



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C James

**Respondent:** The Marine Society & Sea Cadets

**Heard at:** London South (Croydon)

**On:** 11-14 February 2019 and 15 February, 8 March & 24 May 2019  
in chambers

**Before:** Employment Judge Tsamados  
Ms S V MacDonald  
Mrs C Upshall

**Representation:**

Claimant: Mr T Wood of Counsel  
Respondent: Mr A Aamodt of Counsel

## RESERVED JUDGMENT

The unanimous Judgment of the Employment Tribunal is as follows:

- 1) The Claimant's complaints of disability discrimination and harassment were presented outside the time limit set out in section 123 of the Equality Act 2010 and so the Tribunal has no jurisdiction to deal with them;
- 2) The Claimant was unfairly dismissed.

## REASONS

### Background

1. The Claimant, Ms Christina James, was employed by the Respondent, The Marine Society and Sea Cadets, as Joint Finance Manager, from 1 November 2006 until her dismissal (which the Respondent states was by reason of redundancy, but the Claimant disputes).

2. The Claimant presented a Claim Form to the Employment Tribunal on 9 April 2018 following a period of Early Conciliation from 15 March 2018 to 15 March 2018. In her Claim Form she brought complaints of unfair dismissal, direct disability discrimination, discrimination arising from disability, failure to make reasonable adjustments and harassment. She states that her disability comprises of three conditions: Complex Trauma; a physical impairment to her back; and a breast tumour. The Respondent sent its Response to the Tribunal on 22 June 2018 in which it denied all of the Claimant's complaints and did not accept that she was disabled for the purposes of the Equality Act 2010.
3. A Preliminary Hearing was held on 10 July 2018 before Employment Judge Spencer. A number of case management orders were made, including provision by the Claimant of further details of her complaints by way of revisions to the Respondent's draft list of issues, for the Respondent to amend its Response in the light of the further details provided by the Claimant and as to provision of medical evidence by the Claimant as to her claimed disability in the form of an disability impact statement, medical records and the names of medical experts so as to commission an expert report. The full hearing was set for 5 days commencing 11 February 2019.
4. The Claimant provided her revised list of issues on 23 August 2018 and her disability impact statement on 28 August 2018.

### **Issues**

5. The Respondent now accepts that the Claimant was a disabled person in law in respect of the Complex Trauma but not in respect of her back condition or breast tumour. Whilst the Claimant was expected to provide expert medical evidence as ordered by the Tribunal at the Preliminary Hearing held on 10 July 2018, she has not done so. However, at our hearing the Respondent indicated that it was not going to make an issue of this. The Claimant has provided her medical records and reports from her own medical advisers.
6. The parties have provided an agreed list of issues which is within the bundle at pages 53G-L. Whilst the Respondent was concerned that the list of issues was not an exact overlap with the particulars provided within the Claim Form and that the complaints appear to have shifted, taking a pragmatic view the Respondent accepted that it was sufficient to proceed with.
7. After enquiry by the Tribunal, the Claimant stated that she might need to take breaks and that she is deaf in one ear. We took this into account when conducting the hearing.

### **The hearing**

8. The hearing took place on 11 to 14 February 2019 during which time the Tribunal read the witness statements and referenced documents, heard evidence from both parties and closing submissions. The Tribunal sat in chambers on 15 February, 8 March 2019 and again on 25 May 2019 in order to reach judgment.

### **Evidence**

9. We heard evidence from the Claimant and from Mr Mark Hallam, Ms Kathryn Stone, Ms Petrina Brooker, Ms Joan Pickering, Ms Nicky McCallum, Ms Patricia Smith, Mr John Parker-Jones, Mr Simon Buckton-Holloway and Mr Martin Coles and on behalf of the Respondent, by way of written evidence and in oral testimony.
10. The Respondent provided a witness statement from Ms Carla Rockson, but she did not attend to give evidence. We explained that this would obviously affect what weight if any we gave to her testimony.
11. The Respondent provided an agreed bundle of documents consisting of 539 pages, which we refer to as “R1” where necessary.

### **Findings of Fact**

12. I set out below the findings of fact the Tribunal considered relevant and necessary to determine the issues we are required to decide. I do not seek to set out each detail provided to the Tribunal, nor make findings on every matter in dispute between the parties. The Tribunal have, however, considered all the evidence provided to us and we have borne it all in mind.

### **Background**

13. The Claimant was employed by the Respondent as a Joint Finance Manager from 1 November 2006 until her dismissal on 18 December 2017.
14. The Respondent is a national registered charity. It is the parent charity for the Sea Cadets and works across the maritime sector to support young people and seafarers. The Respondent has 220 paid staff and 8,500 trained volunteers.
15. The Claimant worked in the central Finance Team at the Respondent's headquarters offices in Lambeth in London. These are rented offices situated over two floors. We were provided with floor plans and photographs of various offices at R1 523-539.
16. The Chief Executive Officer is Mr Martin Coles. The Director of Finance, IT and Trading is Mr Mark Hallam. At the time of the majority of events in question, the Claimant and Ms Rani Ariyawansa were the two Joint Finance Managers, Mrs Nicky McCallum, was the Finance and Project Accountant and Mr Aaron Thompson was the Purchase Ledger Finance Officer. The Respondent's headquarters premises consists of an open plan Finance Office on the first floor of the Respondent's offices, the staff working at a bank of desks. The Procurement Purchase Manager was also based in the IT Office. The Human Resources Director is Ms Petrina Brooker and her office is in the corner of the Finance Office. Her two team members sat at the same bank of desks as the Finance Team. One of these was Mr Simon Buckton-Holloway who was then employed as a HR Adviser.
17. We were referred to the Claimant's Employment Agreement which is at R1 54-64. This includes provision for notice of termination of employment of three months (at R1 54). Whilst the document refers to a grievance

procedure contained in a Staff Handbook, we were not provided with a copy of this and indeed it was not referred to by the parties.

18. The Claimant's Terms of Reference sets out her job description. This is at R1 65-66. Whilst the Claimant was not happy with the split of duties between herself and Ms Ariyawansa this was not something that we needed to determine. Suffice to say that the Claimant's duties were distinct from Ms Ariyawansa's duties.
19. The Claimant was responsible for three main areas of work: volunteer payroll; vehicles' and KPI (key performance indicators). From her witness statement and CV, we can see that she clearly has considerable experience of working in finance for a number of organisations and charities. The Claimant is a part-qualified Accountant holding an AAT qualification (Association of Accounting Technicians) which entailed three years of study to NVQ level 4.

### Disability

20. The Claimant had been diagnosed with Complex Post Traumatic Stress Disorder ("CPTSD" or "Complex Trauma") as a consequence of childhood traumas. This was known to the Respondent at the material time and has been accepted as a disability for the purposes of the Equality Act 2010. We were referred to the Claimant's disability impact statement at R1 422-431 which sets out the ways in which CPTSD impacts upon her ability to carry out day to day activities (at R1 425-426).
21. The Claimant commenced trauma therapy in January 2016 and the Respondent allowed her time off to attend weekly sessions on Friday afternoons. The therapy opened up emotions and feelings which she had suppressed due to the effects of the trauma.
22. The Claimant also had two other health conditions during her employment.
23. As a result of a horse-riding accident in January 2013 she injured her back. Her back has never fully recovered and she has a large posterior disc protrusion to the L5/S1 of her spine which presses on her spinal cord. She sets out the adverse impact on her ability to carry out day to day activities at R1 422-423 of her disability impact statement. Whilst we were not taken to the all of the medical evidence relating to this impairment, we note the contents at R1 476 to 484J.
24. The Respondent's position is that it does not accept that this impairment is a disability for the purposes of the Equality Act 2010 and in any event avers that it did not have knowledge beyond an awareness of her horse-riding accident and her sustaining a back injury. Mr Halam accepted that there were discussions in the office in relation to this and that he empathised with the Claimant, having ridden horses all of his life until he suffered from severe back problems. Ms Brooker gave evidence that at the time, the Claimant was referred to the Respondent's Occupational Health Adviser, who provided reports. We were referred to R1 482-484. In evidence she quoted from one of these reports, but we could not find this within any of those documents. Moreover, they did not appear to be OH reports and it is unclear who commissioned them. On the face of it they are from the Claimant's

physiotherapist to her doctor. We also had regard to the further correspondence at R1 477 and 480-481. This further documentation is more recent and appears to have been prepared for this claim. This would indicate that the back impairment was ongoing from 2013.

25. The Claimant maintains that her back condition and pains continued throughout her employment and that the Respondent was well aware of this. The Respondent denies knowledge of a condition amounting to a disability. The Claimant has produced a number of typed records of various meetings and incidents which took place over 2016/2017. We note from these that there are references to her back condition in the records dated 26 October 2016 and 8 November 2016 at R1 414E & EA. We are also aware that the Claimant had an ergonomic office chair. In evidence, the Claimant said that this condition was exacerbated by having to move her office chair, office equipment and computer equipment between various offices on a daily basis (which we deal with later on). The Respondent's evidence was that this was not an issue that she raised at that time. We also note that the Claimant did not mention the issue of her back in her later grievance letter at R1 217-218.
26. On balance of probability we find that the Respondent was not aware of sufficient information from which it was aware that the Claimant's back condition amounted to a disability in law.
27. The Claimant's further impairment relates to a breast tumour. The Claimant developed a Phyllodes breast tumour in March 2017 which she states was brought on as a result of the extreme stress that she was experiencing during a period of sustained harassment at work (which we deal with later on). As we understand it, this tumour grew rapidly from March 2017 onwards and the Claimant had to undergo surgery to remove it in June 2017. Her disability impact statement sets out the details of how this impacted upon her at that time (at R1 427- 430).
28. At the time the tumour was diagnosed as benign. However, we are aware from the Claimant's impact statement and witness statement that there was reoccurrence of a tumour after she left the Respondent's employment, she underwent several operations and the tumour was classified borderline cancer and she was treated in the same way as a cancer patient. We were referred to the letter from her consultant dated 28 November 2018 at R1 484R-S which has been commissioned for the purposes of the claim. The Claimant relies on this condition as a disability.
29. The Respondent denies that it is something capable of meeting the definition of disability. It was not disputed that the Respondent was aware of the condition for several years (when there had been earlier manifestation of a tumour) and particularly in 2017 when the tumour grew rapidly, and it resulted in the Claimant's absence from work to undergo surgery and to recuperate. The OH report of 5 December 2018 refers to "a benign tumour" (at R1 443). Whilst matters developed by June 2017, there was nothing to indicate to the Respondent that this was a condition which would be long-term.

