Case Number: 3201057/2018

RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr G Herring**

Respondent: **London & Quadrant Housing Association**

Heard at: **East London Hearing Centre**

On: **16, 17, 18, 23, 24 & 25 April 2019**
30 & 31 May 2019 (in chambers)

Before: **Employment Judge Foxwell**

Members: **Mrs S Jeary**
Ms L Conwell-Tillotson

Representation

Claimant: In person

Respondent: Mr S Butler (Counsel)

JUDGMENT

1. **The Claimant was not disabled within the definition in section 6 of the Equality Act 2010 because of Obsessive-Compulsive Personality Disorder at the times material to his claim.**

2. **The Claimant's claims of discrimination arising from disability contrary to section 15 of the Equality Act 2010 are dismissed on withdrawal.**

3. **The Claimant's claims of direct disability discrimination, indirect disability discrimination and failure to make reasonable adjustments are not well-founded and are dismissed.**

REASONS

Introduction

1. The Claimant, Mr George Herring, is employed by the Respondent, the London & Quadrant Housing Association ("L&Q"), as a Construction Insurance Manager. His employment began in December 2013 when he joined the East Thames Housing

Association ("East Thames") as an Insurance Officer. East Thames merged with L&Q on 6 December 2016 and the Claimant's employment transferred to the new entity under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). Prior to the transfer the Claimant's job title had been "Group Insurance Manager", following it he was given his current job title of Construction Insurance Manager and he continues to be employed in this role.

2. Having gone through early conciliation between 8 March 2018 and 22 April 2018, on 20 May 2018 the Claimant presented complaints to the Tribunal of disability discrimination. He claimed to be disabled because of three conditions: Bulimia Nervosa ("Bulimia"), Agoraphobia with Panic Disorder ("APD") and Obsessive-Compulsive Personality Disorder ("OCPD").

3. The Respondent denied the claims and did not admit disability but, following the commissioning of joint medical evidence, it has conceded that the Claimant's Bulimia and APD are disabilities within the definition in section 6 of the Equality Act 2010. The questions whether the Claimant has OCPD and whether the symptoms meet the definition in section 6 remain to be decided however. Furthermore, there are issues about when the Claimant's admitted disabilities arose and the Respondent's knowledge of them.

The issues

4. The issues in the claim were considered at three preliminary hearings, two before Employment Judge Goodrich on the 3 September 2018 and 26 November 2018 respectively and one before Regional Employment Judge Taylor on 26 October 2018. The Claimant represented himself at each of those hearings (as he has done at this).

5. Judge Goodrich recorded the agreed issues as follows at the hearing on 26 November 2018:

Preliminary Issues

Disability

1. *Was the Claimant disabled for the purposes of section 6(1) of the Equality Act 2010 at the time(s) when the alleged less favourable treatment occurred? The Respondent does not admit that the Claimant is disabled.*

    a. *The Claimant relies upon the following disabilities:*

        i. *Bulimia nervosa ("Bulimia"). The Claimant says that he has had Bulimia from about 2004 (age 17) to 2009 (age 22), and from about March 2015 to about January 2017; and about end October 2017 to date;*

        ii. *Agoraphobia with Panic Disorder ("APD"). The Claimant says that he has had APD from about May 2017 to date; and*

        iii. *Obsessive Compulsive Personality Disorder ("OCPD"). C says that he has had symptomatic OCPD since around August 2015 to date, although the condition may have been present from much earlier.*

b. *Did the disabilities have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?*

c. *At the relevant time, had the disabilities had any substantial adverse effect on the Claimant for at least 12 months and/or were the disabilities likely to have such an impact in the future?*

i. *The Claimant says that the Respondent knew or ought reasonably to have known about the Claimant's Bulimia and its impact from 6 March 2015 when he sent an email to his line manager, Martin Cawthorn.*

ii. *The Claimant says that the Respondent knew or ought reasonably to have known about the Claimant's APD and OCPD and their impact from 8 June 2017 when he sent an email to his line manager, Keith Petty.*

2. *If so, did the Respondent know or could have reasonably been expected to know about Claimant's disability/ies and their impact at the time(s) when the alleged less favourable treatment occurred?*

Jurisdiction

3. *Do the acts alleged by the Claimant form part of a continuing act under section 123(3)(a) of the Equality Act 2010?*

4. *Are any of the allegations of discrimination out of time and, if so, is it just and equitable to allow the claim to proceed out of time? The Respondent says that any events occurring before 9 December 2017 are out if time and that time limits should not be extended.*

Direct Disability Discrimination

5. *Was there 'less favourable treatment'? Claimant's case is that he was more vulnerable and less able to stand up for himself because of his disabilities and that various of the Respondent's employees were aware of this and took advantage of the Claimant in this respect. The Claimant relies upon the following incidents in which he alleges that this occurred:*

a. *On or about 6 March 2015 Martin Cawthorn failed to inform the Respondent's HR team that the Claimant had a recurrence of an eating disorder due to work related stress so that he did not get support from HR or a referral to OH at that stage.*

b. *Martin Cawthorn did not send the Claimant home on 26 August 2015 when the Claimant booked annual leave instead of authorising the Claimant to take time off in lieu or sick leave. The Claimant's case is that if he had, for example, flu, Mr Cawthorn would have authorised time off in lieu or sick leave.*

c. *On or around 28 September 2015 the Claimant was informed his pay could be evaluated in line with market rate but this was not*

implemented until May 2016 and various false explanations were given to him by Mr Cawthorn meanwhile.

d. *On or around 30 November 2015, Martin Cawthorn told the Claimant a grievance had been raised against him by another member of staff. While the Claimant had been off work and since he had returned, Martin Cawthorn had had numerous meetings with the member of staff that had complained Sayra Begum, yet failed to inform the Claimant that there were issues to be addressed and failed to inform Miss Begum that the main cause of her complaint was actually the Complainant acting on Mr Cawthorn's instruction in order to benefit her.*

   This had led to the Claimant resigning and Mr Cawthorn talking him out of it offering reassurances it was known he was not in the wrong and steps being taken to correct the situation, however they were allowed to worsen resulting in the Claimant having to take on more work and lose a resource.

e. *On or around 16 February 2016 Maureen White refused to implement adjustments to the Claimant's work station. The situation was referred to Mrs White's manager Martin Cawthorn numerous times, who failed to enforce reasonable adjustments were made. The Claimant relies on Ms Alex ?, who was an Executive Assistant to the CEO, as his comparator, or alternatively a hypothetical comparator.*

f. *On 4 May 2016, Martin Cawthorn told the Claimant an email had been received and who had sent it claiming the Claimant's work on a tender had not actually achieved savings for the Respondent. but that through incompetence, the Claimant had actually wasted £800,000. Mr Cawthorn encouraged the Claimant in raising a formal grievance, forwarded the email to the Claimant rather than just the allegation to answer, then prevented access to key supporting email being made available to be investigated.*

g. *On the 17 August 2016 the Claimant was told by Keith Petty that he would be appointed to the role of Construction Insurance Manager without consultation. The Claimant relies on all members of L&Q's and East Thames Housing Association's Finance Department as his comparators, or alternatively a hypothetical comparator.*

h. *On 5 December 2016, the Claimant was asked to sleep on his decision to resign by Martin Cawthorn as the next day it would be Keith Petty's problem to deal with instead.*

i. *During February through to May the claimant felt pressured by Keith Petty to accept the change in role and give up his previous title due to a group wide initiative it later transpired never existed. The Claimant relies on all members of L&Q's and East Thames Housing Association's Finance Department as his comparators, or alternatively a hypothetical comparator.*

j. Since on or around 18 May 2017 until 14 July 2017 the Respondent failed to give the access to information regarding the restructure of the Finance Department due to understanding the Claimant had agreed to the role change already with Keith Petty. The Claimant relies on all members of L&Q's and East Thames Housing Association's Finance Department as his comparators, or alternatively a hypothetical comparator.

k. Since 14 July 2017 the Respondent failed to provide the Claimant with training in construction insurance when the Claimant had no experience in this area. None of the projects promised to the Claimant have materialised either.

l. The Respondent did not provide the Claimant with an L&Q contract following a change to his role on 14 July 2017 and the deletion of his old role. Had this of been done his grievance would have dealt with under the L&Q policy which contains set and reasonably short timescales. The Claimant relies on Mr Ross Marshall as his comparator, or alternatively a hypothetical comparator.

m. On 21 July 2017 Martin Cawthorn told the Claimant he had referred the Claimant's bonus-related issues to HR when this was not correct.

n. On 05 September 2017 John Grimmer led the Claimant to believe the grievance process would take 6 weeks, when he requested permission to share the grievance made with senior manager John Lucey to investigate.

o. The Respondent initially dealt with the Claimant's 2017 grievance informally when he had previously complained about grievances being dealt this way.

p. The Claimant was informed 25 October 17 by John Grimmer that he needed to hand the grievance over to Kate Mitchell, this was not done until 5 December 2017 and only by an email containing 2 files, but missed a summary paper sent to him 12 September 2017 and supporting documents he had received too,

q. The Claimant was not informed he could have someone to accompany him to a meeting on 22 December 2017 with Kate Mitchell and Ben Roberts. The Claimant relies on Mr Ross Marshall as his comparator, or alternatively a hypothetical comparator, and says that Mr Marshall was told that he could have someone accompany him to his grievance.

r. On 22 December 2017 Kate Mitchell and Ben Roberts failed to inform the Claimant which policy his grievance would be dealt under and was not provided a copy of the relevant policy.

s. On 24 January 2018 the Claimant's team arranged a team day out at a foodbank in Lewisham.

t. *On 24 January 2018 the Claimant was required to wait in an office he didn't work in for periods of 30 minutes and 40 minutes respectively.*

u. *Ben Roberts informed the Claimant on 3 April 2018 that he had the outcome report from the Claimant's grievance and sent the Claimant a summary letter on 11 April 2018,*

v. *In or around April 2018 Charlie Culshaw was appointed to hear the Claimant's grievance appeal, who was not impartial.*

6. *The Claimant relies upon a number of real comparators in respect of particular alleged incidents of less favourable treatment, as set out above, and otherwise relies upon a hypothetical comparator, being an employee in the Claimant's position who does not have the Claimant's disabilities.*

7. *If the Tribunal finds that the Claimant was subjected to any less favourable treatment, was the less favourable treatment 'because of' the Claimant's disability?*

Indirect Disability Discrimination

8. *The Claimant alleges that instead of applying its stated policy or practice of conducting grievances in a fair and timely manner, the Respondent operated a PCP of unnecessarily prolonging grievances in practice.*

9. *Did this PCP put, or would it have put, the Claimant or others with the Claimant's disability at a particular disadvantage in comparison with those without the Claimant's disability? The Claimant's case is that this PCP put him at a particular disadvantage because, because his of his disabilities, he was more vulnerable to illness through having the grievance unnecessarily prolonged rather than dealing with it in a timely manner.*

10. *If the Claimant was put at a particular disadvantage, was the PCP a proportionate means of achieving a legitimate aim? The Respondent relies upon the legitimate aim of "dealing with grievances in a timely, impartial and fair manner".*

Failure to Make Reasonable Adjustments

11. *Did the Respondent fail to comply with its duty to make reasonable adjustments?*

    a. *The Claimant relies upon the following PCP: "the imposition of tight and unnecessary deadlines"*

12. *The Claimant claims the Respondent was in breach of the duty by failing to make the following reasonable adjustments.*

    a. *The Claimant asserts that: on 9 March 2015, he sent an email to Martin Cawthorn asking for assistance from a work experience person that reported into another department employee in preparing the tender he was working on; this request was declined, however the work experience person did have spare capacity to assist. The*

Claimant says that it would have been a reasonable adjustment to have provided the requested support from the work experience person.

b. *The Claimant asserts that on 18 June 2015 Mark Revell told the Claimant that there was a possibility that he might use an alternative OJEU procedure for a tender so that, if used, the deadline would be extended so that the Claimant was unsure whether the tender deadline was extended or not. The Claimant says that the Claimant was unaware of the extension of the deadline until 25 August 2015, and was not informed of this by Mr Revell directly until after the Claimant had overheard a telephone call to this effect. As a result of this the Claimant had needlessly over worked for approximately 6 months to meet the original deadline, causing a great deal of stress which the Claimant says is exacerbated by Bulimia and which also exacerbates his Bulimia.*

13. *If so, did any such failure place the Claimant at a substantial disadvantage in comparison to persons who do not have the Claimant's disability?*

a. *The Claimant relies upon the following alleged substantial disadvantages: stress and exacerbation of Agoraphobia, OCPD and Bulimia*

Discrimination arising from disability

14. *The Claimant is not pursuing a claim for Discrimination Arising from Disability.*

Remedy

15. *Is the Claimant entitled to any declaration, recommendation or compensation? In addition to purely financial loss, the Claimant alleges that the Respondent's actions have caused and/or led to significant exacerbation of his disabilities.*

16. *If so, to what compensation is the Claimant entitled having regard to the obligation to mitigate his loss?*

17. *Has the Claimant contributed to his loss?*

6. We checked whether the parties still agreed that these were the issues in the claim at the beginning of the hearing; both agreed that they did. In doing so, we explained to the Claimant the difficulty there can be in constructing a comparator for claims of direct disability discrimination by giving a hypothetical example based on non-compliance with a sickness absence procedure, namely that the comparison is between a disabled person and a non-disabled person with the same level of sickness absence. Having regard to the recent decision of the EAT in **Saha v Capita plc [2018] EAT 80** we also satisfied ourselves that the list of issues reflected the claims in the claim form. We noted in particular that the Claimant had raised claims of discrimination arising from disability under section 15 of the Equality Act 2010 in his claim form but that these were no longer pursued in the list of issues. We considered whether these claims were, in fact, still

before us but were satisfied that they were not for the following reasons:

a. The process of identifying issues had been conducted over three hearings previously by experienced Employment Judges.

b. Judge Goodrich had recorded that the Claimant had taken legal advice by the time of the last preliminary hearing for case management.

c. There were good reasons concerning knowledge of disability why the Claimant might choose not to pursue a claim under section 15.

d. The Respondent had indicated in an opening note that its case was prepared on the basis of the agreed list of issues and any attempt to change this would be strongly resisted. While this factor was not determinative, it suggested to us that the evidence might have to be refocussed to deal with the issues a section 15 claim gives rise to which would require a postponement and incur considerable additional costs.

