EMPLOYMENT TRIBUNALS

Claimant: Mr J F Edwards

Respondents:
1. Unite the Union
2. Ms J Formby
3. Ms G Cartmail
4. Mr L McCluskey

HELD AT: Manchester **ON:** 24-28 February 2020, 2 and 4 March 2020 (in open hearing) and 5-6 March and 7-8 April 2020 (in chambers)

BEFORE: Employment Judge Slater
Mr G Pennie
Mrs S J Ensell

REPRESENTATION:

Claimant: In person
Respondents: Mr M Potter, counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. There is no jurisdiction to consider complaints of unjustifiable discipline under the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of matters occurring before 9 March 2018 which were presented out of time.

2. There is no jurisdiction to consider complaints under the Equality Act 2010 in respect of matters occurring before 9 March 2018 which were presented out of time.

3. The complaints of unjustifiable discipline under the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of which the Tribunal does have jurisdiction are not well founded.

4. The complaints under the Equality Act 2010 in respect of which the Tribunal does have jurisdiction are not well founded.

5. The remedy hearing provisionally arranged for 16 July 2020 is cancelled.

REASONS

Claims and issues

1. This hearing related to two claims: case no.2205756/2018 presented on 6 August 2018 and case no.2401913/2019 presented on 9 January 2019.

2. There were five preliminary hearings prior to this final hearing: on 19 February 2019, 21 August 2019, 18 November 2019, 30 October 2019 and 10 February 2020. The parties were unable to agree a list of claims and issues for use at this final hearing. However, the claimant has set out, in two Scott Schedules, the complaints he is bringing, including complaints added by way of amendment at preliminary hearings, and the respondent accepts that those are the complaints on which the tribunal is to adjudicate. We refer to these Schedules as the Scott Schedule and the Scott Schedule for Amendments. The amendments referred to in the Scott Schedule for Amendments are set out in more detail in pages 78-88 and SB 114-115.

3. The claimant amended the Scott Schedules during the course of the hearing, to identify, at the judge's request, for the victimisation claims, the protected acts relied upon for each complaint and, for the unjustifiable discipline claims, the conduct which the claimant asserts as being the reason for the discipline. We have appended those schedules to our reasons. In discussion at the hearing, the claimant clarified what type of disability discrimination was alleged in respect of some of the complaints where this had not been clear to the tribunal. This was as follows:

3.1. Incident 25 Scott Schedule – indirect discrimination.

3.2. Incident 54 Scott Schedule – indirect discrimination.

3.3. Incident 55 Scott Schedule – indirect discrimination.

3.4. Incident 56 Scott Schedule – victimisation.

3.5. Incident 57 Scott Schedule – victimisation.

3.6. Amendment 6b Scott Schedule for Amendments – indirect discrimination.

3.7. Amendment 8 Scott Schedule for Amendments – direct discrimination.

4. The claimant brings complaints of unjustifiable discipline, relying on sections 64 and 65 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the 1992 Act) and complaints of direct and indirect disability discrimination, harassment

related to disability, failure to make reasonable adjustments and victimisation under the Equality Act 2010 (the EqA).

5. The claims of unjustifiable discipline are brought against Unite only. The complaints under the Equality Act 2010 are brought against the first respondent, Unite, and, depending on the particular complaint, against one or more of the other three respondents. The claimant referred in the Scott Schedule to the Amendments to Mr Gillam as a fifth respondent and labelling on the bundles also identified him as a fifth respondent. However, Mr Gillam had not been a respondent to either claim when presented and has not been added as a respondent. We consider any reference to him as a fifth respondent to be made in error.

6. At the preliminary hearing on 19 February 2019, the respondents confirmed that disability is conceded in relation to a mental impairment described by the claimant as being "PTSD, anxiety, acute stress reaction and depression."

7. This hearing was listed to deal with liability only.

8. The last two days in chambers, 7 and 8 April 2020, were conducted by video conferencing, due to the COVID-19 pandemic.

