owen in July 2016. As Miss Mellor acknowledged, the claimant has an evidential difficulty regarding this aspect of the claim.

216. For the sake of completeness, we deal with the issue of the delay in dealing with the Stage 3 grievance. This fails for the same reasons as did the complaint of harassment against Mr Lund.

217. For the avoidance of doubt, the Tribunal does have jurisdiction to entertain the claimant's complaints of harassment against the first respondent and against Mr Lund (which is in time) and Mr Owen (which is out of time but time is extended). The Tribunal does not have jurisdiction to consider the complaint of harassment brought against Mr Braddock.

218. As we have said, while the complaint against Mr Braddock stands alone, the harassment complaints involving Mr Owen concern a continuing course of conduct which pertained until Mr Owen left the business on 16 March 2018. The claimant commenced early conciliation against Mr Owen on 19 June 2018. On the face of it, this appears to be three days out of time. However, there is no evidence that the claimant actually knew that Mr Owen left on 16 March 2018. In any event, her commencement of the early conciliation certificate was simply four days late and for the same reasons as outlined above at paragraphs 165 to 174 it is just and equitable to extend time to enable the Tribunal to consider the complaints of harassment brought against Mr Owen and the respondent. Given Mr Owen's continuous involvement in matters (as plant manager) this is sufficient to link the individual acts.

219. We now turn to the victimisation complaint. The schedule of issues does not set out the protected acts upon which the claimant relies. It was common ground that these are protected acts and consist of:

- The complaints raised with Mr Owen on 9 December 2015.
- The Stage 2 grievance dealt with by Mr Caudwell.
- The Stage 3 grievance ultimately dealt with by Mr Whitehouse.
- The letter addressed to the chief executive of the respondent from Louise Haigh MP dated 16 August 2016.

220. The alleged act of detriment by reason of the protected acts are the acts contended for as harassment. Miss Mellor acknowledged that the victimisation complaint was pleaded in the alternative to that of harassment.

221. It seems to us that this is a difficult argument to maintain. On the one hand, the claimant appears to be contending that she suffered harassment related to the protected characteristic of disability. On the other hand, she appears then to be contending that the same acts are detriments caused because she did protected acts. A further difficulty for the claimant is that it was not put to any of the respondent's witnesses that their acts and

omissions were because the claimant was raising allegations against the respondent and against the individuals of contravention of the 2010 Act.

222. In connection with the harassment complaints, we have already determined the reasons why the respondent and the named respondent acted as they did. In each case, we have determined that the reason for the impugned conduct was not because of the protected characteristic of disability but for another reason. That other reason is not because the claimant did protected acts either. Further, there is simply no basis upon which it can be concluded that the claimant having done the protected acts was a material reason for the respondent's impugned conduct. It follows therefore that the victimisation complaints must also fail.

223. There is much merit in Mr Jenkins' point that in reality this was a complaint of unfavourable treatment for something related to the protected characteristic of disability and of a complaint of a failure by the respondent to comply with the duty to make reasonable adjustments but which was re-packaged by the claimant's solicitors so as to incorporate complaints of direct discrimination, harassment and victimisation.

224. The matters shall now be listed for a remedy hearing in relation to those matters upon which the claimant has succeeded. The Tribunal understands that the claimant intends to claim personal injury. It was intimated that directions for the provision of medical evidence in support of that claim may be required and in the circumstances, it appears sensible that there be a case management preliminary hearing before the Employment Judge to give directions and list the matter for a remedy hearing. The parties shall therefore write to the Tribunal within the next 14 days with dates of availability within the next three months upon which they may be able to attend such a hearing. It may take place by telephone if the parties so request.

Employment Judge Brain

Date: 19 JUNE 2019