30. With no disrespect to the nature of the condition or the impact on the Claimant, it is not something that would amount to a disability in law certainly at that time given the circumstances.

The Claimant's move of offices

31. During the heatwave in September 2016, the Respondent encouraged members of staff to find cooler places to work. In particular, some parts of the office, including IT Office, had air conditioning. Other parts of the office, including the Finance Office, did not. The Respondent agreed that the Claimant could work in the IT Office. One of the symptoms of her CPTSD is that she finds it difficult for her body to regulate heat.
32. The Claimant moved to a desk in the IT Office on 16 September 2016. There were four desks and three people working in that office: the Head of IT; the IT Support Officer and the Procurement Manager. In addition, Mr Mark Fletcher, the Head of Westminster IT Applications, worked there. However, he worked at other locations in the UK and so he was only on at the headquarters' office an average of four days month.
33. After working in the IT Office for a period time, the Claimant discovered further benefits to her health as a result. The environment there was less stressful and so she did not feel so tired at the end of the day, another symptom of her CPTSD. There were less people in the office and less traffic walking through the office, so it was quieter and less disruptive, and no one could walk behind her. She felt safe working in there.
34. At the end of heatwave, whilst others had returned to their own desks, the Claimant remained in the IT Office.
35. There then followed a series of discussions/meetings between the Claimant, Mr Hallam and on occasions Ms Brooker, which the Claimant characterises as attempts to pressurise her to return to the Finance Office and which she states amounted to disability discrimination and/or harassment. Mr Hallam accepts that there were frequent discussions and meetings but these were intended to keep up the momentum in encouraging her to return, as he put it in evidence, "*in the medium to long term*" to the Finance Office, although in "*the short to medium term*" he was happy for her to remain away from the Finance Office.
36. The Claimant has provided a number of records of these discussions/meetings which she said that she typed up from notes which she took at the time and which she added to later on (at R1 414A-B, 415D-EA & 415). Whilst they appear predominantly to be contemporaneous notes, they do contain commentary as well, some after the event and with an element of hindsight. The Respondent has produced no notes of any of these discussions/meetings and for the vast majority did not take any. To be fair, Mr Halam struggled to remember which discussion/meeting was which, and exactly what was said, because he has no notes of the meetings and the Claimant's own notes were provided late on in the case preparation for this hearing.

37. The Respondent accepts that the Claimant told it that she wished to remain in the IT Office because it lessened the symptoms of her CPTSD, although it disputed the level of detail that the Claimant went into in explaining why. Mr Hallam gave evidence that he was someone who felt uncomfortable discussing personal matters, particularly of this nature, or in dealing with emotional reactions. He said he was someone who would close down such conversations or reactions. From our observations of Mr Hallam and his evidence, we accept this to be the case.
38. The Claimant was thereafter working in the IT Office and when it was not available, she worked in what was known as "*Patrick's old office*" (abbreviated and referred to as the "*POO room*") or at home. What happened was that at some point the Claimant was not able to sit in the IT Office as frequently as before and so she was using the POO room or working from home. The POO room was used as a general meeting room either being booked in advance in the office diary or used on an ad hoc basis for meetings or for staff to make confidential telephone calls.
39. Mr Fletcher left the Respondent's employment but his replacement, Mr Shallow, commenced employment in early March 2017. He worked in the IT Office more frequently than Mr Fletcher had done and so the Claimant had to move to the POO room more often.
40. The Claimant's case is that this uncertainty of where she was going to work from day to day and having to move her office equipment and files to that location, caused her stress, made her less productive and as a result of her colleagues' reaction to leaving the Finance Office and moving locations all caused her to feel uncomfortable.
41. On a daily basis, the Claimant had to move her computer, which was a large older model, her ergonomic office chair, a box of files and miscellaneous office equipment from the POO room to the IT Room because it was locked at the end of each day. Whilst the two rooms were close to each other, the Claimant had to undertake more than one trip and navigate a large ergonomic office chair through two doorways. The Respondent, at our hearing, disputed whether she needed to move her office equipment out of the POO at the end each day. However, this was not discussed at the time and there no dispute that this is what she was doing.
42. As we have already stated the Claimant's disability for the purposes of her claim is her CPTSD and not her back condition.
43. The Claimant's case is that the Respondent should have provided her with a permanent workstation away from the Finance Office, either in the IT room, the POO room or some other suitable workstation. The Respondent's position is that it was attempting to facilitate her return to the Finance Office but, in the short term was not pressing her to return and offered a number of alternatives which the Claimant rejected. However, in the medium to long term it wanted her to return to work as part of the Finance team in the Finance Office. The Respondent stated that the Claimant could not stay in the POO room because it was a meeting room. But it was willing to offer her a fixed permanent location. However, it stated that it needed further medical advice as to what exactly to offer the Claimant.

44. The Claimant also alleges that she was subjected pressure to return to the Finance Office, amounting harassment, which arose from a number of incidents with other members of staff (20 October 2016 Mr Buckton-Holloway. Nicky McCallum).
45. The Claimant further alleges harassment by a number of members of staff because her use of the POO room (17 November 2016 Mr John Parker-Jones. Joan Pickering. Nick Chubb. Carla Rockson).
46. In addition, the Claimant also alleges harassment by a number of members of staff arising from their frustration with her (Rani, Aaron Thomspson, Nicky McCallum).
47. We deal with these incidents below in the order they appear at paragraph 3 of the List of Issues at R1 53G-P.

*26 September 2016 comments made by Mr Hallam:*

48. This is set out at paragraph 16.1 of the Claimant's Grounds of Claim at R1 26, paragraph 3.3.1 of the List of Issues at R1 53H and recorded in more detail her typed note at R1 414A. In essence the Claimant alleges the following. Mr Hallam came into the IT Office and said to her "*we want you back in Finance, but you have another week*". This caused the Claimant to feel panicky and to have a tight chest. After leaving the office and returning shortly afterwards, she told Mr Hallam that she felt like she was going to have a panic attack when he said she needed to return to the Finance Office. She explained to Mr Hallam in detail the CPTSD/Complex Trauma she was dealing with and what had caused this. She told him about her therapy and the beneficial effect of being away from the Finance Office, to which he responded, "*we must have you back*". She felt very upset and Mr Hallam did not seem to understand the seriousness of what she was dealing with. She told Mr Hallam that there were people in psychiatric hospitals attempting suicide who had been through less than her. He asked how long her therapy would take and she replied that she did not know. She told him that the IT Office helped her feel calmer because it is tucked away in a corner and is quieter whereas her desk in the Finance Office was in the middle of the room and there are people talking behind her and walking around. Mr Hallam asked if anyone in particular was bullying her and she replied no, but her colleagues in Finance have not been nice to her and she has had a hard time since she had stopped sitting there. Mr Hallam said that there was no rush in her return to the Finance Office and that he would leave it for now.
49. In evidence, Mr Hallam accepted that there was a meeting, but denied using the words attributed to him or that the Claimant had gone into that level of detail, although the aim of the meeting was to get the Claimant back into the Finance Office.
50. On balance of probably we find that the meeting was essentially one in which Mr Hallam indicated that he wanted the Claimant to return to the Finance Office, expressed the desire to have her back there but did not press the matter further given the Claimant's reaction. Given his evidence as to his reaction to the Claimant's attempts to discuss her CPTSD/Complex Trauma



in detail and what we observed of his general discomfort in dealing with personal matters and emotional responses we think it unlikely that he would have allowed the Claimant to go into that level detail that her typed note sets out.