Adjustments

9. The claimant sought a number of adjustments in relation to the employment tribunal proceedings due to disability.

10. The case was transferred from the London South employment tribunal to the North West region at the claimant's request. Although the claimant lives in Liverpool, he requested that the final hearing was held in Manchester, rather than Liverpool, and this was agreed.

11. We agreed, at this hearing, at the claimant's request, that the respondent's witnesses should give evidence first, so the claimant could cross examine them before he became more tired. We also agreed that the hearing day could start at 10.30 a.m. each day, rather than the normal start time of 10 a.m. The claimant agreed that he could manage a hearing day finishing around 4.30 p.m. (although, in practice, we finished earlier on a number of days) with short comfort breaks mid-morning and afternoon, when we were sitting for a full session.

12. The claimant asked for a gap in proceedings after evidence had been heard, to allow him time to prepare his submissions. We agreed that, after completion of the evidence on Monday 2 March 2020, we would not hear the parties' submissions until Wednesday 4 March 2020.

Summary

13. The claimant was a member of Unite, the first respondent. The events giving rise to these claims began with the claimant's attempts, in 2016, to obtain industrial and legal representation from Unite for employment claims and personal injury

claims against the RMT, the claimant's employer, and against an officer of the RMT. There are separate employment tribunal proceedings against the RMT which we understand are currently proceeding to a final hearing listed for later this year.

14. The claimant was employed by the RMT, and had been employed in earlier jobs, as an employment solicitor.

15. The claimant was dissatisfied with the way Unite dealt with his requests for industrial and legal representation and with the conduct of some of its officers. He brought internal complaints about a number of officers and was dissatisfied with the way those complaints were dealt with. He alleges disability discrimination, victimisation and unjustifiable discipline in respect of the actions of a number of the first respondent's officers and employees. The complaints this tribunal is asked to adjudicate on date from 2018, but events in 2016 are relied on as background information for the current claims.

Evidence and cast list

16. We heard evidence for the respondent from: Vince Passfield, Deputy Regional Secretary, Unite London and Eastern region; Owen Granfield, Member Relations Officer, Unite; Alys Cunningham, solicitor, Unite legal department; Gail Cartmail, Assistant General Secretary, Unite, who reviewed the claimant's complaint; and Neil Gillam, senior employment solicitor, Unite legal department.

17. The second respondent, Jennie Formby, was, at the time, South-East Regional Secretary for Unite. She dealt with the claimant's complaint about officers of the union.

18. The third respondent, Gail Cartmail, is an Assistant General Secretary of Unite. She reviewed the claimant's complaint about officers of the union.

19. The fourth respondent, Leonard McCluskey, is the General Secretary of Unite.

20. The tribunal did not hear evidence from Jennie Formby or Len McCluskey.

21. The tribunal was told by Mr Potter, on instructions, in closing submissions that Ms Formby was no longer an employee and had been undergoing treatment for cancer during much of the time the case was being prepared and this was why she did not give evidence. The claimant replied that Ms Formby was General Secretary of the Labour Party and had been unwell but had been in remission for a while and could have attended the hearing.

22. Mr Potter also said in closing submissions that Nicky Marcus, who is referred to in our findings of fact, did not give evidence because she is no longer an employee and now lives in France.

23. The tribunal was not told why Mr McCluskey did not give evidence.

24. The tribunal heard evidence for the claimant only from the claimant himself.

25. There were two lever arch files of documents comprising the agreed bundle. Numbers in brackets in these reasons are references to the page number, or first page of the document, in this bundle. There was also a supplementary bundle of documents. Page references to documents in the supplementary bundle are given with the prefix "SB". Some documents were added to the agreed bundle, by agreement, during the course of the hearing.

26. Other people mentioned in this case are as follows:

Unite

Howard Beckett, Assistant General Secretary, Unite in charge of legal services.
Nicole Charlett, Regional Officer, Unite London and Eastern region.
Peter Kavanagh, Regional Secretary, Unite London and Eastern region.
Nicky Marcus, Regional Legal Officer, Unite London and Eastern region.
Tom Dixon, a Unite Accredited Support Companion.
Tony Woodhouse, Chair, Unite Executive Council.