The hearing

7. The final hearing had been given a time estimate of seven days by Judge Goodrich in consultation with the parties and was listed either side of the Easter weekend 2019. Unfortunately, the Tribunal was unable to sit on Friday 26 April 2019 because the Judge had a prior judicial commitment. Further time was lost on Thursday, 18 April and on the afternoon of Tuesday 23 April 2019 because the Claimant was unable to attend the hearing because of symptoms of APD. We nevertheless managed to complete the evidence and submissions relating to liability by close of business on 25 April 2019. It was necessary for us to reserve our decision which we considered in chambers on 30 & 31 May 2019.

8. At the commencement of the hearing we agreed with the parties that we would deal with the issue of liability first. We also asked that witnesses read their witness statements as, because of their length and the size of the bundle, we were concerned that we might not properly assimilate and understand evidence in chief in the time available without this. The Claimant read his statement to us and it had been our intention (as explained to the parties) for the Respondent's witnesses to do the same; in the event, because of the Claimant's absence on 18 April 2019 through illness, we took the opportunity to read all of the Respondent's witness statements and treated them as read when each was called to give evidence. We did this to make up time which had been lost and to ensure that the Claimant had as full an opportunity as possible to put his questions to witnesses on liability within the balance of the allocation. Neither party objected to this approach.

9. The Tribunal heard evidence from the Claimant and we read a short witness statement on his behalf from Susanna Ulliott, who had been employed by East Thames as an HR Business Partner between March 2014 and December 2016. As described above, the Claimant read his statement to us apart from paragraphs 212 to 274 which were duplicated elsewhere in the statement, paragraphs 382, 393 and 385 which related to the Claimant's home life, paragraphs 386. 387 and 388 which relate to remedy and those paragraphs which were direct quotations from the Respondent's Grounds of Resistance.

10. The Respondent called the following witnesses:

Mark Revell: Mr Revell is employed by the Respondent as a Procurement Manager. He was employed by East Thames in the same capacity prior to the merger in 2016.

Martin Cawthorn: Mr Cawthorn is employed by the Respondent as a Director of Procurement. He is also a former employee of East Thames where he was Assistant Director of Procurement and Property. He was the Claimant's line manager at East Thames.

John Grimmer: Mr Grimmer is employed by the Respondent as Assistant Director of Human Resources. He is responsible for managing the HR Business Partner team and the Respondent's pay and reward processes. He is a former East Thames employee.

Keith Petty: Mr Petty is employed by the Respondent as the Director of Risk & Insurance. He has worked for the Respondent since 1995. He became the Claimant's line manager after the merger in 2016.

Giulia Artusa: Ms Artusa is the Respondent's Group Risk & Insurance Manager. She has been employed by the Respondent since 2011.

Ben Roberts: Mr Roberts is employed by the Respondent as an HR Advisor supporting the Strategy & Operations, IT and Finance teams. He has been employed by the Respondent since 2017.

11. In addition to the evidence of these witnesses the Tribunal considered the documents to which it was taken in an agreed bundle and references to page numbers in these Reasons relate to that bundle. We explained to the parties at the beginning of the hearing that the Tribunal did not have the facility to pre-read the bundle, which comprised 1176 pages, and that it was therefore essential that they take us to relevant passages in the documents. Apart from one addition on the first day (pages 1175-1176), no documents were added to the bundle during the hearing.

12. Mr Butler produced an opening note, chronology and cast list which we considered and at the end of the evidence, when we received closing submissions from the parties, Mr Butler produced written closing submissions. These were provided to the Claimant and us before the lunch adjournment so he and we had time to read them before submissions got under way in the afternoon.

13. We had explained to the Claimant on the first and penultimate hearing days that he was welcome to make his closing submissions at the end of the evidence in writing or orally and that we did not expect him to address us on the law, although he was free to do so (it is our job to understand and apply the law correctly). The Claimant chose to address us orally and relatively briefly having regard to the broad sweep of his allegations. We asked him to amplify his points on the comparison we should draw when dealing with his complaints of direct discrimination and he did his best to do so.

The Legal Principles

14. The Claimant alleges direct disability discrimination, failure to make reasonable

adjustments and indirect disability discrimination. Although disability is conceded by the Respondent because of the Claimant's Bulimia and agoraphobia, it does not admit that the Claimant has obsessive compulsive personality disorder or that any such condition is a qualifying disability in his case.

Qualifying disabilities

15. Section 6 of the Equality Act 2010 provides as follows:

> *"(1) A person (P) has a disability if:*
>
> *(a) P has a physical or mental impairment; and*
>
> *(b) the impairment has a substantial and long term adverse effect on P's ability to carry out normal day to day activities."*

16. Further details of the definition are contained in Schedule 1 to the Act but in essence it has four components, which can be broken down into the following questions:

(1) Does the Claimant have a mental or physical impairment? (*the Impairment Condition*);

(2) Does the impairment affect the Claimant's ability to carry out normal day to day activities? (*the Adverse Effect Condition*);

(3) Is the adverse effect substantial? (*the Substantial Condition*) and

(4) Is the adverse effect long term? (*the Long-Term Condition*).

17. Guidance issued by the Secretary of State in 2011 (replacing earlier Guidance) supplements this definition. We have had regard to this in deciding whether the Claimant's disputed condition is a disability.

Direct discrimination

18. Section 13 of the Equality Act 2010 provides as follows:

> *"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

19. This provision requires a Tribunal to decide the following:-

(1) Has there been treatment?

(2) Is that treatment less favourable than the treatment which was or would have been given to a real or hypothetical comparator?

(3) Was that difference in treatment because of a protected characteristic?

20. A claim of direct discrimination concerns a comparison between the treatment given to the Claimant and that which a comparator received or would have received. A

comparator for this purpose must be the same in all material respects, apart from the protected characteristic, as the Claimant (see section 23 of the Act). The reason for the relevant treatment in some cases will be inherent in the conduct complained of, for example where a race specific comment is used (for another example see **James v Eastleigh Borough Council [1990] ICR 554** which concerned the application of different rules for men and women): close examination of a comparator in these cases will be unnecessary. Furthermore, where a hypothetical comparator is relied on the question for the Tribunal is often better expressed as 'what is the reason why the Claimant has been treated in the manner complained of?' (see **Amnesty International v Ahmed [2009] IRLR 884**). Nevertheless, the requirement for a comparison to be drawn creates a particular difficulty in disability discrimination cases following the decision of the House of Lords in **London Borough of Lewisham v Malcolm [2008] IRLR 700** where it was held that a correct comparison involves stripping out disability but not the reason for the treatment: in that case, where it was claimed in defence to possession proceedings that a tenant had unlawfully sublet property because of a mental health condition which was a qualifying disability, the House of Lords held that the correct comparator was a tenant without a mental health condition but who had also sub-let property unlawfully. Such a comparator would also have faced possession proceedings so the reason for the treatment was not disability but unlawfully sub-letting.

21. The determination of whether treatment is because of a protected characteristic requires a Tribunal to consider the conscious or sub-conscious motivation of the alleged discriminator. This element will be established if the Tribunal finds that a protected characteristic formed a part of the reason for the treatment even though it may not have been the only or the most significant reason for the treatment (see **Nagarajan v London Regional Transport [1999] ICR 877**). In cases where the less favourable treatment complained of is not inherently related to a protected characteristic it is necessary for the Tribunal to look in to the mental processes of the alleged discriminator in order to determine the reason for the conduct (see **Amnesty International v Ahmed [2009] IRLR 884**).

22. There must be some detriment to the Claimant in any differential treatment and, whilst the threshold for this is low, minor or trivial matters may not cross it (see **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285**).

23. The issue whether treatment amounts to 'less favourable treatment' is a question for the Tribunal to decide. The fact that a complainant honestly considers that he is being less favourably treated does not of itself establish that there is less favourable treatment (see **Burrett v West Birmingham Health Authority [1994] IRLR 7**).

Failure to make reasonable adjustments

24. The relevant parts of Sections 20 of the Equality Act 2010 provide as follows and should be read in conjunction with section 21 and Schedule 8 to the Act:

> *"(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
>
> *(2) The duty comprises the following three requirements.*

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

25. A claim of failure to make reasonable adjustments requires a Tribunal to consider a number of questions. Firstly, it must identify a provision, criterion or practice (which really means no more than a way of doing things) which is in issue. Secondly, it needs to consider who the non-disabled comparators are. Thirdly, it needs to identify the nature and extent of the disadvantage the Claimant has suffered or will suffer in comparison with the comparators. Only then can the Tribunal go on to judge whether any proposed adjustment is reasonable *(***Environment Agency v Rowan [2008] ICR 218***).*

26. Even if these questions are resolved in the Claimant's favour, liability will not arise unless the employer knew or ought to have known that the Claimant was disabled and that he was liable to be affected in the manner alleged (**Secretary of State for Work & Pensions v Alam [2010] ICR 665**). Whether an employer had actual knowledge of both these matters is a factual question to be resolved on the evidence. Whether an employer who lacks actual knowledge ought to have known requires an assessment of the evidence by the Tribunal.

27. If the duty to make reasonable adjustments arises it does not require an employer to make every adjustment that could conceivably be made, only those which are reasonable. Reasonableness is a matter for the Tribunal to assess objectively; accordingly, the mere fact that the employer considers its approach to be reasonable does not make it so (**Smith v Churchills Stairlifts Plc [2006] IRLR 41**). An adjustment is unlikely to be reasonable if it will not address the employee's disadvantage.

28. In summary, therefore, the questions which a Tribunal must address in determining a reasonable adjustments claim are as follows:

(1) What is the relevant PCP?

(2) Who is the Claimant comparing himself with or is a comparator unnecessary?

(3) What is the adverse effect on the Claimant of the PCP?

(4) Is the effect substantial?

(5) Did the employer know that the Claimant was disabled and that he was likely to be affected as he describes?

(6) If the answer to (5) is 'no', ought the employer to have known these things?

(7) Is there an adjustment which, judged objectively, ought reasonably to have been made to reduce or eliminate the adverse effect?

Indirect discrimination

29. Section 19 of the Equality Act 2010 provides as follows:

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

30. This provision requires a Tribunal to decide the following:-

4.1 Has the employer applied a provision, criterion or practice ('PCP') to the employee?

4.2 Has or would the employer apply the PCP to persons who do not share the employee's protected characteristic?

4.3 Does the PCP put persons who share the employee's protected characteristic at a particular disadvantage compared with persons who do not?

4.4 Does the PCP put the employee at that disadvantage?

4.5 If the answer to the foregoing questions is yes, can the employer nevertheless show that the PCP is a proportionate means of achieving a legitimate aim?