*13 October 2016 comments made by Mr Hallam:*

51. This is set out at paragraph 16.2 of the Claimant's Details of Complaint at R1 26, paragraph 3.3.2 of the List of Issues at R1 53H and recorded in her typed note at R1 414B. In essence, the Claimant alleges the following. Mr Hallam came into the IT Office and asked to have a private word with her next door. He told her that she had to return to the Finance Office because he wants Mr Fletcher to sit at his desk when he comes up from Gosport for meetings. The Claimant told Mr Hallam that she was liaising with Mr Fletcher as to when he needs to attend the HQ office and so that she can book meeting rooms to sit in. She further told Mr Hallam that Mr Fletcher had offered to hot desk elsewhere when he come to the HQ office, but she had insisted that she did not want to prevent him from using his desk. Mr Hallam insisted she had to return to the Finance Office, she became emotional and started to cry. Mr Hallam then said that he would leave it for now, but it cannot be a permanent thing. He further said that no doubt she would need a moment to compose herself and left the office. She continued to cry and then went to the IT Office but started to cry again in front of her colleagues who were not sure what to do. It took four days for her nervous system to claim down and for her to stop feeling emotional.
52. Mr Hallam accepted that there was meeting, given that generally he was raising the matter every two weeks in order to maintain momentum in the discussions for the Claimant to return to the Finance Office. His evidence was that he said that he told her he was quite happy in "*the short to medium term*" for her to remain outside the Finance Office but in "*the medium to long-term*" for her to return with the assistance of her therapist. This was something he told us was "*a mantra*" that he repeated at each meeting. He agreed that there was a discussion about Mr Fletcher working more in the office and this would impact upon her ability to work in the IT Office.
53. Mr Hallam further accepted that the Claimant began to cry but he shut down the discussion and "*abstracted*" himself from it. He said that he did not think it appropriate to continue a meeting when a member of staff was upset but later went back to observe the Claimant through the glass partition of the IT Office, to check that she was alright.
54. On balance of probability we find that the meeting went broadly along the terms set out by the Claimant, but the meeting ended abruptly when the Claimant became emotional. Whilst Mr Hallam referred to his repeated mantra, we find on balance that given his difficulty in remembering the details of each discussion/meeting and the Claimant's lack of reference to any of these words, it is more probable that not that at least at this meeting it was not something that he said and that what he did do was to attempt to raise the Claimant's return to the Finance Office but the discussion did not go any further.

*20 October 2016 comments made by Mr Buckton-Holloway:*

55. This is set out at paragraph 16.3 of the Claimant's Details of Complaint at R1 26, paragraph 3.3.3 of the List of Issues at R1 53H and her typed note at R1 414C. In essence, the Claimant alleges as follows. She was sitting in the small meeting room next to the IT Office because Mr Fletcher was at HQ using his desk. Mr Buckton-Holloway came into the room and said to her "*oh, so you really are determined not to come back into Finance then*". Her response was to say that it was nothing personal and she wished people would understand what she was going through and how difficult things were for her. She explained that Ms McCullam had been giving her a hard time earlier that week, that how she missed the banter between her and Mr Buckton-Holloway and how quiet it was. He said that her absence had had a noticeable impact on the Finance team and the Claimant replied that she did not have the energy to keep making everyone else happy.
56. Mr Buckton-Holloway said in evidence that he did not recall the actual words in quotes in the typed note at R1 414C, but he and the Claimant had many conversations, he missed having her in the Finance Office and he popped into see her on many occasions. He was also aware of the general situation involving the Claimant and her health reasons for being away from the Finance Office, although Ms Brooker was dealing with the matter.
57. On balance of probability we think it more likely than not that he did say words to the effect of those attributed to him although we accept given his relationship with the Claimant that these were not intended to cause offence or to harass.

*25 October 2016 comments made by Mr Hallam:*

58. This is set out at paragraph 16.4 of the Claimant's Details of Complaint at R1 27, paragraph 3.3.4 of the List of Issues at R1 53H and in her note at R1 414D. In essence, the Claimant alleges the following. She received an email from Mr Hallam asking to have a catch-up meeting at 2 pm that day. She rang him to ask if it was going to be the same sort as the last time and he replied that he was afraid it will be. She told him that she could not put herself through that again and it would cause her more distress. She then told him that she was due to see her GP on the Monday for blood test results and also to discuss her work situation. Mr Hallam suggested having a short meeting. The Claimant declined. Mr Hallam suggested holding the meeting at 3pm on the afternoon of her GP's appointment. She said that all she was asking for was support to get on with her work and could do so as long as she did not feel threatened. He praised her work and reassured her that she would get the support asked for.
59. Mr Hallam said in evidence that he had intended to hold a catch-up meeting with the Claimant to discuss the plan as to her return to the Finance Office. However, the Claimant phoned him after receiving his email seeking to hold a catch-up meeting at 2 pm and because she indicated that she was going to see her GP the following Monday, he suggested hold their meeting on the Monday afternoon. Mr Hallam does not remember there being any discussion as set out in the Claimant's note.

60. On balance of probably we think it more probable than not that this discussion did take place as the Claimant sets out, given Mr Halam's desire to hold a the meeting, the subject matter and his intention to regularly check on the Claimant with a view to her returning to the Finance Office.

*26 October 2016 comments made by Ms Brooker:*

61. This is set out in the Claimant's typed note at R1 414E. It is not referred to in her Details of Claim or identified in the List of Issues. In essence, she alleges the following. She had a discussion with Ms Brooker when they were in the toilets. Ms Brooker asked her if she was alright, the Claimant replied no and Ms Brooker suggested they talk and they agreed to meet that afternoon. At the meeting she told Ms Brooker what had been happening and she felt that Mr Hallam was intimidating her. Ms Brooker asked her why she was seeing her doctor and the Claimant replied to get a letter from her doctor so as to obtain support from the Respondent. She said that all she was asking was to sit in a quieter office, her work was not affected by her therapy and that she was mentally able to carry out her work. Ms Brooker suggested that she did not need to see her doctor because all they would do is sign her off or give her medication. She suggested that the Respondent could get its Occupational Health advisers ("OH") to speak to her therapist and see what way the Respondent could support her.
62. In oral evidence, Ms Brooker accepted that she probably bumped into the Claimant in the toilets and asked how she was and suggested a catch-up as this was something she would generally do. She said in evidence that the note was a partial reflection of their discussion although the Claimant did not raise the issue of intimidation. Had she done so, Ms Brooker said that she would immediately have discussed the matter. She added that it was something that the Claimant subsequently raised. Further, she would not have advised the Claimant against seeing her GP. She said she did not raise the issue of OH contacting the Claimant's therapist.
63. On balance of probability we find that there was likely to have been a discussion as to Mr Halam's approaches but not couched in terms of intimidation or harassment. If there had then we accept that Ms Brooker as an HR professional would have responded accordingly. The discussion as to the GP is innocuous and appears to be an attempt to help. On balance we find that it more likely than not that was what took place, save for the discussion about OH which was not put to the witness.

*8 November 2016. Meeting with Ms Brooker:*

64. This is set out at paragraph 16.5 of the Claimant's Details of Complaint, paragraph 3.3.5 of the List of Issues at R1 53H and her typed note at R1 414EA. In essence, the Claimant alleges the following. She had a meeting with Ms Brooker. She told her that her GP had been very supportive and would be providing a letter stating that she should stay in the IT Office for the foreseeable future. Ms Brooker said she had spoken to Mr Hallam. He was happy for the Claimant to continue to meet with her, but they needed her back in the Finance Office, certainly before Christmas. There was a discussion about the pros and cons of this from both sides. The Claimant repeated her concerns that Mr Hallam had tried to intimidate her and also he was not

supporting her. She said this was causing her to feel more stressed. Ms Brooker stressed that in the HQ everyone was working in their teams and there are not many places the Claimant could be put in any event. Ms Brooker said let's wait for the GP's letter. She asked the Claimant to complete an OH consent form. The Claimant also raised Ms McCallum's negative comments to her and Ms Brooker said she would speak with Ms McCallum.

65. Ms Brooker said in oral evidence that this meeting took place, but she did not take notes because this was intended as a catch-up meeting and not a formal meeting. She accepted that she said that the Claimant should aim to return to the Finance Office by Christmas and that the Claimant said she was feeling stressed and anxious. She said they discussed the challenges to the Claimant presented by the work environment and that she suggested discussing this with her therapist and they agreed to making a referral to OH.
66. Whilst she also stated in her written evidence that she offered the Claimant 4-5 alternative work locations, this was a discussion which did not take place until a later meeting and so we think it more probable than not it was not raised on 8 November 2016.
67. On balance of probability we find that because Ms Brooker broadly accepts the parameters of the conversation it is more likely than not that it took place as the Claimant described it, although Ms Brooker did not remember a discussion about Ms McCallum's negative comments and certainly did not speak to Ms McCallum about any such comments.
68. For continuity purposes we now set out findings relating to the provision by the Claimant of a medical report from her GP and the referral to the Respondent's OH advisers.
69. On or about 10 or 11 November 2016, the Claimant provided a medical report from her GP to Ms Brooker. This is at R1 436. The nub of the report was the recommendation made by the GP to let the Claimant stay in her current or contained environment. The Claimant's evidence is that Ms Brooker appeared disappointed and said: *"let's wait and see what the outcome of the OH report says."* Whilst this was not put to Ms Brooker in evidence, it is more probable than not that this is what she said, although the interpretation of disappointment is what the Claimant perceived is not something we can make a finding on, as it was also not put.
70. On 11 November 2016, the Claimant was referred to the Respondent's OH health adviser. We were referred to documents evidencing the referral at R1 100-101 but there were no documents setting out the terms of the referral. A report was provided to the Claimant dated 5 December 2016. The Claimant corrected the original report and an amended version was supplied. These are at R1 438 and 442. The report was provided to the Respondent on 17 January 2017 (at R1 441).
71. The report essentially contained the following. It identified the condition of Complex Trauma and what had led to it. It also identified partial hearing loss, a benign breast tumour and a back injury. It set out the Claimant's concerns arising from her work environment, sitting in the Finance Office and the

beneficial effects on moving to the IT Office on her Complex Trauma. It reports the Claimant's concerns as to being pressurised to return to the Finance department and the anxiety and panic caused by this. The report states that the Claimant is fit to work with some adjustments. The adjustment identified by the OH physician was to keep the Claimant:

*"... in a situation such as the current IT office and not return to the finance department. This is essentially an organisational issue and therefore must be for her managers to resolve, although I do agree that if she were put back in the finance department, it could have an adverse effect on her health and wellbeing. There is also on record, a letter from her GP supporting this opinion as well."*

72. The report then sets out the responses to specific questions raised by the Respondent:

- "1. The condition affects the employee by making her feel extremely anxious and subject to panic attacks if she were to return to the finance department. With empathic support however, it will not have any significant impact on her ability to do her job.*
- 2. I am certain that Christina is having the appropriate therapy, and is proving beneficial although likely to be long term.*
- 3. Providing Christina is given an appropriate place in which to work, I cannot see any difficulty with her being able to provide regular and effective service in the future.*
- 4. In my opinion, her condition is likely to be covered by the disability provision of the Equality Act 2010.*
- 5. My main advice to the employer would be to engage with Christina and have a conversation to understand where she needs to be able to sit in order to do her work most effectively, and why."*

73. The report was not dealt with by the Respondent until March 2017.

*17 November 2016. Comments by Mr Parker-Jones:*

74. This incident is set out at paragraph 16.6 of the Claimant's Details of Complaint at R1 27, paragraph 3.3.6 of the List of Issues at R1 53I and her typed note at R1 416. The latter sets out in some detail the incident in which she alleges that Mr Parker-Jones was rude to her when entering the POO room and effectively threw her out of the room so that he could use it, which left her distressed and shaken.