RMT

Andy Gilchrist, manager, chaired the claimant's capability meeting.
Karen Mitchell, solicitor, claimant's line manager.
Mick Cash, General Secretary.

Slater and Gordon solicitors

Simon Lee, solicitor, client care coordinator.
David Miers, Senior Associate, solicitor dealing with the claimant's personal injury claims against the RMT.
Sadiq Vohra, Practice Group Leader Employment, solicitor dealing with the claimant's employment tribunal claims against the RMT during most of the relevant time.

Facts

27. We were referred to a very considerable amount of correspondence during the hearing which we have read and considered. We do not mention all of this in our findings of fact, but refer to the correspondence of most relevance and significance in relation to the issues we need to determine.

28. The first respondent is a trade union. The Executive Council, which consists of elected lay members, is the ultimate decision-making body. It delegates powers to the General Secretary and officers of the union.

29. The Unite rulebook, approved by the Executive Council in September 2015, includes the following rules to which we were referred:

> "2.1.6 To promote equality and fairness for all, including actively opposing prejudice and discrimination on grounds of gender, race, ethnic origin, religion, class, marital status, sexual orientation, gender identity, age, disability or caring responsibilities."
>
> "3.6 Each member must notify the union's membership department of any subsequent change of workplace or contribution category status."

30. Rule 4.6 sets out provisions as to when the union will provide legal assistance. This includes the following.

> "4.6.1 A member who is entitled to benefit who suffers injury or disease arising out of or in connection with his/her employment (or the dependants of such a member who has died) shall be entitled to such legal advice and representation, and on such terms, as the Executive Council may consider appropriate.
>
> "4.6.3 A member who requires advice and/or representation on a problem relating to the member's employment which first arose at a time when the member was entitled to benefits and which cannot be resolved through the members workplace representative should refer the matter to the appropriate Regional Officer. The Union may provide such advice and/or representation as the Executive Council shall consider appropriate, whether by a full-time officer or otherwise, and on such terms as the Executive Council shall consider appropriate."
>
> "4.6.4 The Executive Council may provide such additional legal advice and representation to members and to members' families as it may consider appropriate."
>
> "4.6.5 The Executive Council may extend legal assistance to a member who is not otherwise entitled to benefits."
>
> "4.6.6 A member who is given advice and/or representation under this rule shall provide all relevant information and cooperate fully with the compilation of evidence for any legal proceedings and shall comply with any other obligations and/or conditions set out in any arrangements for the provision of legal assistance. If a member fails to do so or provides false or misleading information or fails to act upon the advice of those appointed to represent him/her, the Executive Council may at its absolute discretion annul all legal assistance or withdraw any further legal assistance to that member."
>
> "4.7 The Executive Council shall have discretion to provide additional benefits."

31. Rule 14.9 states that the government, management and control of the Union shall be vested in the Executive Council collectively and sets out a non-exhaustive list of its powers. These include the following.

> "14.9.6 Consider all appeals and resolutions addressed to it, subject to where it deems appropriate the Council shall have the power to refer such appeals and references to regional or national industrial committees."
>
> "14.9.18 Decide any question relating to the meaning and the interpretation of these rules or any matter not expressly provided for by these rules which decision shall be binding on all members of the Union."
>
> "14.11 In addition to any express powers in these rules provided, the Executive Council shall have power generally to carry on the business of the Union, as it may deem necessary, and do such things and authorise such acts, including the payment of monies, on behalf of the Union, as it, in the general interests of the Union, may deem expedient, and to delegate to any person or persons the power to represent and to act on behalf of the Union. Between Executive Council meetings the Executive Council's powers under clause 8 above and this clause are delegated to the General Secretary save the following:
>
> "14.11.1 regarding appeals and resolutions
>
> "14.11.2 regarding delegation of powers from the executive to any committee
>
> "14.11.3 regarding executive council procedures."
>
> "14.12 The Executive Council may exercise any power given to it by these rules as it sees fit from time to time."