31. All of the above requires further explanation. Lady Hale in **R (On the application of E) v Governing Body of JFS and others [2010] IRLR 136** described indirect discrimination as follows (see paragraphs 56 to 57):

"The basic difference between direct and indirect discrimination is plain: see Mummery LJ in R (Elias) v Secretary of State for Defence [2006] EWCA 1293*,* [2006] 1 WLR 3213, para 119*. The rule against direct discrimination aims to achieve formal equality of treatment: there must be no less favourable treatment between otherwise similarly situated people on grounds of colour, race, nationality, or ethnic or national origins. Indirect discrimination looks beyond formal equality towards a more substantive equality of results: criteria which appear neutral on*

their face may have a disproportionately adverse impact upon people of a particular colour, race, nationality or ethnic or national origins.

Direct and indirect discrimination are mutually exclusive. You cannot have both at once. As Mummery LJ explained in Elias at para 117 "the conditions of liability, the available defences to liability and the available defences to remedies differ". The main difference between them is that direct discrimination cannot be justified. Indirect discrimination can be justified if it is a proportionate means of achieving a legitimate aim."

32. Similarly, in **Homer v Chief Constable of West Yorkshire *Police* [2012] IRLR 601**, Lade Hale said at paragraph 17:

"The law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic … The resulting scrutiny may ultimately lead to the conclusion that the requirement can be justified …"

33. We have reminded ourselves that indirect discrimination can be intentional or unintentional (**Enderby v Frenchay Health Authority [1993] IRLR 591 ECJ**) and that a 'PCP' is no more than a way of doing things: it may or may not be a written process or policy (see **British Airways plc v Starmer [2005] IRLR 862**). It is for a Claimant to identify the PCP that he relies on and the question whether it is, in fact, a PCP is one of fact for the Tribunal (see **Allonby v Accrington and Rossendale College [2001] EWCA Civ 529, [2001] IRLR 364***, CA* and **Jones v University of Manchester [1993] IRLR 218**). There is no need for a Claimant to show that a person who shares his protected characteristic cannot comply with the PCP. The PCP being complained of must be one which the alleged discriminator applies or would apply equally to persons who do not have the protected characteristic in question: it is not necessary that the PCP was actually applied to others, so long as consideration is given to what its effect would have been if it had been applied.

34. It is necessary for a Claimant to adduce evidence tending to show that persons who share his protected characteristic (though not necessarily all of them) are placed at a particular disadvantage by the PCP and that the Claimant is also at that disadvantage. This may involve consideration of pools of employees, statistical evidence or such like but the notion of *'particular disadvantage'* is not confined to this. What constitutes a *'disadvantage'* depends on the facts of the case and is not defined in the Equality Act but we draw assistance from those cases which shed light on the meaning of the word *'detriment'* in the Act (see, for example, **Shamoon v Chief Constable of the RUC [2003] IRLR 285**). We have borne in mind that an individual may suffer a detriment even though, at the time when action is taken against him, he is unaware of the employer's prejudicial behaviour.

35. It is open to a Respondent to establish a defence of justification to a claim of indirect discrimination but that is not a matter raised by the Respondent in this case.

The burden of proof under the Equality Act

36. Section 136 of the 2010 Act provides as follows:

> *"(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision".*

37. These provisions require a Claimant to prove facts consistent with his claim: that is facts which, in the absence of an adequate explanation, could lead a tribunal to conclude that the Respondent has committed an act of unlawful discrimination (see **Royal Mail Group v Efobi [2019] EWCA Civ 18**). 'Facts' for this purpose include not only primary facts but also the inferences which it is reasonable to draw from the primary facts. If the Claimant does this then the burden of proof shifts to the Respondent to prove that it did not commit the unlawful act in question (**Igen v Wong [2005] IRLR 258**). The Respondent's explanation at this stage must be supported by cogent evidence showing that the Claimant's treatment was in no sense whatsoever because of disability. If the Claimant fails to discharge the primary burden at stage one, then there is no requirement for the Respondent to prove a non-discriminatory reason for any difference in treatment (**Ayodele v Citylink Limited [2018] ICR 748**).

38. We have borne this two-stage test in mind when deciding the Claimant's claims. We have also borne the principles set out in the Annex to the judgment of Peter Gibson LJ in **Igen v Wong** firmly in mind. Save where the contrary appears from the context however we have not separated out our findings under the two stages in the Reasons which appear below. In any event detailed consideration of the effect of the so-called shifting burden of proof is only really necessary in finely balanced cases.

The drawing of inferences in discrimination claims

39. An important task for a Tribunal is to decide whether and what inferences it should draw from the primary facts. We are aware that discrimination may be unconscious and people rarely admit even to themselves that such considerations have played a part in their acts. The task of the Tribunal is to look at the facts as a whole to see if they played a part (see **Anya v University of Oxford [2001] IRLR 377**). We have considered the guidance given by Elias J (as he then was) on this in the case of **Law Society v Bahl [2003] IRLR 640** (approved by the Court of Appeal at [2004] IRLR 799): we have reminded ourselves in particular that unreasonable behaviour is not of itself evidence of discrimination though a tribunal may infer discrimination from unexplained unreasonable behaviour (**Madarassy v Nomura International plc [2007] IRLR 246**).

The time limit for claims under the Equality Act

40. The time limit for claims under the Act is contained in Section 123 which provides as follows:

> *"(1) Subject to section 140A proceedings on a complaint within section 120 may not be brought after the end of –*
>
> *(a) the period of 3 months starting with the date of the act to which the*

complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable

……

(3) For the purpose of this section –

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

41. It can be seen from this provision that time does not begin to run in respect of acts continuing over a period until that period has ended. This might suggest that a failure to make a reasonable adjustment is a continuing act but, as was explained by the Court of Appeal in **Kingston upon Hull CC v Matuszowicz [2009] ICR 1170**, the correct position is that a failure to make a reasonable adjustment is an omission which is deemed to have been done either when the omission was decided upon or, if there is no evidence of a deliberate decision, when the omitted act might reasonably have been expected to be done (there is contrary authority at EAT level but we are bound by the decision of the Court of Appeal). This can give rise to a situation where the primary time limit for a claim for failure to make reasonable adjustments has expired at a time when the Claimant could not have reasonably known this. In such a case a Tribunal is likely to be willing to allow a reasonable extension of time on just and equitable grounds.

42. Where there are a series of acts constituting a continuing act the three-month period runs from the date of the last act in the series. A failure to deal with a situation can constitute a continuing act (see **Littlewoods Organisation v Traynor [1993] IRLR 154**). We have reminded ourselves, however, that we must not conflate a series of isolated, separate acts with a continuing act even if those separate acts have common features. A continuing act is an ongoing situation or state of affairs so, in the leading case of **Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96**, the ongoing state of affairs was that the Commissioner allegedly allowed a culture to continue in which discriminatory acts were tolerated: it was the culture which was the continuing act, not the individual actions of numerous police officers over many years.

43. If a claim is presented out of time the Tribunal may nevertheless extend time for bringing it if it considers that in all the circumstances it is just and equitable to do so. Should we find that this claim or aspects of it have been presented out of time, we have considered two cases concerning the just and equitable extension of time. Firstly, **Robertson v Bexley Community Centre [2003] IRLR 434** in which the Court of Appeal

emphasised that time limits are usually exercised strictly in employment cases and that there is no presumption for exercising the Tribunal's discretion in a Claimant's favour unless there are grounds for not doing so, rather the Court thought that this would be the exception rather than the rule. Secondly, **Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327** in which the Court of Appeal emphasised that none of the *dicta* in **Robertson** fettered the Tribunal's judicial discretion when considering this point. In our judgment the important thing for us is to weigh all the circumstances and reach a just conclusion while bearing in mind that it is for a Claimant to establish the Tribunal's jurisdiction.

The scope of our findings

44. The Tribunal heard and read a substantial amount of evidence over 6 days. Issues were tested and explored by the parties and the Tribunal through their questions. We have not attempted to set out our conclusions on every question or controversy raised in the evidence but we have considered all the evidence in reaching the conclusions set out below. The findings we have recorded are limited to those we consider necessary to deal with each of the issues raised by the parties. We have made our findings unanimously and on the balance of probabilities. In doing so we have borne in mind that unlawful discrimination can be subtle and may not be consciously motivated. We have considered whether inferences can and should be drawn from the primary facts in deciding whether the Respondent has engaged in unlawful conduct contrary to the Equality Act 2010.

Findings of fact

The Claimant's disabilities

45. The Claimant told us that he did not consider any of his conditions to be disabilities until December 2017 when he did some research into this online. We accept that evidence.

46. ***Bulimia Nervosa*** The Respondent concedes that the Claimant is disabled because of this condition and was at all times material to this claim. It also concedes constructive knowledge of disability at all times material to this claim.

47. The Claimant developed this condition at a young age but brought it under control by his early 20s (he was born in 1986). He said that his symptoms began to re-emerge after he began working for East Thames and had become significant by March 2015. We accept that evidence. The Claimant first informed Mr Cawthorn about an eating disorder in an email dated 6 March 2015 (page 84) in which he wrote that he had had a *"lifelong battle with an eating disorder"*; he did not name the condition however nor describe its symptoms.

48. The Claimant's case is that this condition was symptomatic between March 2015 and January 2017 and again from October 2017 to date. We accept this.

49. ***Agoraphobia with panic disorder ("APD")*** The Respondent accepts that the Claimant had APD and that this is a qualifying disability but it denies knowledge of the condition until the claimant referred to it in an occupational health report dated 19 April 2018.

50. The Claimant's case is that he has had APD since May 2017 and that the Respondent ought reasonably to have known this from an email he sent to his then line manager, Keith Petty on 8 June 2017 where he said as follows (pages 275 & 276):

> *"Hi Keith*
>
> *just a quick note to let you know that I've just booked a doctors appointment as its clear to me and everyone else I would imagine, that I need to stop taking medication again to get on top of my nerves and worries. The earliest I can get is 23rd June at 9am.*
>
> *I stopped taking tablets for it spring 2016 and was fine for ages, but since last Christmas I have had some knocks and changes outside of my control (like the merger and people moving away) that make some things tricky for me – sometimes doing something outside my routine feels impossible and sometimes when I work from home at short notice it's because I get panicky about leaving the flat to be honest. You will probably remember when I came to KMH the first time last summer to meet you I was having the worst panic attack, sweating and then you asked if I wanted to go to lunch and I literally ran away.*
>
> *I promise that work has not suffered, if anything it's better as I focus on it to distract myself and get to organise things – I am on top of everything and have the capacity to take on more if you want to hand anything over? I wrote down everything and intended to tell you this morning, but got flustered and embarrassed, then didn't – apologies.*
>
> *Having my face and especially my nose down in a couple of weeks will make a massive improvement to my confidence and once my new role is signed, sealed and delivered, I think I'll be back to normal (touch wood).*
>
> *I'm really sorry to have been so scatty recently."*

51. Mr Petty replied (page 275):

> *"Hi George*
>
> *No problem and no need to apologise – thanks for letting me know."*

52. We find that there was sufficient in this email exchange to put the Respondent on notice that the Claimant had a condition which affected his ability to leave home and was linked to panic attacks despite the condition not being formally named. We find therefore that the respondent had constructive knowledge of the claimant's APD from about June 2017. That said, we also accept Mr Petty's evidence that he did not appreciate that this was a disability at the time and only came to learn of this in April 2018 following an OH report; we find therefore that he did not have actual knowledge until then.

53. ***Obsessive Compulsive Personality Disorder ("OCPD")*** The Claimant's case is that he has had symptomatic OCPD since August 2015 and possibly much earlier than that. The Respondent disputes that the claimant has this condition or, if he does, that it qualifies as a disability within the statutory definition.

54. The parties obtained a medico legal report on joint instructions from Dr Mynore-Wallis, a Consultant Psychiatrist, to address the Claimant's disabilities. This report is dated 12 February 2019 and confirms the diagnoses of Bulimia and APD. Dr Mynore-Wallis concluded that these conditions fell within the statutory definition of disability. He did not find that the Claimant had a personality disorder however; rather, he described the Claimant as having no psychotic beliefs or symptoms related to mood and that he presented as polite, co-operative and spoke with normal rhythm and volume. Accordingly, Dr Mynore-Wallis did not support the Claimant's case that he has OCPD.

55. In contrast, one of the claimant treating doctors, Dr Jacobs (who does not appear to be a consultant), suggested that the Claimant had OCPD in a letter to the Claimant's GP dated April 2018 (pages 1144 to 1145). This letter is not a medicolegal report however and does not contain a formal diagnosis, rather it sets out Dr Jacobs *"impression"* of the Claimant's symptoms. Taking all of these factors into account, we prefer Dr Mynore-Wallis' conclusion.