75. Mr Parker-Jones accepted what happened but denied that he was rude or effectively threw the Claimant out of the POO room. He said that he explained to the Claimant why he needed to use the room (for a conference call) and she accepted and left. He returned to the room later to use it, thinking the Claimant left work at 4 pm but in fact she was still there. He accepted that she may well have been on the telephone when he entered. He further accepted that he came in and set up for his conference call whilst

she was in there, but he did not think that unreasonable given their agreement and she was due to leave. He was not aware why the Claimant was using the room but knew she used it regularly.

76. On balance of probability we find that the incident happened, there was perhaps a misunderstanding by Mr Parker-Jones as to when the Claimant was leaving work and so he did come into the room and set up whilst she was still there, expecting her to have left by 4 pm. Clearly the Claimant found it inconvenient that he did this and that his simply coming into the room when she was still there on the phone was rude. However, Mr Parker-Jones denied being the room or throwing her out of it because she had told him she was going to leave. The Claimant alleges that she was left shaking and distressed and subsequently raised the matter with Ms Brooker who said she would speak to Mr Parker-Jones. However, this was not put to Ms Brooker in cross examination. On balance we prefer the evidence of Mr Parker-Jones.

*1 March 2017. Meeting with Ms Brooker:*

77. This incident is set out at paragraph 16.7 at R1 27 of the Claimant's Details of Complaint, paragraph 3.3.7 of the List of Issues at R1 53l and in her typed notes at R1 418.
78. This meeting took place after the Respondent had received the Claimant's OH report in January 2017. We were unclear why it took this long to hold a meeting about the report.
79. The Claimant alleges as follows. There was a discussion about the OH report, Miss Brooker was clearly unhappy and frustrated by the recommendations which she felt were insufficient. Miss Brooker made it clear that the Claimant was to move back to the Finance Office. As a result Claimant felt distressed. Ms Brooker asked her what she would do once they move to open plan offices next year and the Claimant replied "*well hopefully I won't be here by then*".
80. Ms Brooker said in oral evidence that she took notes of this meeting, she had them but that they were not in the bundle. She said she could only apologise. She denied being frustrated but she said she was concerned that the report did not go into specifics as to what would assist the Claimant given that staying where she was in the IT Office or similar was not an option.
81. Ms Brooker stated that there was a detailed discussion of options and she gave the Claimant a number of alternatives. This is the discussion which the Claimant states took place at a meeting on 31 March 2017 which accords with the evidence given by the Respondent's witnesses. We are inclined to think that on balance this part of the discussion, as the Respondent states happened, took place at that later meeting, on 31 March 2017. This is supported by an email dated 29 March 2017 at R1 120 sent by Ms Brooker to the Claimant ahead of the meeting.
82. With regard to the meeting on 1 March 2017, both the Claimant and Ms Brooker agree that they spoke about the OH report and Ms Brooker was

concerned that it did not go into specifics and so to that extent she was not happy and was going to seek further medical evidence.

*31 March 2017. Meeting with Mr Hallam and Ms Brooker:*

83. This is set out at paragraph 16.8 of the Details of Complaint at R1 28, paragraph 3.3.8 of the List of Issues at R1 53I and in the typed note at R1 419. There was a discussion as to the OH report and the Claimant was provided with other alternatives to the POO room or the IT Office. There is no dispute that the Claimant rejected these options as unsuitable. The Claimant's evidence is that they required a third medical opinion and Ms Brooker told her that her therapist should focus on helping her to return to the Finance Officer. As a result she felt distressed.
84. The Respondent's position is that it attempted to out find from the Claimant what her needs were as per the OH recommendation to have a discussion with her, but all that she said was that she wanted to stay where she was. The Claimant was asked to provide other options but did not do so. Mr Hallam said in evidence that they had not got the information needed from the Claimant's GP or from OH or through the Claimant from her therapist. Whilst he could not recall whether it was suggested that the Claimant see a third doctor, Ms Brooker did recall saying this, although she said either from the same OH adviser or another practitioner.

*28 April 2017. Comments of Ms Brooker:*

85. This incident is set out at paragraph 16.9 of the Details of Complaint at R1 28 and in the typed notes at R1 419A. There was a catch-up meeting with Mr Hallam and Ms Brooker. The Claimant's evidence is that she mentioned that her tumour was now out of control and she had a doctor's appointment the following week. She states that Mr Hallam looked shocked and Ms Brooker insisted that they did not have the necessary information they needed to support her (in respect of the place of work) and she had to see the company doctor again. The Claimant further states that they attempted to diarise another catch-up meeting to which she responded that where she sat was not her priority now given issue with her tumour. Ms Brooker looked at Mr Hallam as if to say, "*shall we push it*" and he shook his head, as if to say, "*leave it*". The meeting ended there, the Claimant leaving in tears and highly distressed.
86. In oral evidence Mr Hallam accepted that a meeting had taken place with the Claimant and that the note of this was generally accurate save for pressing her to see a third doctor. His evidence was that they did not press for this it given the health issue that the Claimant raised at the meeting. We accept that.

*Early October 2016. Comments by Ms Ariyawansa, Ms McCallum and Mr Thompson:*

87. This is set out at paragraph 18.1 of the Grounds of Claim at R1 28 and the names of those alleged to have made the comments is contained within the List of Issues at R1 53i. The Claimant alleges that as a result of her move from the Finance Office in September 2016 onward, various member of staff

made negative comments towards her, were short tempered and less helpful. Her evidence is at paragraph 65 of her witness statement at some length.

88. The Claimant alleges that she discussed Ms McCallum's negative comments with Ms Brooker on 8 November 2016 (at R1 414EA). However, Ms Brooker denied this. Mr Hallam's evidence was that the Claimant had mentioned that she was concerned that other members of the team were not being nice to her at their meeting on 26 September 2106. He said that he explored this with the Claimant, to determine whether it was anyone particular or if she was being bullied. He said that he subsequently spoke to the staff as to whether they had seen anything untoward and they were all quite shocked. He said he would not have tolerated it if this was going on.
89. We also note the conversation that the Claimant had with Mr Buckton-Holloway on 20 October 2016 at R1 414C as to how she was feeling generally about comments and attitudes of colleagues. He gave evidence that he and the Claimant spoke on many occasions and whilst the exact words attributed to him are not words that he would use, he was aware that she was going through a difficult time.
90. Given Mr Hallam's evidence we find on balance of probability that such comments were more likely than not being made by other members of staff.

*18 October 2016. Comment by Ms McCallum as to the shredder:*

91. This is set out at paragraph 18.2 of the Grounds of Claim at R1 28 and at paragraph 3.4.1 of the List of Issues at R1 53I. In essence the Claimant alleges that when she went to the Finance Office to use the shredder, Ms McCallum commented "*I'm surprised you didn't take that with you*".
92. Ms McCallum's evidence was that she did not remember making such a comment but it was possible that she did because the Claimant was very particular about her office equipment. She had taken her chair and other equipment away when she moved out the Finance Office and was very attached to the shredder, referring to it as "*her baby*". On balance we find that this comment was made.

*20 October 2016. Comment by Mr Buckton-Holloway:*

93. This is set out at paragraph 18.3 of the Grounds of Claim at R1 28 and paragraph 3.3.3 of the List of Issues at R1 53I. We have already dealt with it above.

*Colleagues becoming generally more short-tempered with her:*

94. The Claimant alleges at paragraph 18.4 of her Details of Complaint and paragraph 3.4 of the List of Issues at R1 53I that her colleagues became generally more short-tempered with her and demonstrated their frustration that she no longer sat in the Finance Office with them.
95. As a general finding in respect of the above comments, on balance we find that the Claimant perceived an atmosphere within the Finance team arising from her absence. She has taken this from a number specific comments,



attitudes and behaviours set out above. However, we find that this was not intended either individually or collectively to apply pressure or to harassment or offend the Claimant. In particular as to an email containing a reference to lemon drizzle cake and the comment “*come back we miss you*” which we accept from Ms McCallum’s evidence were intended to be acts of kindness and not intended as harassment or pressure or by way of offence.