32. Rule 15 sets out provisions relating to the General Secretary. These include that the General Secretary is responsible for the administration of the affairs of the Union. All employees of the Union are stated to be under the ultimate control of the Executive Council but, subject to that control, the General Secretary is responsible for managing employees of the Union. The General Secretary is under the control of and acts in accordance with the directions of the Executive Council. The General Secretary may delegate to any employee of the Union such of the General Secretary's powers as the General Secretary may consider appropriate.

33. Unite has a lay members complaints procedure (926). We accept that the Executive Council has approved this as the way in which complaints about the service provided by the union, its employees or agents are to be dealt with. This includes the following:

> "Where a member's complaint concerns advice from the union, union lawyers or the conduct of the union's lawyers, the union shall use its usual procedures for legal service review, which may include the solicitors' own internal complaints procedure. The decision shall be final."

34. We accept the evidence of Mr Gillam that decisions in relation to legal assistance and funding are delegated to the legal department through the relevant Assistant General Secretary and that, to the best of his knowledge, it has never been the case in Unite that decisions on the provision of legal assistance are made by Unite's Executive Council. All decisions about legal assistance are taken by the legal department. In reality, most of the decisions are taken by Regional Officers in conjunction with panel solicitors. If they are unsure on any point, they can seek the advice of the Regional Legal Officer and, if there is a dispute or complaint, it is brought to the attention of the Central Legal Department. We also accept the evidence of Gail Cartmail that, in her experience, the claimant was unique in his expectation that an application for legal assistance would be considered by the Executive Council itself.

35. We find, as indicated in the members' complaints procedure referred to in paragraph 33, that complaints about legal advice members are given, or about being refused legal assistance, are dealt with by way of a legal services review, rather than under the general members' complaints procedure. We accept the evidence of Mr Gillam that this involves one of the members of the legal department, Ms Cunningham, Mr Gillam or Mr Lemon, "reviewing" the advice provided. Depending on factors such as workload, the complexities of the case and impending limitation, the legal department has the authority to use panel solicitors or counsel to undertake the review on their behalf.

36. We accept the evidence of Mr Granfield that, if there was an allegation that an official had not provided services on discriminatory grounds, that would be an allegation of misconduct and should be investigated; he informed the tribunal that he was doing that where there had been an allegation of race discrimination in not providing services.

37. The lay members' complaints procedure is not designed to cover complaints against fellow members and/or elected lay representatives, which are dealt with under Rule 27 Membership Discipline.

38. The lay members' complaints procedure sets out that members are asked, in the first instance, to seek to resolve their complaints informally, either with the Unite employee concerned or with the Regional Secretary. Where this procedure fails to reach a resolution, a formal complaint should be submitted. Such complaints are to be submitted in writing to the office of the General Secretary. The aim is to acknowledge receipt within a week and allocate a senior officer to investigate. The procedure provides:

> "An assessment will be made as to the most appropriate person to investigate that complaint. In respect of Unite employees in the regions, this will normally be the Regional Secretary but may be a National Officer or other official…. In cases where the complaint is against the Regional Secretary, another senior officer will be asked to consider the complaint."

39. The procedure provides that any investigation will be conducted fairly and with no initial presumption of fault on either side.

40. The procedure provides that a member may ask for a review of a decision. Any request for review should be submitted to the General Secretary and should specify the grounds on which the member is disputing and appealing against the findings of the investigation. On receipt of a request for review, the General Secretary shall consider it and ask an Assistant General Secretary (AGS) or other appropriate officer of senior rank, together with the Chair of the Executive Council (or nominated EC substitute), to conduct a review of the case and adjudicate. The decision of the AGS (or senior official) and Chair of the Executive Council (or nominated EC substitute) is final.

41. The procedure provides that, to ensure complaints are dealt with in a timely manner, the Executive Council will be provided with a quarterly complaints report outlining a brief summary of the complaint, outcome and timescales.