56. Against that background we do not find that the Claimant has a personality disorder. That is not to say that he is not obsessive, on the contrary we are sure that he has obsessive tendencies. For example, he spoke in evidence about his attention to detail and how this was an asset with regard to his work.

57. The Claimant gave no evidence about how obsessiveness caused him substantial disadvantage in normal day-to-day tasks at the times material to this claim. We cannot infer such disadvantage from the primary facts. There was no evidence to show that this was a progressive or recurring condition which has or will create such substantial disadvantage. In those circumstances we do not find that the Claimant was disabled within the statutory definition because of a condition, OCPD, or that he was disabled because of more general obsessive tendencies.

Findings of fact – a chronology of relevant events

58. The Claimant's background is in insurance, having worked for some years at a commercial broker. On 2 December 2013 he joined East Thames as an insurance officer on a six-month fixed term contract. Martin Cawthorn, the Assistant Director of Procurement and Property, became the Claimant's line manager when he joined. Mr Cawthorn encouraged the Claimant to apply for a permanent role when it was advertised in 2014 and the Claimant was the successful candidate. He was given a permanent contract on 15 May 2014.

59. The Claimant's role was to manage the insurance of East Thames' housing stock, which comprised approximately 16,000 dwellings, and to deal with insurance claims.

60. Mark Revell was the Procurement Manager heading up procurement within East Thames. In early 2015 he began a re-tender process for East Thames' insurance and associated services. This was a contract worth about £3 million. The tender process he adopted was one used in public sector procurement and is known as a "restricted process"; this involved preparing an invitation to tender ("ITT") and draft contract against which selected companies could bid. Notice of this tender process was sent to interested parties in March 2015 with an expectation that the relevant tender documents would be available for them in September 2015. The renewal date for the insurance contract was March 2016.

61. The Claimant told us that there was a great deal of work required to prepare the tender documents as East Thames had not maintained systematic records of its properties and insurance requirements. This meant that he had to do a lot of preparatory work in identifying risks to be insured. We accept that evidence. The Claimant's then managers, Mr Cawthorn and Mr Revell, describe him as capable and hard-working and we accept that too. We have no doubt, therefore, that the Claimant set about this task diligently.

62. At or about the time when the procurement process began the claimant wrote to Mr Cawthorn on 6 March 2015 in the following terms (page 84):

> *"Hi Martin*
>
> *I'm not very well at the moment and won't be in the office today. I'm in Suffolk as of last night until Sunday evening and plan to be back in the office on Monday.*
>
> *I've been struggling recently with overcoming a lifelong battle with an eating disorder I thought I'd put to bed years ago. In the last few weeks I've lost a massive amount of weight and the consequences and worry have caught up with me.*
>
> *I will be seeking medical and psychological help next week, I don't expect this to interfere with work however I will keep you and HR are notified as soon as I know.*
>
> *I'm sorry for the inconvenience, but would appreciate that this is treated as confidential with regards to general staff."*

63. Apart from this occasion, the Claimant did not refer to his eating disorder in the context of the insurance procurement process.

64. On 9 March 2015 the Claimant asked Mr Cawthorn whether he could use a work experience person, Gethin, to assist with the tender process between April and October of that year. Mr Cawthorn agreed to raise this with the manager to whom Gethin had been assigned, Angie, and it is clear that he did so because he told the Claimant by email on 11 March 2015 that she had not agreed to release Gethin. The Claimant believes that this was the wrong decision because Gethin was underused in his view whereas he needed assistance. There is no evidence to suggest that Angie knew the Claimant was disabled because of Bulimia at the time of this decision or that this was the reason for her refusal to release Gethin (the Claimant had not developed APD at this stage).

65. Mr Cawthorn also told the Claimant in his email of 11 March 2015 that the recruitment of an administrative assistant had been approved with effect from the new financial year. The Claimant was subsequently involved in the recruitment of Sayra Begum who was taken on principally to assist him (80%) but who was also required to do some other tasks (20%).

66. Ms Begum began work in June 2015. The Claimant told us that he was extremely busy with the tender documents when she joined and did not have time to train her or train her properly.

67. The parties agree that Mr Revell called a meeting with the Claimant and Mr

Cawthorn in mid-June 2015 to discuss the tender process. He mentioned that he might possibly switch to an "open" process (one where there is not a restricted panel of bidders) which would mean that the tender documents would not be required so soon. No firm decision was made about this at the time. Mr Revell made a firm decision to switch to the open tender process in August 2015 and the Claimant first became aware of this when he overheard Mr Revell mention it on the telephone on 25 August 2015. The ITT documentation was due to be published at the end of that month. It is clear that the Claimant was upset by the timing of this decision and the way he found out about it. We do not find, however, that Mr Revell deliberately disclosed this information in this way, he was simply overheard. Mr Revell subsequently discussed this with the Claimant and confirmed the decision by email to him on 27 August 2015. The open process put the publication date for relevant notices back to the beginning of November 2015.

68. On 26 August 2015 the Claimant emailed Mr Cawthorn asking for annual leave at short notice. He said as follows (page 104):

> *"Now that Mark has advised of the new deadlines that I need to be working to for the tender (I was informed yesterday), I now have a window for taking off a chunk of time off as annual leave.*
>
> *I know its short notice, however I would like to take tomorrow, Friday, Monday is bank holiday, I already have Tuesday booked off and then take next Weds, Thurs & Fri if you are happy to allow it.*
>
> *The majority of what I am working on at the moment is the tender – which can now wait a couple of weeks, all of our claims are up to date and I would be confident leaving Sayra to deal with all admin tasks and general queries. I would check my email throughout the week to redirect anything urgent and Sayra has been aware since joining that she is more than welcome to message me If I'm not here and she is unsure of something.*
>
> *I am really run down at the moment and feel unwell constantly so would like to take a break as soon as possible – its my intention to go to Health & Fitness "Bootcamp" next week in Lancashire to re-group."*

69. Mr Cawthorn approved this holiday request. The Claimant's case is that Mr Cawthorn should have recognised that this was really a request for sick leave and, had it been dealt with as such, it would have alerted HR to his condition (which at this time was Bulimia). Mr Cawthorn said that employees are expected to take responsibility for their own health and wellbeing when judging whether they are fit for work and the Claimant had not said that he was unfit. Mr Cawthorn said that in those circumstances it was inappropriate to record this as sick leave rather than annual leave. We accept Mr Cawthorn's evidence.

70. In October 2015 the Claimant approached Mr Cawthorn to request a pay review. We do not accept the Claimant's evidence that Mr Cawthorn agreed to increase pay to a "market rate" (that is a private rather than public sector rate) as Mr Cawthorn did not have authority to agree pay increases. He did agree to refer the Claimant's role to HR for review and possible re-evaluation. Mr Cawthorn asked the Claimant to provide a role profile for his approval to facilitate this. The revised profile had to be sufficiently different from the current one to justify re-evaluation. Mr Cawthorn's evidence, which we accept, is

that it was for the Claimant to prepare and submit this document to him. Delays in the process subsequently were due principally to the Claimant not doing so. The Claimant sent a role profile to Mr Cawthorn in November 2015 (page 376) and a tweaked version in March 2016 (page 380). We do not accept the Claimant's explanation that delays prior to and between these dates were because he was waiting to be asked to provide these documents; he was capable of providing them on his own initiative. We find it more probable that the issue of re-evaluation only came to the fore from time to time.

71. The re-evaluation process was carried out by HR in May or June 2016 after the Claimant had submitted a final version of his role profile on 16 May 2016 (page 387). The Claimant's role was re-evaluated and he was given a £5000 pay rise backdated to May 2016 and this was later further backdated to November 2015 after the Claimant raised a complaint about delay in the re-evaluation process. The Claimant's title was also changed to "Group Insurance Manager". This was a matter of importance to him as later events show.

72. In or about November 2015 Ms Begum made a complaint to Mr Cawthorn about the Claimant. She alleged that she found him to be intimidating. The Claimant refutes this but it is unnecessary for us to resolve the accuracy of her complaint. It is common ground that Mr Cawthorn told the Claimant on 30 November 2015 that Ms Begum had complained about him. Mr Cawthorn explained to the Claimant that this was not a formal complaint and that she had not provided specific detail. Later that week the Claimant emailed Mr Cawthorn asking to work from home and stating *"I feel like I am being harassed by a clique of staff …"*. We find that this is a reference to Ms Begum and her complaint (page 112). On 10 December 2012 the Claimant emailed Mr Cawthorn saying that he felt *"much better"* about *"the situation"* having spoken to HR (page 113) this too was a reference to Ms Begum's complaint. On 14 December 2015 the Claimant made his own complaint about the quality of some minutes produced by Ms Begum (page 506). On 16 December 2016 the Claimant tended his resignation in writing to Mr Cawthorn (page 114) but was persuaded by Mr Cawthorn to retract this. It was in this context that Ms Begum was moved from the Claimant's line management to that of Maureen White on a temporary basis. This move subsequently became permanent. We are unsurprised by the change as it is clear from the evidence that the relationship between the Claimant and Ms Begum deteriorated rapidly once the Claimant learned of her complaint about him.

73. On 19 January 2016 the Claimant emailed Mr Cawthorn complaining of stress at work. He said as follows (page 115):

> *"The stress at working at East Thames is too much and so I won't be in – I'm going to the doctor as soon as I can. I haven't been myself for a long time and near breaking point.*
>
> *The pressure I feel is intense, I'm not liked by a lot of people in that building – who make that very clear, others are unhelpful and I am chastised for being negative. There is a clique issue I have raised before to HR and I have to sit at a desk that is too small as advised by H&S but nothing has been even though I've raised the issue several times which gives me neck and back pain. It's lonely role that doesn't get much thanks and its making me ill in many ways physically and mentally.*
>
> *I will let you know how I get on at the doctors. Mark should speak to an insurance consultant if he hasn't already as I am not sure when I will be back."*

74. The Claimant emailed Mr Cawthorn on 22 January 2016 informing him that he had been diagnosed with anxiety and prescribed antidepressants (page 116). Mr Cawthorn acknowledged this email by return. The exchange demonstrates to us that the Claimant and Mr Cawthorn had a good working relationship at the time.

75. The Claimant returned to work in late January 2016 after a short absence. An issue then arose concerning workplace adaptations. He had been provided with a height adjustable chair in January 2016 but in an email dated 28 January 2016 Sally Moody, a Health and Safety Adviser, said that that Claimant's desk was too low for him to use comfortably and attempts to raise it on blocks had been unsuccessful (page 117). The Claimant provided medical evidence dated 12 February 2016 that he required an assessment of his desk (page 119). A suggestion put forward at about this time was that the Claimant move to a different location where it would be easier to provide an appropriate desk (he had been working at a bank of desks which were bolted together and could not be raised easily). The Claimant did not agree to this proposal as he felt that it would create the wrong impression if he was seen to move physically from the department.

76. Maureen White, the Corporate Facilities Manager, had responsibility for making adjustments to the Claimant's work station. In response to a chasing email the Claimant sent on 29 March 2016, she told him that a contractor would attend site later that week to consider a solution *"to his neck complaint"* (page 137).

77. We find on the evidence that there was delay in dealing with the physical adjustment of the Claimant's desk but find too that this requirement related to a condition affecting his neck and was unrelated to the two disabilities relevant to this claim. Furthermore, the Claimant had not developed APD by this stage and Ms White was unaware that he had Bulimia so any delay by her was not treatment of him because of disability.

78. There was further discussion in April 2016 about whether the Claimant could move to a different location to address his spinal issue (page 146).

79. While all of this was going on the insurance procurement process continued and culminated in a successful outcome at the end of March 2016. The Claimant informed Mr Cawthorn of this by email on 1 April 2016 (page 139) and Mr Cawthorn replied saying that the Claimant *"should be very proud"* of the work he had done and recommending publishing the news across the organisation (page 138). Subsequently, on 28 April 2016 a news story was published on the intranet about the savings the Claimant had achieved through the insurance tendering process. Unfortunately, this news item elicited one negative reaction from Koisor Hussain, who emailed Simon Bass, the Executive Director of Corporate Resources, challenging the reason for the savings. Mr Hussain alleged that money had been saved simply because some double insurance had been spotted by someone other than the Claimant (page 148). Mr Bass emailed Mr Cawthorn immediately upon receipt of Mr Hussain's email asking for an explanation (page 147). Mr Cawthorn raised the matter with the Claimant and then forwarded him the email chain on 3 May 2016 (page 147). The Claimant replied to Mr Cawthorn that afternoon with his explanation, which was accepted (page 151). There is no dispute that the tender process generated significant savings for East Thames and that this was due principally to the Claimant's work on it.