*Being informed by other colleagues that Ms McCallum was obsessed about getting the Claimant back and pressuring Mr Hallam about this and not letting anyone else sit at her desk:*

96. This is set out at paragraph 18.5 of the Claimant’s Details of Complaint at R1 29 and encompassed within paragraph 3.4.4 of the List of Issues. Mr Hallam gave evidence that he was under no pressure from Ms McCallum and that he decided to keep the Claimant’s desk free to assist with the Claimant’s return therapy. Ms McCallum’s evidence was that she was not obsessed with getting the Claimant to return and if anyone asked to use her desk, she referred them to Mr Hallam. On balance we accept that there was no pressure from Ms McCallum and that the desk was kept free in order to facilitate her return to the Finance Office which was Mr Hallam’s oft repeated intention.

*Negative comments and behaviours displayed towards the Claimant as a result of her use of the POO room:*

97. This is set out at paragraph 20 of the Details of Complaint at R1 29 and paragraph 3.5 of the List of Issues at R1 53l.
98. At paragraph 20.1 the Claimant alleges that I December 2016/February 2017 Ms Pickering, the Special Advisor – Quality Improvement was very irritated and angry with the Claimant as she wished to use the POO room to make calls and the Claimant was in there. She is alleged to have said in an exasperated and irritated manner: “how long is this going to go on for?” and left the room very annoyed.
99. Ms Pickering accepted that the incident happened, that she needed to use the room to make a private phone call and said to the Claimant from the door, how long are you going to be because I need to make a private phone call. Ms Pickering told us that the POO room was general meeting room, used by many and there no reason why the Claimant should be there. She denied being exasperated or frustrated or that she left clearly very annoyed although she may have been inconvenienced by the Claimant’s use of the room. On balance we accept that Ms Pickering was likely to have been irritated by the Claimant’s presence in the room when she needed to make a private conversation and perhaps this came out in what she said to the Claimant, although we do accept that she was not annoyed. Whilst we were unclear of the exact words that were used, we can see that they could be open to the interpretation that the Claimant placed upon them.
100. At paragraph 20.2 the Claimant alleges that in January and March 2017 Ms Carla Rockson, the Head of Seafarers Education, repeatedly asked her to find somewhere else to sit, notwithstanding that the Claimant had booked the

room out. She also quizzed the Claimant as to how long she would be using the room for.

101. Ms Rockson's evidence was that she held her weekly team meeting in the POO room on Wednesdays and when it became apparent that the Claimant was using it on regular basis, she asked her about it. She said that if the Claimant was using the room on a Wednesday they moved to another room. The only time that she may have asked the Claimant to move out was when there was going to be an OFSTED inspection. She said that her dealings the Claimant were always friendly. On balance we accept that Ms Rockson queried why the Claimant was using the POO room when she used it on a weekly basis, but she made other arrangements if necessary. We accept that these interactions were not intended to harass the Claimant but purely made on a practical basis.
102. This is set out at paragraph 20.3 of the Claimant's Details of Complaint at R1 29. The Claimant alleges that in April 2017 Mr Chubb, the Business Developer, came into the POO room in an agitated state and said to her that he had an external meeting which he had forgotten about and that he needed the room. He got very agitated with the Claimant and asked why she was using the room and how long for. He then rushed out of the room clearly very annoyed with the Claimant. We heard no evidence from the Respondent and accept the Claimant's evidence.

*17 November 2016 incident with John Parker-Jones:*

103. This is set out at paragraph 20.4 of the Claimant's Details of Complaint and we have already dealt with above.

#### The Claimant's dismissal

104. On 31 May 2017, the Claimant emailed Mr Hallam to advise him that the tumour in her breast was fast growing and she requires surgery to remove it. She indicated that she had a provisional date of 12 June 2017 on which to undergo a mastectomy and due to the invasiveness of the procedure it would be six weeks before she could return to work. This email is at R1 121. Mr Hallam responded later that afternoon expressing he sorrow at her news his hopes that all would go well (at R1 122).
105. On 8 June 2017, the Claimant had a handover meeting with Mr Hallam, Mr Hallam having told her that a temp was starting on the following Monday to cover the Claimant's role in her absence.
106. The Claimant sent a further email to Ms Brooker, cc'ed to Mr Hallam, on 9 June 2017 indicating that she was not well enough to attend work that day and would arrange for a sick certificate to be sent to them (R1 123). Ms Brooker replied later that morning with her best wishes (at R1 123).
107. As to future plans for the Finance Team at this time, the Respondent's position is as follows:

107.1 There had been a longstanding intention in discussions between the Mr Martin Coles, the Respondent's Chief Executive Office and Mr

Hallam to reorganise the Finance Team from a Director of Finance with two Joint Finance Managers with separate roles reporting to him, to a Director of Finance with a Financial Controller and Finance Officers reporting to the Financial Controller. This was intended to create a more pyramid structure because Mr Hallam had too many people reporting directly to him;

- 107.2 The opportunity to achieve this was in sight because the Respondent knew that Ms Ariyawansa (the other Joint Finance Manager) was due to retire on a particular date in September 2016. In oral evidence Mr Halam said that he had mentioned to the Claimant on several occasions over the years that when Ms Ariyawansa retired, the Respondent was going to replace her with a Financial Controller. However, he accepted in evidence that he did not mention any possible impact on the Claimant's own role arising from this.
- 107.3 The Respondent had intended to announce the planned reorganisation on the Wednesday, but on the Monday of that week, the Claimant told them that she was going off for her surgery. As a result, the Respondent decided that in the circumstances it was not appropriate to proceed with the complete reorganisation as originally conceived. We could not determine the dates of these events. We will come back to our findings on this later.
- 107.4 However, the Respondent needed to replace Ms Ariyawansa as a matter of urgency given her impending retirement, as well as the Purchase Ledger Finance Officer, Mr Thompson who was leaving at about the same time.
- 107.5 As result the Respondent decided to undertake a two-stage reorganisation. The first stage being to recruit the Financial Controller and the second stage to look at the impact of the restructure on the Claimant's role.
- 107.6 The Finance Controller post was for a more senior position, requiring a graduate, qualified accountant. Mr Hallam sets out the justification for the senior and qualification required in his witness statement at paragraphs 38-41. The Purchase Ledger Finance Officer was to be retained and re-recruited.
108. On 19 July 2017 the Claimant sent an email to Ms Brooker as the outcome of her operation and its impact on her. She was due to return to work on 26 July 2017 and then on annual leave from 8 July 2017. She requested to work at home for the period prior to her annual leave so that the wounds from her operation could fully heal. The email correspondence is at R1 130A-B.
109. Ms Brooker had already sent the Claimant at email earlier on 19 July 2017 enquiring as to how she was, advising her of the recruitment of Ms Ariyawansa 's replacement, which she believed the Claimant was already aware of from Mr Hallam, and the recruitment of Mr Thompson's replacement (at R1 128).

110. Ms Brooker emailed the Claimant on 20 July 2017 believing that the Claimant's email of 19 July 2017 was in response to her email of 19 July 2017 (at R1 130A). In this email Ms Brooker states "*thank you for your quick response to my email*". She further states that she was glad that the operation was a success and thanked her for the update on progress. She asks for a medical certificate indicating that the Claimant is fit to work. She agrees to the Claimant's request to work from home but only for part of the following week and would like her to be in the office at least two days to begin her reintegration after time away. The email refers to Taimur covering the Claimant's work in her absence.
111. The Claimant replied to this email on 25 July 2017 querying the reference to Ms Brooker's previous email, stating that she has not received any communication since her operation on 13 June 2017 (at R1 130). In this email she reports that she that her doctor has declared her fit to work from home but not fit to travel. The email refers to an attached medical certificate which is at R1 131. The email discusses work arrangements in which the Claimant indicates that there will likely be a backlog of emails which she will have to deal with during time working at home and that Taimur would not be able to cover all aspects of her work which she can establish in speaking with him. She also indicates that she will be on annual leave from 7 to 11 August 2017 and requests a further day's leave on 4 August 2017 to see her therapist. She states that cover will need to be arranged during her absence to process the volunteer payroll to meet the payroll deadline.
112. Ms Brooker replied by email later that day at R1 132. She agrees to accommodate home working in the short term. She agrees to the work arrangements that the Claimant set out. Whilst expressing surprise at the request for cover, she states that they will ask Taimur to cover the payroll during her leave.
113. The Claimant is thereafter working from home. She goes off on leave from 7 to 11 August returning on 14 August 2017. She returns to work in the office on 14 August but on doctor's advice this becomes a phased return (as set out in the emails at R1 145) until a planned full time return to the office from the week commencing 4 September 2017.
114. On returning to work in the office on 14 August 2017, the Claimant was told by Ms Ariyawansa that the Finance Department was being restructured, that there was going to be a new Financial Controller and 2.5 Finance Officers, but no Finance Managers.
115. The Claimant had a meeting with Mr Hallam on 22 August 2017, when he was next in the office. As a result of what the Claimant had learned from Ms Ariyawansa, she asked for the restructure of the Finance Department to be part of the agenda. This is in her email of 21 August 2017 to Ms Brooker at R1 145.
116. We note the email of 21 August 2017 from Ms Brooker to Mr Coles which indicates that Mr Hallam was keen to start the consultation process with the Claimant that week in any event and that one of the attachments sets out the redundancy calculations (R1 147). This was at odds with Mr Hallam's written evidence as amplified in his oral testimony that there was no urgency or haste

and he would have preferred to have held back on raising the matter to allow the Financial Controller to settle in, but his hand was forced by the Claimant raising the matter. On balance we do not accept his evidence in this regard.