42. There was no process in practice for individuals to take complaints, or appeals about decisions on complaints, to the Executive Council as a whole. The document the claimant obtained from Unite's website about contacting the Executive Council (855) was a mechanism, like a post box, by which members could refer matters which were then allocated to the appropriate route e.g. members' complaints were forwarded to Mr Granfield who then administered the complaints procedure. We accept the evidence of Gail Cartmail that the sort of appeals and resolutions which go to the Executive Council in practice are appeals for funding and requests for the support of the Union for particular activities; the Executive Council deals with industrial issues. In the experience of Gail Cartmail, it would be unprecedented for the Executive Council to hear an appeal made by an individual about a decision on a complaint under the members' complaints' procedure.

43. The claimant worked as an employment solicitor. His employment history included working for panel solicitors for the GMB and then for Unite. He worked in various locations, including the North West, before moving to work in London in August 2013, when he began employment at the National Union of Rail, Maritime and Transport Workers (the RMT). He worked for the RMT as an employment solicitor advising members.

44. The claimant formed an understanding of normal procedures for obtaining legal representation for union members from panel solicitors and of a General Secretary intervening directly in a case to obtain legal representation for a member, based on his experience as working as a panel solicitor. We note that not all this experience related to Unite and was all some time before the relevant events in this case. The claimant gave evidence that a particular General Secretary intervened in a case so that legal assistance was provided. However, the General Secretary was not Mr McCluskey and we do not find that the claimant's experience on this occasion sheds any light on whether Mr McCluskey would ever intervene in a decision about the grant of legal assistance. We accept the claimant's evidence that he once spoke to Mr McCluskey at a garden party about the possibility of Unite and the RMT doing some joint work in relation to bus drivers and that Mr McCluskey said to send him an

email. This was not pursued, the claimant said, because others at the RMT did not want to do so. We do not consider that this invitation by Mr McCluskey to send him an email about a possible joint approach by Unite and RMT indicates that Mr McCluskey would, in any circumstances, be willing to intervene in an individual application for legal assistance.

45. The claimant understood, from his past experience, that unions, including Unite, would provide legal assistance in relation to all the complaints a claimant wished to pursue, even if some of those complaints did not have a reasonable prospect of success.

46. From 2015, matters arose at work in relation to which the claimant subsequently requested workplace representation and legal assistance from Unite. This included an alleged physical assault on the claimant at an RMT works night out by Karen Mitchell, legal officer of the RMT. The claimant also accuses Karen Mitchell of instructing a trainee solicitor in May 2015 to change evidence in an investigation into a black member of the RMT who went on to bring complaints of race discrimination against the RMT. After an incident at work in November 2015, the claimant went on sick leave. He raised a grievance. He resigned in November 2017, following a capability meeting. The claimant is bringing separate proceedings against the RMT. We make no findings of fact in relation to the disputed matters which will be decided in those proceedings; it is not necessary for us to do so, in order to determine the issues in this case and would not be appropriate for us to do so since this will be the subject matter of another hearing.

47. The claimant had joined Unite in 2008. He later moved to work in London. When the claimant came to seek industrial and legal representation from Unite, Unite's records still had him as being a member in the North West. Members have an obligation under rule 3.6 to update the union as to their workplace details. It appears that the claimant had not notified Unite that he had moved to work in London and his membership had not, therefore, been transferred to the London and East region.

48. The claimant sought assistance from Unite in early 2016 for workplace representation and legal representation. It appears there were difficulties in obtaining assistance because of the claimant having his membership still in the North-West whilst he was working in London. The claimant, therefore, to comply with time limits, issued employment tribunal proceedings with the assistance of solicitors, paid for under the terms of legal expenses insurance, without the input of Unite. The claimant later chose to cease instructing these solicitors, since he was not happy with his representation.

49. In March 2016, Nicole Charlett, a regional officer for Unite London and Eastern region, started to provide the claimant with assistance. From 16 March 2016, the claimant emailed Ms Charlett about his case against the RMT. He informed her about the difficulties he had had seeking advice from Unite and that he had submitted his employment tribunal claims with help from his legal expenses insurance. He asked for legal representation from Unite. (239).