80. On 5 May 2016 the Claimant emailed Mr Cawthorn to say that he would not be coming into work as he could not face being in a meeting that afternoon at which Ms Begum would be present (page 161). He described himself as *"stressed, drained and anxious"*. Mr Cawthorn accepted his explanation for not coming in to work.

81. On 10 May 2016 the Claimant emailed Stephen Rayner of HR complaining about Mr Hussain describing his action as libellous and done as part of the clique out to attack him.

82. On 11 May 2016 the Claimant raised a formal grievance against Ms Begum under East Thames' Bullying and Harassment Policy relating to her informal complaint made the previous November. He also alleged that Mr Hussain's recent email was part of Ms Begum and her clique's campaign against him. The Claimant's grievance was investigated by Joy Millet who provided a written outcome on 28 July 2016 (pages 188 to 191). The complaints were upheld in part: Ms Millet agreed that it had been inappropriate for Ms Begum to speak to other colleagues in a foreign language when the Claimant was present thereby excluding him and she also found that Mr Hussain's email had been malicious and was the result of discussions with Ms Begum.

83. In April 2016 a proposed merger between East Thames and L&Q was announced. On 12 August 2016 the Claimant emailed Keith Petty in advance of the merger asking for a meeting to discuss insurance arrangements in the merged group (page 194). The Claimant had met Mr Petty previously at industry events. Mr Petty told us that he was pleased that the Claimant had shown this initiative so agreed to meet him.

84. The meeting took place on 17 August 2016. Mr Petty's evidence was that he told the Claimant that his current role of Group Insurance Manager would be obsolete in the new structure but that there were opportunities such as a Construction Insurance Manager role. This new role involved dealing with the insurance requirements of the merged organisation's construction arm. Mr Petty said that he discussed this role with the Claimant and proposed that he took it on with effect from April 2017. We accept his evidence but find that there was no discussion of the proposal as such, rather Mr Petty simply presented his ideas for the future. The Claimant told us, and we accept that he felt relieved that he was not going to be made redundant.

85. The merger was due to take place on 6 December 2016 and East Thames employees were expected to transfer to L&Q on that day under the TUPE Regulations. On 5 December 2016 the Claimant emailed Mr Cawthorn resigning. He said as follows (page 219):

> "*I have decided to resign and this time I will not be retracting it. I am not happy working here anymore and have recently heard the most unpleasant things said about me by people having meetings in room 3.01 and the guys in Procurement.*
>
> *This situation is causing me great stress and I am going to leave for the day – I would be grateful if you could call me at 15.30 rather than have a meeting to discuss where we go from here as I am not comfortable running to the office in light of what has been said."*

86. Once again Mr Cawthorn persuaded the Claimant to reconsider and retract his

resignation. The Claimant suggested to us in evidence that all that Mr Cawthorn wanted was to pass responsibility for him to a new line manager, Mr Petty, upon transfer and that, with this in mind, Mr Cawthorn had told him to *"sleep on it"*. We reject this account. We accept Mr Cawthorn's evidence that when he spoke to the Claimant about this resignation the Claimant was already having second thoughts. We also find it more probable that it was the Claimant who said that he would sleep on his decision to resign when asked to reconsider by Mr Cawthorn. In an account the Claimant gave of Mr Cawthorn's actions before these proceedings began he described their conversation as follows (page 802):

> "*On 5/12/2016 when I couldn't take it anymore (after hearing cruel jibes that colleagues were making about me when they thought I was listening to music in earphones) I snapped, emailed MC that resigned and walked out.*
>
> *He called me that afternoon and the call went (pretty much word for word:*
>
> *MC: Im quite surprised to see your email, I though you were happy now that the stuff with SB* [Sayra Begum] *has died down and you know what you will be doing after the merger?*
>
> *Me: I don't know what to do Martin, I just don't know, maybe I should sleep on it?*
>
> *MC: yes, that's a good idea – and then tomorrow its Keith's problem.*
>
> *Me: ok, I will, thanks Martin, bye."*

87. The Claimant's employment did not end and he transferred to L&Q.

88. Unlike East Thames, the insurance function at L&Q sat within the Finance Department and while the Claimant's procurement colleagues also transferred as part of the merger he no longer fell under the line management of Mr Cawthorn or Mr Revell but was now line-managed by Mr Petty.

89. The Claimant's case is that the symptoms of his Bulimia improved from about January 2017.

90. On 25 January 2017 the Claimant emailed Mr Petty to say that he had to leave the office that afternoon, he wrote as follows (page 227):

> *"For the sake of my mental health, unfortunately I had to leave the office this afternoon, due to the continuous trolling and provocations I have been subjected to by Robin, Martin, Mark and everybody they have, quite publicly, spoken about me.*
>
> *I find myself unable to return to the office to deal with this matter directly and I think it is in the interest of all of us if we could achieve a way by which I will resolve my current situation with the company and leave what is now a redundant role subsequent to the merger, and also in light of Giulia having retained the position of Group Insurance Manager.*
>
> *Could it be possible to sit down with you, at your earliest convenience, to discuss? Preferably, outside of our offices, as I truly find myself incapable of subjecting myself to a repeat of today.*

> *I'm gutted that things have come to this, my blood sweat and tears went into sorting ETs* [East Thames] *insurance out from the mess it was in when I joined. When I single handedly prepared the tender I swear to God I worked 16 hours a day Monday to Friday and had to work weekends too for months. I have always over delivered, ahead of time and under budget with no help, support or even appreciation of what I do – I've always just been branded a drama queen and moody."*

91. The Claimant was off work for the next few days. Mr Petty acknowledged his email and arranged a follow-up meeting.

92. In February the Claimant moved into the legal department as he found a suitable desk there (page 230).

93. The Claimant's role remained unchanged immediately after the merger but the East Thames insurance programme was due to come to an end on 31 March 2017 at which point Mr Petty wanted the Claimant to take on the role of Construction Insurance Manager. There are three aspects to the Claimant's evidence about this change: firstly, he alleges that it was imposed upon him; secondly he compares his treatment with that of Ross Marshall who had to apply for a role in competition with others when he transferred from East Thames to L&Q; and, thirdly, the Claimant asserts that he should have been pooled with Keith Petty and Gulia Artusa for "group" roles. This last point reflects the fact that the Claimant's new job title no longer included the word "group" whereas Mr Petty's and Ms Artusa's did.

94. We do not find that the Claimant was forced to accept the new role of Construction Insurance Manager. The Claimant had emailed Mr Cawthorn and Stephen Rayner in August 2016 asking about redundancy and Mr Cawthorn had replied by return suggesting that the Claimant wait until his meeting with Mr Petty as he might be *"surprised"*, which we take to be a reference to the possibility of good news. Mr Petty raised the potential new job role in the meeting on 17 August 2016 as described above. The Claimant did not mention redundancy in this meeting nor did he follow up his earlier request for redundancy figures with a request to take voluntary redundancy, rather his reaction to his discussion with Mr Petty was relief that he was not going to be made redundant. None of this is consistent with him being forced to take on the new role, nor is the fact that he withdrew his resignation in December 2016 when he was aware that East Thames' current insurance arrangements would come to an end in March 2017. In an email to Keith Petty dated 13 April 2017 the Claimant also said that the new role had *"really sparked his interest"* (page 246).

95. Turning to the comparison with Ross Marshall, Mr Petty told us, and we accept, that where there was a direct job match because of the merger the affected East Thames and L&Q employees were put at risk of redundancy and were required to go through a selection process and this is what happened to Mr Marshall who was in the Social & Economic Team at East Thames. In contrast there was no job match for the Claimant within East Thames or L&Q as he had a unique position so there was no pool of affected workers. Mr Petty told us that, rather than make the Claimant redundant he had created a role to retain his skills which he thought that the Claimant was happy to accept. We do not find, therefore, that Mr Marshall's circumstances were the same or not materially different from the Claimant's: unlike Mr Marshall, the Claimant was not competing for a

role in the new merged structure. Accordingly, Mr Marshall is not a valid comparator.

96. As far as pooling with Ms Artusa and Mr Petty is concerned, we find that the Respondent's approach in not pooling the Claimant with them was within the range of reasonable responses of an employer and had nothing to do with disability. Ms Artusa and Mr Petty had responsibility for corporate risk as well as insurance. They managed teams of employees and were (and remain) responsible for a substantial level of self-insured risk (some £3 million). In contrast, the Claimant had had only one person reporting to him, Ms Begum, and that had lasted a short while only. He had a significantly smaller amount of self-insured risk (£400,000) and was not responsible for corporate risk. The Claimant raised the question whether he should have been compared with Ms Artusa in terms of job title and salary in an email to Mr Petty dated 16 May 2017. Mr Petty replied setting out the reasons why their roles were different (page 261). We accept that explanation.

97. The Claimant's case is that he developed his second relevant disability, APD, in about May 2017.

98. One of the matters the Claimant has raised is his access to information after becoming a part of L&Q's Finance Department. He said that he did not have access to the relevant drive on the intranet (the S drive) and was not copied into emails. We find that there was a delay in transferring some employees to the new combined IT system and accept that the Claimant was affected by this delay. We were nevertheless shown emails to the Finance Department which contains the Claimant's email address on the distribution list. So, while the Claimant may not have had ready access to all information, this is not a case where he was excluded from information concerning the Department.

99. Another of the issues raised by the Claimant is a lack of training in his new role. Mr Petty told us that in his judgment the Claimant had sufficient transferable skills to deal with the new role and that he had provided the Claimant with contacts to begin work on a latent defects project (see pages 564 to 565). He also said that he had arranged a mentor for the Claimant but had not introduced mentoring sessions as he felt that the Claimant was too distracted by *"legacy/HR issues"* to make the most of this. Mr Petty explained that as this arrangement was a favour offered free of charge by the mentor he did not feel that this could begin until he was sure the Claimant would be receptive to it. Mr Petty also told us that he had been aware of the Claimant's *"legacy/HR"* issues from an early stage as the Claimant had told him about them and had also referred to his difficulties at work and with others in his emails. In this context we accept Mr Petty's reasons for not introducing a mentor. We find too that the Claimant did not follow up the contacts Mr Petty gave him for the latent defects project. We find, therefore, that the Claimant did not receive formal training in the Construction Insurance Manager role but in the circumstances described above.

100. On 16 June 2017 the Claimant had an email exchange with Ms Artusa regarding a proposed team night out. He said as follows (pages 283 to 284):

> "*Just catching up on few bits – I was going to ask you at the meeting this afternoon (that we didn't have to attend in the end, thankfully!) if you have any ideas about what you would like to do for the team night out on the 30th?*
>
> *You'll think I basket case, but I'll be upfront with you so you that you don't think I'm*

being awkward nearer the time or try to rearrange plans to accommodate my silliness :) There are some situations that make me a bit anxious and I end up bailing at the last minute after stressing myself out in the lead up to them. To be honest, that was what happened with the team Xmas meal – a sit down meal at a table of people that I didn't know but they knew each other was too much for me and then on top of that, thinking that I needed to make a good impression to try to fit in.

Activities that are sports, team based or competitive and things centred around food, I avoid (like a curry night, tapas or meals where everyone shares and passes around dishes), although I'm fine with informal dining where the focus tends to be on the company you're with rather than the meal. Drinks, I am absolutely find with in bars rather than Pubs, though my worst nightmare is a sports bar! Things will be a lot easier now that I know the team, but I would still awkward at something of the above with a group of my best friends!

In no way would want to restrict what you guys would like to in order to accommodate me (nor draw attention my limitations, if we could please keep this between us? Keith knows, though) I am more than happy to meet you guys after what ever you decide for drinks if its easier and would so much more relaxed that the guys wont walk away thinking im odd! :)

….

Thanks – sorry to be a pain."

101. Ms Artusa replied that the Claimant should do whatever he felt comfortable doing and that the team were *"a pretty easy going bunch"* (page 283).

102. The Claimant's change of job title was confirmed by Kate Mitchell of HR in a letter dated 14 July 2017 which said that the change would take effect from 1 August 2017 (page 294) but that all other terms would remain as before. Prior to this Mr Petty had asked HR whether the Claimant would transfer from East Thames terms to L&Q terms (page 255) and Ms Mitchell had told him that the Claimant would remain on East Thames terms but would be offered the chance to switch to L&Q terms within the near future (page 254).