117. The meeting took place on 22 August 2017 between the Claimant, Mr Hallam and Ms Brooker. The Claimant was handed two documents, one headed Restructure Proposal for Finance Department 2017 and the other the job description for the new Finance Officer role (R1 227-229 and 488C-D). It appears that after the meeting the Claimant was given a letter confirming the discussion at the meeting (at R1 194). The Claimant's typed note at R1 419B sets out what she states happened at the meeting. This is also set out at some length in her witness statement at paragraphs 74-76.
118. In essence, at the meeting the Claimant was advised of the proposal to restructure in two phases. First by creating a new Financial Controller role, which Mr Hallam said would not affect the Claimant because the Respondent was looking for a Central Council of Accounting Bodies ("CCAB") qualified accountant. She explained that she was part-qualified and had previous experience as a Finance & IT Manager. Part of the proposal was also to make changes to the Claimant's role which put her at risk of redundancy. The second phase was to appoint two Finance Officer posts (at a lower salary than the Claimant was receiving). The Claimant was advised that the following two weeks until 5 September 2017 were a consultation period in which the Respondent would consider any alternative proposals that the Claimant put forward. The Claimant was invited to apply for the Finance Officer roles. A further meeting at which the final decision would be given was scheduled for 12 September 2017.
119. During the meeting Mr Hallam told the Claimant that he had already told her about the restructuring before she went off for her operation. The Claimant denied this at the time and in evidence to us. Ms Brooker in her witness statement stated that Mr Hallam had told the Claimant prior to her going on sick leave as to the commencement of the recruitment to the Financial Controller post, which is a different issue of course. The Claimant denied this. Reference was made to an email from Mr Hallam to the Claimant on 1 September 2016 at R1 302. However, we note that the reference to restructuring within the second paragraph is extremely vague. We also found that Mr Hallam had a general reluctance to deal with personal issues with staff. On balance we accept that the Claimant was not told of the restructure and in particular the commencement of the recruitment before she went on sick leave. We also find that there is no evidence to support the contention that the Claimant was aware before she went on sick leave that her job was at risk.
120. We note that at her request the Claimant was sent draft redundancy calculations and a copy of Financial Controller's job description on 24 August 2017 (email from Ms Brooker to the Claimant at R1 448B). The draft redundancy calculations are at R1 488E. It is clear from the job description at R1 488C-D (the second set of pages with that numbering), that the Claimant did not have the qualifications required for the job, although we accept that she may have had much relevant experience. The Claimant accepted in her witness statement that she lacked some experience in completion of final year end accounts in the Statement of Recommended

Practice (“SORP”) format. However, it went beyond this particularly given the Respondent’s requirement that the post holder needed to be a qualified accountant.

121. On 31 August 2017, the Claimant found out from Mr Scott Sicklemore, the newly appointed Business Analyst, who had been covering the KPIs in her absence, that he had been telephoned the day before by Mr Hallam who told him that from now on he would be doing the KPI’s and not the Claimant. The Claimant’s view is that this demonstrated that the consultation was a sham and that her dismissal was predetermined. Her note of this discussion is at R1 419C.
122. The KPIs had not been dealt with by the temp covering the Claimant’s absence but by Mr Sicklemore. Mr Hallam said in evidence that prior to her absence on leave there had been a discussion about transferring the KPIs to another member of staff. However, this appears to have been the much earlier discussion as to the Claimant’s job description and not in the context of the reorganisation. In an email dated 3 October 2017 from the Claimant to Mr Hallam at R1 397 she raises her concerns about her loss of the KPIs to Mr Sicklemore and also refers to the earlier discussion as to KPIs.
123. We note that the consultation process had already commenced and was due to end on 5 September 2017 and the KPIs had been given to Mr Sicklemore whilst the Claimant was off work due to her operation and subsequent recovery. We can see that this adds to the Claimant’s impression that the decision to make the Claimant’s post redundant had already been made.
124. A further consultation meeting took place on 4 September 2017 between the Claimant, with Mr Fraser Lowe accompanying her, and Mr Hallam and Ms Brooker. The Claimant’s note of this meeting is at R1 419D. The Claimant said that her consultation process had started too late. The Respondent stated that the first phase did not affect her and so the consultation started at the second phase. The Claimant said that she should have been given the chance to apply for the Financial Controller position to utilise her skills. The Respondent stated that they needed a chartered accountant for the role. The Claimant pointed out an inaccuracy in the current structure shown in the restructuring proposal document. Ms Brooker agreed to revise this. Ms Brooker asked the Claimant if her role stayed the same would she accept reporting to the new Financial Controller and she replied no, because this would effectively be a demotion in that she would no longer report directly to the Finance Director.
125. The final consultation meeting took place on 14 September 2017 with the same persons present as at the previous meeting. The Claimant’s note of the meeting is at R1 419E although it contains more of a commentary on what happened rather than a record of the meeting itself. R1 232-234 sets out the Respondent’s decision which along with the letter that date at R1 230-231 was read out to the Claimant by Mr Hallam. The nub of the meeting was that the Respondent had decided to continue with its proposals and that as a result the Claimant would be issued with formal notice of redundancy to take effect from 18 September 2017. A meeting on that date would take place at which she would be handed a letter of redundancy. She was advised of her

right of appeal. The document headed Finance Restructure Outcome at R1 232 sets out the decision and summary of changes following consultation.

126. On 9 September 2017 the Claimant was given a letter giving notice of redundancy (at R1 237-238). The letter confirmed her redundancy, recorded her wish not to be considered for the Finance Officer role and stated that there were no other suitable alternative roles within the Respondent organisation. The Claimant was given 3 months' notice of termination of her employment, her last day being 18 December 2017. The new structure would be implemented from 2 October 2017 but there would be a period of transition and handover of activity. The letter set out the Claimant's entitlement to statutory redundancy payment, notice and annual leave. A further letter made reference to an enhanced package but this was clearly made on a without prejudice basis. The Claimant was reminded of her right of appeal.
127. By a letter dated 3 October 2017 the Claimant appealed against her redundancy. This is at R1 225-226 and rather confusingly it is headed "*Without Prejudice – Redundancy Appeal with Grievance*". However, it clearly is not a without prejudice document but intends to appeal against redundancy and also raise a grievance. The letter sets out the grounds of appeal. The letter states by way of appeal that she has been discriminated on the basis of her disability and ongoing treatment for Complex Trauma and by way of grievance that there has been a failure to make reasonable adjustments to her working environment notwithstanding medical advice. The letter further states that this was followed by a sustained period of bullying and harassment started by Mr Hallam and continued in collaboration with Ms Brooker with the sole aim of getting the Claimant to sit back in the Finance Officer with no regard for her health or wellbeing. The letter then goes on to set out a number of instances with Mr Hallam and Ms Brooker in support of these allegations. The letter continues by dealing with the deficiencies and shortcomings of both the restructuring proposals, the consultation process and the decision to make her redundant.
128. A meeting to deal with both the appeal and grievance took place on 20 & 25 October 2017. The meeting was conducted by Mr Coles and with the involvement of Ms Kathryn Stone, one of the Respondent's Trustees, who has experience of working with Complex Trauma. The Claimant was accompanied by Mr Lowe. The notes of the meeting are at R1 246-250. The Claimant's notes of the meeting on 20 October 2017 are at R1 419G-I
129. Following the meeting, Mr Coles wrote to the Claimant by letter dated 8 November 2017 in which he set out the outcome of the grievance. This is at R1 243-245. The letter indicates that during the meeting it was agreed that the Respondent would resolve the grievance first (for which there was a right of appeal) before reaching a conclusion as to the redundancy appeal (which had no further right of appeal). For reasons set out at R1 244-245, the Claimant's grievance was rejected.
130. By a letter from the Claimant to Mr Coles dated 15 November 2017 (at R1 251), she expressed her disappointment at the outcome of the grievance and queried the statement that she had agreed to the grievance being dealt with first. In the letter she states she was given the option of having both the grievance and redundancy appeal heard and decided at the same time or the

grievance heard only before going ahead with the redundancy appeal hearing. The letter continues that she stated that she wanted both decisions to be made at the same time. The letter finished by stating that in the circumstances, the Claimant would reserve any comment on the grievance outcome pending receipt of the redundancy appeal outcome.

131. By a letter to the Claimant dated 29 November 2017 Mr Coles wrote setting out the decision in respect of the redundancy appeal. This is at R1 490-493f. For the reasons set out at R1 491- 493, the Respondent upheld the decision to make the Claimant's post redundant.
132. We had a written opening submission from the Claimant's Counsel and closing submissions from the Respondent's Counsel. These were amplified orally in closing submissions. We have taken these into account in reaching our findings and conclusions.