50. Nicole Charlett wrote to the claimant on 26 July 2016 (250) raising some points about material the claimant had sent her in support of his grievance appeal. She raised a concern that the claimant had been adding new allegations to his grievance issues, including claiming harassment from the General Secretary of the RMT himself. She wrote: "Without solid proof to back these types of allegations up you are in danger of being put through disciplinary proceedings for gross misconduct and suffering the consequences."

51. On 4 August 2016, Ms Charlett emailed the claimant about legal support and work place representation (264). She wrote that legal counsel at Unite told her that their lawyers would not deal with the legal claims he had been pursuing with his legal expenses insurance, those lodged now and/or still running. She wrote that she was happy to accompany him to the appeal hearing.

52. Ms Charlett wrote:

> "The investigation side of this meeting will be a different matter and you must be prepared to substantiate your allegations of racial discrimination and victimisation, and answer all questions levelled at you in the meeting. Please note, disciplinary action may follow if any allegations are found to be malicious. At this stage, if there are any allegations you cannot substantiate then you might want to consider withdrawing them and say your judgment at the time may have been affected by how it appeared your essential grievance issue was being denied or possibly being brushed under the carpet."

53. The claimant took offence at some advice Ms Charlett gave. The claimant referred to Ms Charlett advising him he should withdraw his allegations against officers of the RMT. We do not understand this to be the case from our reading of the letter. She was suggesting that he consider withdrawing the allegations if he did not have sufficient evidence to support these. The claimant took particular offence at the suggestion that he should say that his judgment at the time had been affected. He considered this to be advice that he should say something that was untrue, since he believed in the truth of his allegations.

54. The claimant asked Vince Passfield, the Deputy Regional Secretary for the London and Eastern Region, for alternative representation for a meeting which had been arranged for 16 August 2016. In an email dated 9 August 2016 (269), the claimant wrote to Mr Passfield that he appreciated that Ms Charlett was doing her best in a difficult situation and that he did not want to make a complaint about her. However, he wrote that he had lost faith in her because of what she had written in the emails of 26 July and 4 August and was requesting a different representative for the hearing on 16 August. He wrote that he was not happy with the email of 4 August. He wrote:

> "I have been diagnosed with anxiety, depression and post-traumatic stress reaction (following an assault by my line manager) my condition amounts to a disability and I considered that withdrawing parts of my grievance because of my judgment would weaken my entire case and stated so in an email to Ms Charlett dated 4 August (an employment tribunal claim has already been

> submitted and has been stayed). I have to admit suffering from anxiety, depression and post-traumatic stress reaction I did not like the suggestion that my judgment had been effected [sic]."

55. The claimant also explained in the email that the reason his claim had been submitted by other lawyers rather than Unite lawyers was because he was having problems obtaining advice from Unite as he is employed in London but his home address is Liverpool and there was confusion as to which region should deal with the matter and, through an administrative error, a call was not returned and he had to seek help because of time limits through his legal expenses insurance.

56. Vince Passfield refused the claimant's request for a different representative in an email dated 10 August 2016 (273). Mr Passfield explained about the number and spread of members in the region and that around 60 Regional Officers service that membership to the best of their ability. He wrote that it was unmanageable and impractical to move a member from one officer to another without exceptional reasons and that it was, 99.9% of the time, in the member's own interest to maintain the consistency of a single officer when dealing with their employment issues. He wrote that transferring the case over would mean the new officer picking up additional volumes of work on top of their own allocation and then needing to fully understand the historical background/related legal considerations of the transferred case in question. He wrote:

> "I have looked through your email and briefly discussed the matter with the officer and her immediate line manager. It is our view that the appropriate advice and support has been offered and provided to you. Furthermore representation at your appeal hearing is available to you from Nicole and will remain available should you wish such support."

57. In relation to legal support, he wrote that the provision of legal benefits and the access to legal support is covered under rule and remains at their discretion. He wrote: "It is the practice of the Union that legal benefits are not available to members who instruct independent legal advice within a claim and then seek Unite support thereafter surrounding the same matters. I believe this to be the case regarding your employment issues albeit you have provided a suggested explanation."