103. There was a restructure of the Finance Department between May and July 2017 and the Claimant received a number of emails regarding this and attended at least one meeting but the insurance team, of which the Claimant was a part, was not affected by the restructure. The Claimant was nevertheless unsettled by it and felt that his access to information concerning it was limited. That said, this was not a period when he claims that his Bulimia was symptomatic.

104. On 19 July 2017 the Claimant emailed Mr Cawthorn to tell him of the successful completion of a long running project from their East Thames days which arose from a fire at Parr Road (pages 303 to 305). The Claimant set out his achievements in a long email. Mr Cawthorn acknowledged the Claimant's message that evening saying that he could be *"rightly proud of what he had achieved"* (page 302). The Claimant had a one-to-one meeting with Mr Petty on the following day, 20 July 2017, when he raised this matter and asked for a "Spot Award" for the work he had done. Spot Awards were a scheme

operated by East Thames, but not L&Q, under which managers could award small discretionary payments for particular work or achievements. These awards were typically small, measured in the low hundreds of pounds. As this request related to an East Thames legacy issue and as Mr Petty was not familiar with Spot Awards, he suggested the Claimant raise the matter with Mr Cawthorn, which the Claimant did by email that day (page 426). The Claimant asked for guidance on how he might obtain Spot Awards for the Parr Road project and for securing significant savings as part of the 2015 insurance renewal. Mr Cawthorn replied the following day to say that he was doubtful that anything could be done but he would raise it with HR (page 425). We accept Mr Cawthorn's evidence that he spoke to someone in HR about the Claimant's request and was told that such a payment would not be possible. Mr Cawthorn passed this information onto the Claimant when the Claimant called him again about the Spot Awards. The Claimant was unhappy about this. Mr Cawthorn described him as becoming *"very agitated"* in their conversation and we accept that evidence.

105. On 20 July 2017 the Claimant emailed Mr Petty telling him that he had not *"felt this positive or secure about work for years"* (page 306).

106. Shortly afterwards the Claimant emailed John Grimmer of HR requesting a meeting, which was scheduled for 24 July 2017. The subject header of the email was *"discussion re possible grievance against Martin Cawthorn"*. The Claimant said as follows in his request (page 309):

> *"I spoke to Anne who advised that you should hopefully be available at this time, however I can be flexible if required.*
>
> *It is important to me that this is handled by HR with an ET* [East Thames] *background – I would like to sit down to discuss problems I have had with my former line manager and new problems (and financial loss) I am experiencing due to Martin, despite him no longer managing me.*
>
> *I have tried to resolve this with him, but he believes he can not do anything to resolve the situation – however from what he has said and repeated it is clear that he doesn't understand what the issue is, nor the fact that he is the cause.*
>
> *The last thing I want is to go down the grievance route, so would like to sit down with you and explore my options to resolve this before having to resort to that."*

107. The Claimant raised several concerns with Mr Grimmer at the meeting on 24 July 2017. He mentioned that his new job title did not include the word "group". He complained that his pay rise in June 2016 had only been backdated to May 2016 when he had been told his role would be re-evaluated in October 2015. He also said that he felt he should be awarded two Spot Awards for his work on Parr Road and the insurance renewal in 2015. He did not relate any of this treatment to his disabilities.

108. There is a dispute about whether the Claimant raised a formal grievance against Mr Cawthorn with Mr Grimmer or whether he simply asked for the financial matters he had raised to be dealt with as a priority and informally. On 27 July 2017 the Claimant emailed Mr Grimmer saying as follows (page 322):

> *"I was going to request a catch up with you next week as I nearly have everything I*

need to support what I discussed with you on Monday.

Below and attached are just FYI – another example of what I am talking about and why I have been so fed up and stressed with work. Could you please let me know when would work well for you to sit down, go through my issues and hopefully find a solution to financial implications of bonuses and backdated pay increase?

On the 5th of December I snapped, walked out of the office and emailed Martin saying I quit – he rang me later than afternoon and asked me to sleep on it and make a decision tomorrow as he would no longer be my manager then and Keith would have to deal with it. He asked so nicely though I didn't really register what he was saying, once again wondered if I had overacted and agreed.

I don't want to rake over old ground – my new role of L&Q Construction Insurance Manager starts officially 01/08/2017 and I want nothing more than to draw a line under the constant issues, pressure and stress I have had as ET's Group Insurance Manager and start afresh with L&Q with a manager who understands what I do, why, how, when and where etc and is able to support me in doing so.

I genuinely feel bad for the suspicion that I have treated Keith Petty with since he became my line manager, I dread to think of what his opinion of me must be, but I am hopeful that can be left in the past once I am happier at work."

109. In our judgment this email is ambivalent, suggesting both that the Claimant had *"issues"* to raise but also that he did not wish to *"rake over old ground"*. Despite this ambivalence, which we have no doubt was reflected in their face-to-face discussion, we find that Mr Grimmer genuinely and reasonably believed that the Claimant wanted a resolution of his financial claims first and foremost. This email is consistent with that belief.

110. Mr Grimmer had a number of meetings with the Claimant in August and September 2017. The Claimant covertly recorded these. He also sent lengthy documents to Mr Grimmer regarding the grievance he had raised at East Thames in 2016, Ms Begum's complaint about him and issues relating to his neck which he alleged were due to a failure to provide him with an appropriate desk. In the course of these meetings, on 4 August 2017, the Claimant told Mr Grimmer that he had OCD and an eating disorder. In a meeting on 7 September 2017 the Claimant told Mr Grimmer that he was verging on Asperger's and had OCD; he also claimed to have *"almost psychic abilities"* (page 636).

111. On 12 September 2017 the Claimant sent a paper to Mr Grimmer summarising the issues as saw them and setting out his desired outcomes (pages 639 to 645). He wanted his financial claims settled with interest, this included a claim for overtime worked in August 2015 which related to the period immediately before Mr Revell announced the change in the tendering process from a restricted to an open one. The Claimant asked for Martin Cawthorn to be dismissed for gross misconduct and Maureen White, who dealt with the adjustments to his work station, to be disciplined. He stated that it was unrealistic to take action against Ms Begum as she had already handed in her notice but the implication is that, had this not been so, he would have wished her to be dismissed or at least face disciplinary action.

112. On 20 September 2017 Mr Grimmer authorised the backdating of the Claimant's

2016 pay award to November 2015. Additionally, following discussions with East Thames' Chief Executive, Yvonne Arrowsmith, two Spot Awards of £1000 each were authorised. These sums were substantially in excess of the normal level of such awards. They were not paid until November 2017 and then required further adjustment when the Claimant pointed out that the timing of the payments had pushed him into a higher tax bracket such that he had not received the full net benefit.

113. Mr Grimmer also told the Claimant that if he would continue to explore the issue of overtime but was not hopeful about this as overtime was not usually paid to someone at the Claimant's grade. We are not aware that the Claimant has received any payment in respect of his claim for overtime worked in 2015.

114. One of the Claimant's requests was that Mr Petty be informed of his complaints and Mr Grimmer did this on 25 September 2017.

115. On 2 October 2017 the Claimant emailed Mr Grimmer asking for a "*rough time line"* and it is clear from his message that he was concerned that his issues and outcomes were addressed before a member of staff had had an opportunity to leave L&Q *"of their own volition"* (page 667); we take this to be a reference to Mr Cawthorn and the possibility that he might choose to leave or be made redundant.

116. Mr Grimmer had further meetings with the Claimant during October 2017 concerning the progress of his complaints. In a meeting on 25 October 2017 the Claimant confirmed that he had asked Mr Grimmer to sort out pay issues first of all. This had happened to a large extent by that stage. We also note the Claimant's case that his symptoms of Bulimia re-emerged in October 2017.

117. Mr Grimmer told the Claimant in October 2017 that he would have to hand the further conduct of his complaints to a colleague, Kate Mitchell because of other work commitments and an extended period of pre-planned leave due to begin at the end of December. The Claimant emailed Mr Grimmer on 6 November 2017 asking him, amongst other things, to continue dealing with his complaints rather than handing them over (page 691). The Claimant was plainly concerned about delay in dealing with his complaints but it also demonstrates to us that the Claimant had confidence in the work Mr Grimmer was doing. Unfortunately for the Claimant, Mr Grimmer explained that this would not be possible but said that he would copy the Claimant in on his emails to Ms Mitchell when he handed the complaints over.

118. On 5 December 2017 Mr Grimmer emailed Ms Mitchell regarding the Claimant's complaints, attaching two documents which he described as *"key"* (page 720). The Claimant was copied in to this email. Mr Grimmer said that he would send further documents later that week: there is no documentary evidence to show that this happened but, similarly, nothing to suggest that Ms Mitchell did not have access to relevant documents or that the Claimant could not have sent her anything he regarded as important or relevant.

119. On 14 December 2017 the Claimant contacted Ms Mitchell asking to talk (page 777). Ms Mitchell replied on 18 December 2017 to say that she was reviewing the relevant information and planning next steps and that she intended to appoint an HR Adviser who would be in touch (page 777). Subsequently either Ms Mitchell or Ben Roberts contacted the Claimant to arrange a meeting on 22 December 2017. On 21

December 2017 the Claimant emailed them asking whether, in the absence of an agenda, he would be able to go through the issues at this meeting. Mr Roberts replied agreeing to this and adding that he and Ms Mitchell would advise on policy and procedure.

120. The Claimant attended a team Christmas lunch on 20 December 2017.

121. The meeting with Ms Mitchell and Mr Roberts took place as planned on 22 December 2017. The Respondent's notes of it are at pages 783 to 784. The Claimant was unaccompanied and this is a matter he complains about. His case is that this was a formal grievance meeting and that he was entitled to be accompanied by a colleague or trade union representative under the provisions of L&Q's grievance procedure (page 1114). The Respondent's case is that the East Thames grievance procedure was the relevant one as the Claimant remained under their terms and conditions but that in any event this was not a formal grievance meeting but an informal one to understand the nature of the Claimant's complaints and to explain the process. The right to be accompanied does not apply to such a meeting under either procedure.

122. We find that Ms Mitchell and Mr Roberts intended this to be an informal meeting but that this was not explained clearly to the Claimant. There is no evidence to suggest that this was anything other than miscommunication and we do not find that this occurred in any way because of the Claimant's disabilities. The catalyst for the meeting had been the Claimant's own request.

123. One matter which was agreed at the meeting on 22 December 2017 was that the Claimant would be referred for an Occupational Health report.

124. At a team meeting on 24 January 2018 Julia Artusa put forward the idea of the team volunteering at a food bank in Lewisham. The background to this was that L&Q had recently introduced a social responsibility programme under which employees were allowed time off to volunteer in the community. Ms Artusa had made a New Year's resolution to become involved in this and on 18 January 2018 had contacted Sharon Beaufond, the project manager heading the new programme, asking for suitable opportunities. Ms Beaufond suggested the idea of volunteering at the food bank and this is what Ms Artusa put to the team. The team responded positively in the team meeting at which the Claimant was present. Ms Artusa subsequently confirmed this proposal to Ms Beaufond.

125. On 29 January 2018 Ms Artusa circulated forms for the volunteering day at the food bank which was set for 19 March 2018 (page 806). The Claimant replied saying (page 806):

> "*Hi Giulia,*
>
> *Sorry, I think I must have overlooked something – was there a vote of something amongst the team to do this?*
>
> *Thanks*
>
> *George"*

126. Ms Artusa responded on 30 January 2018 saying (page 805):

"Hi George

I have kept you in the loop as you are part of the wider team.

You touched on it in the team meeting and the volunteering is completely optional. Those who want to join in will need to complete the form however.

Kind regards

Giulia Artusa"

127. The email conversation then continued as follows: (pages 805 to 804):

Claimant:

"Hi Giulia,

I remember the meeting and I remember thinking at the time "where has this come from"? sorry, I meant was there some kind of vote to decide where the team would go?

Could you please confirm what you mean by wider team? I thought there was just one team?

Thanks

George"

Ms Artusa:

"*That's ok*

I contacted L&Q foundation who are organising volunteering as part of the giving back programme and I enquired about options for the insurance team. The only option available for Lewisham was the food bank on the 19th March.

Are you interested?

G"

Claimant:

"Giulia,

Can you please confirm what you meant by "wider team"?

George"

and finally, Ms Artusa:

"*By the wider part of the team I mean those who do not report to me i.e. you and Keith."*

128. There was no further discussion of the volunteering day at the food bank which subsequently took place in March 2018. The Claimant did not take part.