### Relevant Law

133. Section 98 Employment Rights Act 1996:

*"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*

*(a) the reason (or, if more than one, the principal reason) for the dismissal, and  
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2) A reason falls within this subsection if it—*

*(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,  
(b) relates to the conduct of the employee,  
(c) is that the employee was redundant, or  
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*

*(3) In subsection (2)(a)—*

*(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and  
(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.*

*(4) [In any other case where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*

*(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

*(b) shall be determined in accordance with equity and the substantial merits of the case."*

134. Section 13 Equality Act 2010:

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



135. Section 15 Equality Act 2010:

*“1) A person (A) discriminates against a disabled person (B) if—*

*(a) A treats B unfavourably because of something arising in consequence of B's disability, and*

*(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

*(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”*

136. Section 20 Equality Act 2010:

*“(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.*

*(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

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

*(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.*

*(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.*

*(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.*

*(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—*

*(a) removing the physical feature in question,*

*(b) altering it, or*

*(c) providing a reasonable means of avoiding it.*

*(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—*

*(a) a feature arising from the design or construction of a building,*

*(b) a feature of an approach to, exit from or access to a building,*

*(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or*

*(d) any other physical element or quality.*

*(11) A reference in this section, section 21 or 22 or an applicable Schedule to an*

*auxiliary aid includes a reference to an auxiliary service.*

*(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.*

*(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.*

<i>Part of this Act</i>	<i>Applicable Schedule</i>
<i>Part 3 (services and public functions)</i>	<i>Schedule 2</i>
<i>Part 4 (premises)</i>	<i>Schedule 4</i>
<i>Part 5 (work)</i>	<i>Schedule 8</i>
<i>Part 6 (education)</i>	<i>Schedule 13</i>
<i>Part 7 (associations)</i>	<i>Schedule 15</i>
<i>Each of the Parts mentioned above</i>	<i>Schedule 21”</i>

### 137. Section 21 Equality Act 2010:

*“(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*

*(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*

*(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”*

### 138. Section 26 Equality Act 2010

*“(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and  
(b) the conduct has the purpose or effect of—  
(i) violating B's dignity, or  
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...*

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

*(a) the perception of B;  
(b) the other circumstances of the case;  
(c) whether it is reasonable for the conduct to have that effect.”*

## Our conclusions

### Time Limits

139. There is a time limit issue regarding the complaints that the Claimant has brought under the Equality Act 2010.

140. Section 123 governs time limits under The Equality Act 2010. It states as follows:

*“(1) [Subject to sections 140A and 140B,] Proceedings on a complaint within section 120 may not be brought after the end of—*

*(a) the period of 3 months starting with the date of the act to which the complaint relates, or  
(b) such other period as the employment tribunal thinks just and equitable...*

*...(3) For the purposes of this section—*

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

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

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

*(a) 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.”*

141. An act of discrimination which “*extends over a period*” shall be treated as done at the end of that period under section 123(3) Equality Act 2010. In some situations, discrimination continues over a period of time, sometimes up to the date of leaving employment. If so the time limit in which to present a Claim Form to the Employment Tribunal runs from the end of that period. The common, although technically inaccurate, name for this is ‘continuing discrimination’.
142. In Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96, the Court of Appeal held that a worker need not be restricted to proving a discriminatory policy, rule, regime or practice, if s/he could show that a sequence of individual incidents were evidence of a “*continuing discriminatory state of affairs*”.
143. An Employment Tribunal may allow a claim outside the time limit if it is just and equitable to extend time. This is a wider and therefore more commonly granted discretion than for unfair dismissal claims. The Tribunal must weigh up the reasons for and against extending time and explain its thinking. Tribunals have been directed to consider the checklist contained with section 33 of the Limitation Act 1980, suitably modified, although a Tribunal will not make a mistake as long as it does not omit a significant factor.
144. The factors to take into account under the Limitation Act 1980 (as modified) are these:
  - 144.1 the length of, and reasons for, the Claimant’s delay;
  - 144.2 the extent to which the strength of the evidence of either party might be affected by the delay;
  - 144.3 the respondent’s conduct after the cause of action arose, including his/her response to requests by the worker for information or documents to ascertain the relevant facts;
  - 144.4 the extent to which the worker acted promptly and reasonably once s/he knew whether or not s/he had a legal case;
  - 144.5 the steps taken by the worker to get expert advice and the nature of the advice s/he received. A mistake by the worker’s legal adviser should not be held against the worker and appears to be a valid excuse.
145. The Tribunal should also consider whether the respondent is prejudiced by the lateness of the complaints, ie whether the respondent was already aware of the allegations and so not caught by surprise, and whether any harm is

done to the respondent or to the chances of a fair hearing by the element of lateness.

146. Where the delay is because the Claimant first tried to resolve the matter through use of an internal grievance procedure, this is just one factor for the Tribunal to consider.
147. If the delay was because the Claimant tried to pursue the matter in correspondence before rushing to an Employment Tribunal, this should also be considered.
148. Case law also suggests that a Tribunal ought to take into account the apparent strengths of the case in gauging the degree of prejudice that would be caused to the claimant in finding claims to have been presented out of time.
149. In the case before us, the Claimant's claim form was presented to the Employment Tribunal on 9 April 2018 following a period of Early Conciliation from 15 March to 15 March 2018. This would mean that the earliest date that an act/omission could be in time is 16 December 2017.
150. The Claimant's Counsel submitted that all of the events were linked together and so form a course of discriminatory conduct that continued up to the Claimant's dismissal on 18 December 2017. If correct, this would mean that all of the events are in time.
151. However, the Claimant's dismissal has never been pleaded as an act of discrimination having gone through substantial pleadings in the claim form and within the revised List of Issues and in evidence during the course of this hearing. The last incident relied upon was the appointment of the Financial Controller at the end of July 2017.
152. In submissions, the Claimant's Counsel urged the Tribunal to extend time to allow the complaints on the basis of our just and equitable discretion under section 123. He pointed to the Claimant having been preoccupied with the consultation, the appeal and the grievance and post dismissal health conditions.
153. Whilst these matters might form part of the documents before us, we heard no direct evidence from the Claimant about these matters in the context of why her discrimination/harassment claim to the Tribunal did not include dismissal. Further the Claimant has been professionally represented by solicitors throughout the proceedings and of course we have heard no evidence from the Claimant as to what she knew of the time limits involved in bringing a Tribunal claim and what advice was provided to her at the time that the Claim Form was drafted and submitted.
154. Further, the issue of amending the claim to include dismissal has never arisen and indeed the point itself did not arise until submissions. We further note that the redundancy appeal/grievance letter from the Claimant at R1 225 does clearly speak of disability discrimination.
155. We therefore have nothing concrete on which to exercise our discretion.

156. With regard to the complaint of direct discrimination, the last incident relied upon is the appointment of the Financial Controller at the end of July 2017.
157. With regard to the complaint of discrimination arising in consequence of a disability the two matters relied upon are at paragraphs 6.3 and 6.4 of the List of Issues at R1 53L. Paragraph 6.3 defines the something arising from the Claimant's disability as not providing her with a providing her with a permanent workplace. Whilst the unfavourable treatment appears more to do with the Claimant back problem (which we found not to be a disability), the failure to do this occurred in September 2016 when others returned to their desks. Paragraph 6.4 defines the something arising in consequence of a disability as the Claimant's absence from the office from 12 June to 14 August 2017 and the unfavourable treatment arising in consequence during that period.
158. With regard to the failure make reasonable adjustments – the failure to do something is defined within section 123. The Claimant identifies the PCP as having been applied from September 2016 when others returned back to their desks in the Finance Office.
159. With regard to the incidents of harassment relied upon, these are capable of forming a course of conduct extending over a period of time, but the last incident was in April 2017.
160. As a result, we reach the conclusion that all of the complaints under the Equality Act 2010 are out of time and we are not able to exercise discretion so as to extend the time for presentation.
161. Nevertheless, we have gone on to consider the complaints although any conclusions reached are not determinations that can be acted upon

#### Burden of Proof - discrimination

162. Under section 136 of the Equality Act 2010:

*"...(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..."*

163. This wording whilst slightly different from that used in the previous legislation (section 54A of the Race Relations Act 1976 and section 63A of the Sex Discrimination Act 1975) is identical in terms of its meaning.
164. What it boils down to is the following: where the Claimant proves facts from which the Employment Tribunal could conclude in the absence of an adequate explanation that the Respondent committed an unlawful act of discrimination, the Tribunal must uphold the complaint unless the Respondent proves s/he did not commit that act.
165. We have had regard to the guidance set out by the Court of Appeal in Igen Ltd and others v Wong; Chamberlin Solicitors and another v Emokpae; Brunel

University v Webster [2005] IRLR 258 as to the stages that an Employment Tribunal should follow.

Disability

166. As indicated, we find that the Claimant was a disabled person under the Equality Act 2010 at the relevant times by reason of her CPTSD/Complex Trauma.

Direct discrimination

167. The allegation is that the Claimant was kept in the dark about the reorganisation, the proposal to make her role redundant and the new Finance Controller role because of her disability.

168. Whilst we are willing to accept that the Claimant was kept in the dark about these matters until she returned from her period of sick leave, we do not find that this was because of her disability. She was not told of these matters because of her impending sick leave and absence which was in respect of her breast surgery which we did not find to be a disability under the Equality Act 2010.

169. We therefore conclude that his complaint would fail if we had jurisdiction to deal with it.

Discrimination arising from disability

170. This is set out at paragraphs 6.3 and 6.4 of the List of Issues at R1 53L.

171. At 6.3 the something arising is as a result of the Claimant's Complex Trauma and is expressed to be her need to have a workstation away from the Finance Office. The unfavourable treatment is those matters arising as a result of not being provided with a permanent workstation away from the Finance Office.

172. We are of the view that this complaint is made out and that the Respondent has not satisfied us that there were matters giving rise to justification under section 15 of the Equality Act 2010 (which we explored when considering reasonable adjustments below), if we had jurisdiction to deal with it.

173. At 6.4 the something arising is as a result of the Claimant's breast tumour and not CPTSD/Complex Trauma. It therefore follows that this complaint fails if we had jurisdiction to deal with it.

Failure to make reasonable adjustments

174. The PCP is set out at paragraph 5.2 of the List of Issues at R1 53K. We accept that this is the correct PCP and it was applied to the Claimant.

175. With regard to substantial disadvantage, we are willing to accept that those matters set out at paragraphs 5.4.1 and 5.4.4. would place the Claimant at a substantial disadvantage when compared with those who are not disabled. But we note that paragraph 5.4.2. is really an issue in respect of the back

condition which we have found was not a disability and the 5.4.3 would impact upon anyone who was disabled or not disabled.