129. The Claimant had a scheduled one-to-one meeting with Mr Petty immediately following the team meeting on 24 January 2018. It is common ground that the Claimant was kept waiting for this to start because Mr Petty was in conversation with Ms Artusa. The Claimant says that he was kept waiting for between 30 and 40 minutes. Mr Petty acknowledges that he had expected to have a ten minute conversation with Ms Artusa but it had lasted longer. While Mr Petty was speaking to Ms Artusa he received a WhatsApp message from the Claimant saying that he did not want to wait any longer. At this point Mr Petty cut his conversation with Artusa short and went to speak to the Claimant.

130. The Claimant was seen by Dr Slavin, a Consultant Occupational Physician on 25 January 2018. Dr Slavin's report is dated 30 January 2018 (pages 1140 to 1145). The Claimant did not consent to the release of this report until 13 February 2018 (page 974). Dr Slavin noted that the Claimant was largely working from home by this time and recommended the intervention of a qualified mediator to resolve his work problems.

131. In the meantime, on 29 January 2018, the Claimant sent a long email to Ben Roberts complaining about Mr Grimmer's handling of his complaints (pages 785 – 788). Mr Roberts' evidence is that he and Ms Mitchell had formed the view that an independent investigator should be appointed to deal with the Claimant's complaints because he had become distrustful of the Respondent itself. This was a reasonable conclusion in our judgment. The Claimant was informed of this decision by email dated 14 February 2018 (page 860), the day after he authorised release of the Occupational Health report. Despite some reservations expressed in emails, the Claimant agreed to the appointment of an external investigator, Karen Moore, in a conversation with Mr Roberts on 28 February 2018.

132. Ms Moore held a number of investigatory meetings between 5 and 28 March 2018 and submitted a draft report and outcome letter in respect of the Claimant's complaints on 29 March 2018. Mr Roberts informed the Claimant that the draft report had been received on 3 April 2018. On 9 April 2018 the Claimant telephoned HR chasing the outcome of his grievance and explaining that he felt *"really stressed"* (page 949). On 11 April 2019 Mr Roberts wrote to the Claimant with an outcome summarising Ms Moore's findings (pages 950 – 954). The Claimant's grievance was upheld in part. The letter did not enclose the grievance report itself and Mr Roberts told us that this is L&Q's standard practice. We accept that evidence. In fact, Ms Moore's draft investigation report was not finalised until 12 April 2018, the day after Mr Roberts' letter to the Claimant, but nothing turns on this.

133. The Claimant appealed against the grievance outcome on 18 April 2018, (pages 967 to 977). Charlie Culshaw, Director of Care and Suppor,t was appointed to deal with the appeal. The Claimant alleges that Mr Culshaw was not impartial. He did not say anything about this in his witness statement or grounds of claim but under cross-

examination he agreed that Mr Culshaw had not been involved with him previously and had not worked closely with him. What appeared to concern the Claimant was that Mr Culshaw had a background in the treatment of mental health and in the Claimant's view focused on his OCPD and not his eating disorder.

134. Mr Culshaw's decision letter is dated 24 May 2018 (pages 997 to 1001) and appears thorough and detailed to us.

135. The Claimant has since raised other grievances as we understand it but these are not matters before us.

Conclusions

Direct disability discrimination

136. The Claimant's case on direct discrimination is that the Respondent's employees took advantage of his vulnerability due to his disabilities. The Claimant relied on a hypothetical comparator for most of his allegations. As noted above, there are conceptual difficulties in constructing comparators in claims of direct disability discrimination. In view of this, we began our analysis of each of the Claimant's allegations by deciding the reason for the treatment: if treatment is not because of disability a claim of direct discrimination must fail.

Issue A ***On or about 6 March 2015 Martin Cawthorn failed to inform the Respondent's HR team that the Claimant had a recurrence of an eating disorder due to work related stress so that he did not get support from HR or a referral to OH at that stage.***

137. The factual basis of this allegation is not in dispute: Mr Cawthorn agrees that he did not refer this to HR at the time. This was the first occasion the Claimant had mentioned an eating disorder and said that he had not expected it to interfere with work. He also said that he would keep Mr Cawthorn and HR informed and asked Mr Cawthorn to treat the matter as confidential. In those circumstances we find that Mr Cawthorn simply respected the Claimant's wishes and had no other reason to refer the matter to HR or Occupational Health. We do not find that this was treatment of the Claimant because of disability, so this claim fails on the facts.

Issue B ***Martin Cawthorn did not send the Claimant home on 26 August 2015 when the Claimant booked annual leave instead of authorising the Claimant to take time off in lieu or sick leave. The Claimant's case is that if he had, for example, flu, Mr Cawthorn would have authorised time off in lieu or sick leave.***

138. Once again, the basic facts are not in dispute. We find that Mr Cawthorn did not book this time off as sick leave because the Claimant had requested annual leave and it was for an employee to inform his employer whether he required sick leave or not. Furthermore, while the Respondent may have had constructive knowledge of the Claimant's Bulimia as a disability by this time, we do not find that Mr Cawthorn had actual knowledge of this at the time (the Claimant did not develop APD as a disability until 2017). We do not find therefore that this was treatment of the Claimant by Mr Cawthorn, either consciously or subconsciously, because of disability. The claim fails on the facts.

Issue C ***On or around 28 September 2015 the Claimant was informed his pay could be evaluated in line with market rate but this was not implemented until May 2016 and various false explanations were given to him by Mr Cawthorn meanwhile.***

139. We reject the premise of this claim, namely that there was a promise or proposal to evaluate the Claimant's pay in line with market rates in so far as this suggests private rather than public sector rates. We also reject the Claimant's allegation that the time taken in implementing re-evaluation was due to *"false explanations"* given to him by Mr Cawthorn. While there was delay in the process, this was for a variety of reasons including the Claimant's own delays in producing a suitable revised role profile. In so far as there was a delay by the Respondent we do not find that it was treatment of the Claimant because of an eating disorder. This claim fails on the facts.

Issue D ***On or around 30 November 2015, Martin Cawthorn told the Claimant a grievance had been raised against him by another member of staff. While the Claimant had been off work and since he had returned, Martin Cawthorn had had numerous meetings with the member of staff that had complained Sayra Begum, yet failed to inform the Claimant that there were issues to be addressed and failed to inform Miss Begum that the main cause of her complaint was actually the Complainant acting on Mr Cawthorn's instruction in order to benefit her.***

This had led to the Claimant resigning and Mr Cawthorn talking him out of it offering reassurances it was known he was not in the wrong and steps being taken to correct the situation, however they were allowed to worsen resulting in the Claimant having to take on more work and lose a resource.

140. The Claimant does not suggest that Ms Begum did not complain and there is no dispute that Mr Cawthorn informed the Claimant of the complaint. We find that this passage of events occurred because of Ms Begum's complaint and not because of disability.

141. Given that Ms Begum's complaint was about the Claimant, her immediate line-manager, it was appropriate in our judgment for her to go to Mr Cawthorn, his line-manager, to make the complaint. It was not clear on the evidence how many meetings Mr Cawthorn had with Ms Begum prior to informing the Claimant of her complaint but we do not find that the number of meetings was in any sense because of the Claimant's eating disorder. We cannot see how Mr Cawthorn could address the complaint without informing the Claimant of it, which he did.

142. We reject the Claimant's assertion that the main cause of the complaint was that he had acted on Mr Cawthorn's instructions. Irrespective of whether the complaint was justified, Ms Begum's allegation was that she found the Claimant to be intimidating and we do not accept that Mr Cawthorn instructed him to act in this way.

143. The fact that Mr Cawthorn persuaded the Claimant not to resign in December 2015 cannot be characterised as less favourable or even unfavourable treatment.

144. The Claimant did lose Ms Begum as a resource following her complaint and this may have increased his workload (although it appears that the Claimant was not impressed with her standard of work in any event) but this was a direct result of her complaint and was not because of disability.

145. Accordingly, these aspects of the Claimant's claims fail on the facts.

Issue E ***On or around 16 February 2016 Maureen White refused to implement adjustments to the Claimant's work station. The situation was referred to Mrs White's manager Martin Cawthorn numerous times, who failed to enforce reasonable adjustments were made. The Claimant relies on Ms Alex ?, who was an Executive Assistant to the CEO, as his comparator, or alternatively a hypothetical comparator.***

146. The Claimant has identified an actual comparator for this complaint, Alex an Executive Assistant to the CEO. We were presented with no evidence to show that Alex was a true comparator or of the adjustments made for her.

147. We reject the Claimant's case that Maureen White refused to implement adjustments to his work station. The evidence shows that there was a delay in this but there is nothing in the evidence to establish that this delay was treatment of the Claimant because of disability (the Claimant claimed that his work station exacerbated neck discomfort but that is not a disability relied on in these proceedings). We also reject the Claimant's case that Mr Cawthorn *"failed to enforce reasonable adjustments* [being] *made"*: he was not responsible for implementing physical adjustments to the Claimant's work station and he was in the hands of others with regard to this. This claim fails on the facts.

Issue F ***On 4 May 2016, Martin Cawthorn told the Claimant an email had been received and who had sent it claiming the Claimant's work on a tender had not actually achieved savings for the Respondent. but that through incompetence, the Claimant had actually wasted £800,000. Mr Cawthorn encouraged the Claimant in raising a formal grievance, forwarded the email to the Claimant rather than just the allegation to answer, then prevented access to key supporting email being made available to be investigated.***

148. This was not treatment of the Claimant because of disability. Simon Bass had emailed Mr Cawthorn asking for an explanation of Mr Hussain's "correction" on the day it was received. It is clear from the documents that Mr Cawthorn discussed this with the Claimant before forwarding the email to him. The tone of Mr Hussain's email was intemperate and it was subsequently found to have been malicious but none of that means that it was unreasonable to ask the Claimant about it. He was the person best placed to answer the allegation and he refuted it promptly and fully. His explanation was accepted. So, while the Claimant may have found this episode upsetting, it was not treatment of him because of disability.

Issue G ***On the 17 August 2016 the Claimant was told by Keith Petty that he would be appointed to the role of Construction Insurance Manager without consultation. The Claimant relies on all members of L&Q's and East Thames Housing Association's Finance Department as his comparators, or alternatively a hypothetical comparator.***

149. In August 2016 Mr Petty explained his plans for the Claimant after the forthcoming merger in a meeting requested by the Claimant to discuss the future. Mr Petty knew nothing of the Claimant's disabilities at that time. This treatment was not because of

disability.

Issue H ***On 5 December 2016, the Claimant was asked to sleep on his decision to resign by Martin Cawthorn as the next day it would be Keith Petty's problem to deal with instead.***

150. We reject this claim on the facts. When Mr Cawthorn spoke to the Claimant about his resignation the Claimant was already wavering about it and it was the Claimant who said that he would sleep on it. As this conversation took place on the eve of the TUPE transfer both the Claimant and Mr Cawthorn knew that the Claimant would fall under Mr Petty's line management the following day. We do not accept therefore the Claimant's implication that Mr Cawthorn was simply attempting to pass responsibility for him onto Mr Petty as Mr Cawthorn's line-management responsibility for the Claimant was going to end in any event. Furthermore, Mr Cawthorn demonstrated subsequently a willingness to help the Claimant when he was asked despite the fact that he was no longer the Claimant's line-manager. Persuading the Claimant to withdraw his resignation was not treatment of him because of disability.

Issue I ***During February through to May the claimant felt pressured by Keith Petty to accept the change in role and give up his previous title due to a group wide initiative it later transpired never existed. The Claimant relies on all members of L&Q's and East Thames Housing Association's Finance Department as his comparators, or alternatively a hypothetical comparator.***

151. This allegation relates to the role of Construction Insurance Manager which the Claimant was given formally in August 2017. Mr Petty had explained his thinking before the merger took place in the meeting in August 2016. The new role did not include the word "group" in the title and the Claimant was plainly disappointed about this as he saw it as something affecting his status. There is no evidence to show however that this treatment of him was because of disability. We accept Mr Petty's explanation that the designation "group" in job titles reflected a group wide responsibility for matters such as corporate risk which the Claimant's new role simply did not involve. We also reject the Claimant's case that he was pressured into accepting change. Emails he sent in July 2017 suggest that he was looking forward to the new challenge. He also told us that he was relieved not to be made redundant.

Issue J ***Since on or around 18 May 2017 until 14 July 2017 the Respondent failed to give the access to information regarding the restructure of the Finance Department due to understanding the Claimant had agreed to the role change already with Keith Petty. The Claimant relies on all members of L&Q's and East Thames Housing Association's Finance Department as his comparators, or alternatively a hypothetical comparator.***

152. We were shown several examples of emails concerning the 2017 restructure of the finance department which included the Claimant in the list of recipients. He attended at least one meeting concerning the restructure and we find that he knew his role was unaffected as none of the insurance section were caught up in the restructure. We accept his evidence that his access to the S drive was restricted as there had been delays in the IT transfer from East Thames to the merged organisation but cannot accept that this presented any real difficulty in him obtaining information about a restructure of which he was aware. Furthermore, (and more importantly in this context) none of this was not

treatment of him because of disability.

Issue K ***Since 14 July 2017 the Respondent failed to provide the Claimant with training in construction insurance when the Claimant had no experience in this area. None of the projects promised to the Claimant have materialised either.***

153. There is a difference between the parties about the level of training the Claimant required for his new role as Construction Insurance Manager. Mr Petty believed the Claimant had transferable skills and was an experienced insurance professional who would rise to the new challenge; he nevertheless provided some contacts and had made provisional arrangements for mentoring. In contrast, the Claimant says he should have received formal training.

154. By the summer of 2017 Mr Petty knew the Claimant had issues with agoraphobia and panic attacks and a reason for him not implementing mentoring was his view that the Claimant need to resolve his *"legacy/HR"* issues before starting this. This evidence is consistent with disability being a reason for his approach to training (albeit not the principal one in our judgment) as issues arising from disability were part of the Claimant's *"legacy/HR"* issues. We find therefore that this element of a claim of direct discrimination is established on the balance of probabilities in this instance. The claim nevertheless fails as we find that Mr Petty would have treated a non-disabled comparator with the same or similar *"legacy/HR"* issues exactly the same.

155. There was no evidence given of projects promised which did not materialise or the reason for this.

Issue L ***The Respondent did not provide the Claimant with an L&Q contract following a change to his role on 14 July 2017 and the deletion of his old role. Had this of been done his grievance would have dealt with under the L&Q policy which contains set and reasonably short timescales. The Claimant relies on Mr Ross Marshall as his comparator, or alternatively a hypothetical comparator.***

156. It is common ground that the Claimant was not offered an L&Q contract when given formal notification of a change of role on 14 July 2017. The documentary evidence shows that Mr Petty had asked HR about this and that it was HR who had said the Claimant was to remain on East Thames terms. The Claimant had not raised his 2017 grievance by that stage so none of this would have occurred in contemplation of any differences between the East Thames and L&Q grievance procedures. The Claimant suggested in evidence that the L&Q procedure was more favourable because it contained a six-week time scale for completion of a grievance procedure but we were shown no evidence of this.

157. Ross Marshall is cited as a comparator but there is no evidence that Mr Marshall was issued with an L&Q contract. Even if he was, this would have reflected the fact that he was placed at risk of redundancy and had to apply competitively for a role in the new merged organisation. The Claimant simply transferred in his existing role which continued at least until the end of March 2017. This claim fails on the facts.

Issue M ***On 21 July 2017 Martin Cawthorn told the Claimant he had referred the Claimant's bonus-related issues to HR when this was not correct.***

158. We find that Mr Cawthorn had raised the Claimant's request for Spot Awards with

HR when the Claimant asked him to. This claim fails on the facts.

Issue N ***On 05 September 2017 John Grimmer led the Claimant to believe the grievance process would take 6 weeks, when he requested permission to share the grievance made with senior manager John Lucey to investigate.***

159. There is no documentary evidence to corroborate the Claimant's allegation that Mr Grimmer told him his grievance would be concluded within six weeks. The transcript of the Claimant's covert recording of the meeting of 5 September 2017 (pages 600 to 632) does not contain this. We accept Mr Grimmer's account that he did not say that the grievance process would be completed within this timescale. The Claimant led no evidence about the involvement of John Lucey in events. This claim fails on the facts.

Issue O ***The Respondent initially dealt with the Claimant's 2017 grievance informally when he had previously complained about grievances being dealt this way.***

160. We find that Mr Grimmer dealt with the Claimant's complaints informally to begin with because this is what the Claimant asked for. This claim fails on the facts.

Issue P ***The Claimant was informed 25 October 17 by John Grimmer that he needed to hand the grievance over to Kate Mitchell, this was not done until 5 December 2017 and only by an email containing 2 files, but missed a summary paper sent to him 12 September 2017 and supporting documents he had received too,***

161. The facts relating to this allegation are largely agreed. Mr Grimmer continued to deal with the Claimant's complaints until the beginning of December 2017 as this was consistent with the Claimant's request that he do so. Mr Grimmer sent an email to Ms Mitchell when he handed over the case which contained two attachments and the Claimant was copied in. Neither attachment was the Claimant's paper dated 12 September 2017.

162. We do not find that this was treatment of the Claimant because of disability. There is nothing to show that Ms Mitchell was unaware of other documents which had been submitted by the Claimant: she and Mr Grimmer worked in the same department. Mr Grimmer said that further documents would follow. There was nothing to prevent the Claimant from sending her further copies of his documents if he was concerned that she had not seen them. This claim fails on the facts.

Issue Q ***The Claimant was not informed he could have someone to accompany him to a meeting on 22 December 2017 with Kate Mitchell and Ben Roberts. The Claimant relies on Mr Ross Marshall as his comparator, or alternatively a hypothetical comparator, and says that Mr Marshall was told that he could have someone accompany him to his grievance.***

163. This issue turns on the parties' understanding of the nature of the meeting on 22 December 2017. We accept that the Claimant believed it was a formal grievance meeting as this is consistent with his email of 21 December 2017 but we also find that Ms Mitchell and Mr Roberts believed it was an informal meeting to discuss the handling of the grievance. The Claimant was not entitled to be accompanied at an informal meeting

under either the East Thames or L&Q grievance procedures. In the circumstances we do not find that the Claimant was denied the opportunity to be accompanied because of disability rather it was because of Ms Mitchell's and Mr Roberts' perception of the nature of the meeting.

164. We heard no evidence about a grievance raised by Ross Marshall or the procedure adopted in dealing with it.

165. This claim fails on the facts.

Issue R ***On 22 December 2017 Kate Mitchell and Ben Roberts failed to inform the Claimant which policy his grievance would be dealt under and was not provided a copy of the relevant policy.***

166. In our judgment there was no material difference between the East Thames and the L&Q grievance procedures. We nevertheless accept that the Claimant was not told at the meeting on 22 December 2017 which grievance procedure was to be used. Having regard to the evidence as a whole, we do not find that this was treatment of him because of disability.

Issue S ***On 24 January 2018 the Claimant's team arranged a team day out at a foodbank in Lewisham.***

167. The plan to attend a food bank, raised and approved in a team meeting on 24 January 2018 at which the Claimant was present, was not treatment of him because of disability. Ms Artusa was unaware of the Claimant's disabilities when she proposed this voluntary work. This claim fails on the facts.

Issue T ***On 24 January 2018 the Claimant was required to wait in an office he didn't work in for periods of 30 minutes and 40 minutes respectively.***

168. We reject the Claimant's case that this was treatment of him because of disability: he was simply kept waiting because a previous meeting had overrun. When he sent a message to Mr Petty, Mr Petty ended his meeting with Ms Artusa and came to see him directly. This claim fails on the facts.

Issue U ***Ben Roberts informed the Claimant on 3 April 2018 that he had the outcome report from the Claimant's grievance and sent the Claimant a summary letter on 11 April 2018,***

169. The facts of this allegation are agreed. We reject the implication that there was unreasonable delay in Mr Roberts providing an outcome letter. There was a gap of five working days between Mr Roberts informing the Claimant that the draft report had been received and the outcome letter being sent. In fact, Ms Moore's report was not finalised until the day after the letter was sent. In any case we do not find that the time which elapsed was treatment of the Claimant because of disability.

Issue V ***In or around April 2018 Charlie Culshaw was appointed to hear the Claimant's grievance appeal, who was not impartial.***

170. There is no evidence to show that Mr Culshaw was partial. The thrust of the

Claimant's complaints about Mr Culshaw, with whom he had had no previous dealings, is that he did not like his conclusion. We do not find that this was treatment of the Claimant because of disability or that Mr Culshaw is likely to have reached different conclusions in respect of a non-disabled comparator. This claim fails on the facts.

Discrimination arising from disability

171. While the Claimant did not frame his claims as ones of discrimination arising from disability under Section 15 of the Equality Act 2010 we have nevertheless considered whether he was subjected to unfavourable treatment because of things arising from his disabilities.

172. Despite his many complaints, we do not find that the Claimant was treated unfavourably by the Respondent; in fact, there are many examples of his managers encouraging and supporting him. Examples are permitting him to work from home, sometimes at short notice, allowing his request for recognition through the Spot Award scheme despite it having ended, and successful job re-evaluation with back-dated pay. Things did not always go as quickly as the Claimant would have liked but we bear in mind that the individuals involved had, in all likelihood, many other aspects of their jobs to deal with at the same time.

Indirect disability discrimination

173. We turn then to the Claimant's claim of indirect disability discrimination. He alleges a Provision, Criterion or Practice ("PCP") of unnecessarily prolonging grievances instead of dealing with them in a fair and timely manner as stated in its policies.

174. Paragraph 2.1.1 of the East Thames Grievance Bullying and Harassment Policy states that it is intended to provide a fair and reasonably prompt mechanism for handling individual complaints (page 1071). The L&Q policy contains a similar provision at paragraph 5.2 (page 1115). The Claimant first raised complaints in July 2017 and did not receive a formal outcome letter until 11 April 2018. This does not appear to be prompt on the face of it but for some of the time the Claimant's complaint was dealt with informally and in stages at his request. Some delay also arose when the case had to be handed over to Ms Mitchell and Mr Roberts and there was further delay while the Claimant decided whether to permit the release of the Occupational Health report. When Ms Moore began her investigation, it was dealt with promptly. Given these features in the Claimant's case and the fact that many of the issues he raised were historical, in some cases going back to 2015, we do not infer from the evidence that the Respondent had a practice of unnecessarily prolonging grievances. There are no other examples in evidence of similarly prolonged grievances processes so as to establish some element of repetition inherent in the concept of a PCP. It does not seem to us also that the time taken in the Claimant's case was "unnecessary", although plainly a faster process would have been preferable. We do not find therefore that the PCP alleged is established on the evidence.

175. Had the PCP been established we would have found that it placed employees suffering from panic attacks at a significant disadvantage compared to employees as a whole and that the Claimant was at that disadvantage. Any employee is likely to find a grievance process stressful but in the case of a person with APD or Bulimia the symptoms of this condition are likely to be exacerbated in our judgment and this is something substantially over and above the ordinary stresses of the workplace. Because of our

conclusion on the PCP, however, this claim fails on the facts.

Failure to make reasonable adjustments

176. The PCP the Claimant asserts is the imposition of *"tight and unnecessary deadlines"*. The factual nexus is the tender process in 2015, specifically during the restricted process phase. The Claimant did not refer to any other *"tight or unnecessary"* deadline.

177. We start by observing that the timeframe for the tender process was decided by Mr Revell at a time when he did not, and could not reasonably have known that the Claimant had Bulimia (the Claimant had not developed APD at this time). Mr Revell could not have been aware, therefore, of disability or any substantial disadvantage which are essential components of this claim.

178. We do not accept that the deadline Mr Revell imposed was unnecessary. Our understanding on the evidence is that this timeframe was dictated by the principles of the restricted process (it was referred to as an "OJEU" process in evidence, which itself refers to the Official Journal of the European Union). We accept that the timetable was demanding but it is clear that the Claimant rose to this challenge and met it. It was also a one-off event, albeit lasting several months. We are not satisfied therefore that there was a PCP but, were we wrong in this, the adjustment argued for, namely the provision of assistance, was made in that Ms Begum was recruited to assist. No one could have predicted that this would prove unsuccessful. This claim fails on the facts.

Jurisdiction

179. As none of the Claimant's claims have succeeded on the facts we do not propose to examine the issue of jurisdiction in detail.

180. We find that the claim for failure to make reasonable adjustments was made substantially out of time relating, as it does, to events in 2015.

181. We find that the claim of indirect discrimination was presented in time in that the grievance process was still in train at the time when the claim form was presented.

182. We find that the Claimant's claims of direct discrimination arising before 9 December 2017 were presented out of time.

183. Having regard to: the merits of the out of time claims; the long period over which they are said to have taken place; the nature and extent of the consequences the Claimant asserted to his health; and his own qualifications and experience, we would not have found it just and equitable to extend time for these late claims had they been established on the facts.

Employment Judge Foxwell

3 July 2019