176. As to the reasonableness of the adjustment set out at paragraph 5.6, we conclude the following.
177. In an ideal world a Finance team would work together in one office. The Claimant could not because of the conditions there and the impact on her Complex Trauma.
178. Whilst she had worked in the Finance Office for several years, it was only following her commencing her therapy in January 2016 that she was confronting those matters that had caused her Complex Trauma.
179. The Finance Office was relatively small, there was no obvious bar to allowing her to work in dedicated space which suited her requirements other than the Respondent's desire to have the Finance team in one office.
180. Any practical problems caused by her sitting in another place could easily have been overcome, assuming they had not already, ie by other members of the Finance team going to the Claimant's work station (it was a small office), by email or by telephone or by the Claimant going to the Finance Office if required.
181. The Respondent did offer four alternatives as set out at Claimant's witness statement at paragraph 57. These were not suitable and the Claimant did not give any evidence at the time or to the Tribunal as to their being any other alternatives. Whilst we do wonder why the Respondent could not simply let the Claimant stay in the POO room and find another space for meetings, we heard no evidence on this. On balance we take the view that in the absence of anything to contrary it was reasonable to accommodate the C permanently in the POO room.
182. We therefore find that if we had jurisdiction to deal with this complaint it would have succeeded.

### Harassment

183. We have indicated above which of the incidents we find capable of amounting to harassment and given our views as to the purpose of the remarks of behaviour relied upon.
184. We find that the conduct complained of was unwanted.
185. We find that the conduct complained of related to the protected characteristic of disability. It arose because of the Claimant's absence from the Finance Office and she was not in the Finance Office because of her Complex Trauma. So tangentially yes.
186. We then considered whether the conduct complained of had the purpose or effect (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect)

the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

187. We accept that the Claimant perceived these comments collectively and individually as having that effect. However, looking at wider circumstances, the comments ranged from light-hearted to attempts to be inclusive, to be kind and as to missing the Claimant's presence in the Finance Office or expressing frustration that she was not there because she was missed or using a room which another of member of staff, unaware of her reasons for being there, wished to use. We therefore find that the conduct complained of did not have the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The difficult for the Claimant is that it is not reasonable to conclude that the comments individually or collective had the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

188. Thus, this complaint, if we had jurisdiction to deal with it, fails.

#### Victimisation

189. We note that there was a complaint of victimisation raised for the first time in the Claimant's witness statement but this was not pursued in evidence or submissions at the hearing.

#### Unfair Dismissal

190. We first considered whether the respondent had shown a potentially fair reason for the claimant's dismissal within section 98(1) and (2) ERA 1996. The Respondent's position is that the Claimant was made redundant following a restructuring which led to the disappearance of her post. This is a redundancy within the definition set out in section 139 ERA 1996. We find that redundancy is shown as the potentially fair reason.

191. We then turned to consider whether this was a sufficient reason for the Claimant's dismissal within section 98(4) ERA 1996. This involves an examination of both the way in which the Respondent dismissed the Claimant (the process followed, ie how the Claimant was dismissed) and the reason for the dismissal (the substance, ie why the Claimant was dismissed).

192. With regard to the process, whilst we were referred to the ACAS Code of Practice, this of course does not apply to redundancy dismissals.

193. Having considered the various meetings and notifications we do not find any failings in terms of the process followed. The Claimant was invited to meetings and offered the right to bring someone with her. Decisions were set out in writing. A right of appeal was offered and we do not find it relevant to determine the issue of whether the Claimant agree to the grievance being decided before the redundancy appeal or not.



194. With regard to the dismissal itself, with a redundancy dismissal there are a number of number of factors we are required to consider: the genuineness of the redundancy; if appropriate, how the Claimant was selected for redundancy; whether there was adequate consultation and whether there was alternative employment available that could have been offered to the Claimant so as to avoid the redundancy?
195. Dealing first with the genuineness of the redundancy. The Respondent had identified the need to restructure its Finance Department some years before and the opportunity to do so presented itself with the impending retirement of Ms Ariyawansa, the other Joint Finance Manager to the Claimant. The reasons given by the Respondent on the face of it are perfectly valid and the Claimant was aware that Ms Ariyawansa was leaving but not as to the potential effect this could have on her own employment. However, this does not affect the genuineness of the redundancy. The Respondent had sound business reasons and it is not the Tribunal's function to go behind these in the absence of clear evidence of bad faith.
196. Dealing then with selection. The Claimant's post was under threat because of the change to the structure within the Finance Department and so there is no issue as to selection although there was an issue as to whether the Claimant was unaffected by stage one of the process, as the Respondent asserts.
197. Dealing then with the consultation process. This did not start until stage two of the restructuring, after Ms Ariyawansa had left and the new post of Financial Controller was being recruited to. The Respondent's position is that the Claimant was unaffected by stage one and so there was no need to start consultation earlier. The Respondent also states that it put off its initial plan to undertake the restructuring as a single stage process having learned that the Claimant was to undergo breast surgery and would be absent from work. Mr Hallam also stated that the Respondent was under no pressure to rush things and indeed it preferred to wait because it was better to let the first stage bed in before moving onto stage two. As we have found, this seemed at odds with the contents of the email at R1 147.
198. We considered whether it was reasonable of the Respondent to have put off stage one until the Claimant returned to work. We decided that it would not have been reasonable to expect the Respondent to leave the post unfilled and when one Joint Finance Manager had retired and the other Joint Finance Manager post was being covered by a temp. The Respondent had a business to run and this was a reasonable business decision to take.
199. We considered whether it was reasonable of the Respondent to have put off informing the Claimant of the impact of the restructuring on her post and we find it was not. They ought reasonably to have let her know either before she went on sick leave or during her sickness absence. However well-intentioned the decision to delay in informing her was, the Respondent had well advanced plans that clearly affected the Claimant, they had costed her redundancy and on balance of probability we find that they actually were eager to proceed despite what Mr Halam said.

200. But not starting the consultation sooner there was a lost opportunity for the Claimant to be involved and to contribute to the discussions around the whole structure of the Finance Department including the role of the Finance Controller and what qualification was required, as well as the opportunity for her to apply for the post. That said, we would hasten to add find that as the role was cast, whilst the Claimant could have applied, and indeed it was still unfilled after her return from sick leave and later re-advertised, she would not have been successful, not being a chartered accountant. Whilst the Claimant did not believe that the post needed such a qualification, the Respondent is entitled to take the view that this was what was required from a business point of view and the rationale for this set out in the restructuring document was not unreasonable.
201. Dealing then with alternative employment. There was no alternative employment other than, of course the Financial Controller post which the Claimant would not have qualified for given the need a fully qualified accountant.
202. We considered other options. Whilst the Respondent did not carry out a skills audit to see how close the Claimant's abilities and experience were to that required for the Financial Controller, the Respondent said in evidence that the gap was too big and it would be like employing an unqualified doctor. The Respondent offered the Claimant the chance to express an interest in one of the two new Finance Officer (at R1 194). The Claimant stated in oral evidence that she was not interested because of the salary drop and she would not be happy reporting to the Financial Controller rather than to the Finance Director.
203. We did enquire as to whether the Respondent could have offered the Claimant the Finance Officer post with salary protection and the Respondent said this was a matter of cost because they were replacing her role with 1.6 posts. However, the Respondent accepted that it did not think of this at the time. We also asked the Respondent if it thought of sponsoring the Claimant to become fully qualified. The Respondent did not. We also considered whether the Respondent considered putting off the implementation of restructuring, but its professional advice was to deal with matters quickly to minimise stress on staff. That said, we do not believe the Respondent's failure to consider these matters or to delay implementation to be unreasonable.
204. In all the circumstances we find that the Claimant was unfairly dismissed because of the lack of adequate consultation.
205. We had asked the representatives to address us in submissions as to any reduction from any award of compensation in the event we found the dismissal be unfair, under Polkey v A E Dayton Services Ltd [1987] IRLR 503 HL. This is whereby any compensation awarded for unfair dismissal may be reduced by a percentage to reflect the likelihood that the employee would still have been dismissed, even if fair procedures had been followed.
206. In his written submissions, the Respondent's Counsel stated that any procedural flaws in the dismissal would have made no difference to the outcome (at paragraph 46(c)). The Respondent cites that the Claimant said

at her appeal hearing that she had lost trust and confidence. This is not really a Polkey point because the C had only lost trust and confidence in the Respondent because of its treatment of her. The Claimant's Counsel did not make any submissions as to Polkey.

207. The issue under Polkey is if the Respondent had carried out a proper consultation process would the outcome have been the same or not or delayed by a period time if the same?
208. We considered whether the Claimant could have convinced the Respondent that she could do the Financial Controller role or if they brought in the Financial Controller whether there was a role for her in any revised structure? On the evidence we heard the Respondent clearly wanted a professionally qualified accountant, the Claimant could not fulfil the role because she was not fully qualified and the Respondent wanted to implement the structure having the opportunity to do so as soon as possible. Doing the best we can, we find that had the Respondent adequately consulted fully allowing the Claimant some meaningful input the outcome would have been the same but that process would have taken another month. We therefore find that any compensatory award period would be limited to one month.

#### Footnote

209. We would add that the job of the Employment Tribunal was made harder by the lack of any contemporaneous notes of meetings and records of any interactions with staff from the Respondent (save for the notes of the formal hearings). It would be as well for the Respondent to consider addressing these deficiencies.

#### Further disposal

210. The case will be listed for a half day remedy hearing for the first convenient date after 30 September 2019 so the parties to consider possible settlement.

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Employment Judge  
Date 25 July 2019