58. He wrote that, in view of the apparent complications involved in the case and, in an attempt to assist the claimant and Ms Charlett, he had asked their legal officer to review the claimant's case files to ascertain where there may be potential legal considerations. Their legal officer would then liaise with Ms Charlett as necessary prior to and after appeal. He wrote:

> "**Please note**: by agreeing to the case review by our legal officer which is outside of the benefits we would normally provide in such circumstances, we are **not** suggesting Unite are now formally on record as providing representation within any legal proceedings already initiated either by you, or, on your behalf by a 3rd party. Until otherwise advised, you will remain responsible for any orders or costs resulting out of any legal proceedings already initiated.

> "**In conclusion** - I would advise you to make contact with Nicole Charlett in regard to the representational support you require at the appeal hearing on the 16th August. This support is available to you and will **not** be transferred to another Unite officer or lay representative. Thereafter you should continue to liaise with Nicole in relation to these employment matters.
>
> Please be advised that this is the Region's **final position** on the matter."

59. The claimant considers that Vince Passfield failed to make a reasonable adjustment for him, by not agreeing to provide an alternative representative to accompany him to the appeal hearing. However, this is not a complaint which forms part of the claims on which this tribunal is asked to adjudicate; the claimant said he did not include this because it was an historic, out of time, matter.

60. On 11 August 2016, the claimant replied to Mr Passfield. He wrote: "whilst suffering from anxiety, depression and post-traumatic stress disorder I cannot attend a meeting with my employer with a representative who advises me to withdraw some of my complaints, stating that my judgment was affected by my grievance being denied."

61. In a further email on 12 August 2016, Mr Passfield wrote (276), maintaining his view that Nicole Charlett remained best placed to provide the support the claimant requested. He acknowledged that the claimant had health concerns but stated that the representation and advice, in his view, had been appropriate and the region would not transfer the claimant's case to another official. He wrote that, even though in his opinion the claimant was not entitled to this, the region had agreed to allow their legal officer to review the legal aspects of his employment concerns, assuming the claimant cooperated and provided the necessary information. He confirmed this was the region's final position.

62. The claimant attended an appeal hearing and investigation hearing with the RMT on 16 August 2016 without representation since he did not wish Ms Charlett to represent him.

63. On 5 September 2016, the claimant wrote again to Mr Passfield (291). He wrote that he had attended the investigatory meeting without the support of the union and on his own. He wrote that he did not consider Mr Passfield's reasons for not providing him with a change in representation to be reasonable. He wrote:

> "The advice I was given by the Unite representative was to withdraw certain allegations and state I was stressed when I made the allegations but with years of industrial and litigation experience behind me I know this would have weakened my case: further I may be ill with mental health problems but I know they have happened and I lost faith in the advice that I was provided. I also consider the advice not only bad but in the circumstances insulting but I do not wish to make a complaint against the officer in question as I have worked with many officers and know how difficult the job can be."

64. The claimant asked Mr Passfield to appoint another representative for the next hearing. He wrote: “I am a union member and entitled to a service I can have trust in and when I am suffering from mental health problems I do not want a representative that will advise me to withdraw allegations stating that I was stressed.”

65. Mr Passfield, who was away on holiday at the time, replied that, on his return to work the next day, he would refer the claimant’s emails to the appropriate Unite department and send the claimant a copy of their complaints’ procedure (292).

66. The claimant wrote that the next hearing would not be until October or even later and asked Mr Passfield to reconsider his stance and be reasonable and appoint another representative for the next hearing.

67. The claimant provided Nicky Marcus, the region’s legal officer, with information relating to his claims. Nicky Marcus is not a solicitor but had specialist employment law training.

68. Nicky Marcus reviewed the claimant’s claims and wrote to the claimant by email dated 5 September 2016 (287). She wrote:

> “I have to say that having assessed your original claim, I do not believe it would have had prospects of success. Unfortunately, on the information I have, I am similarly struggling to see how your new claims for victimisation and detriment for a protected disclosure would have reasonable prospects of success.
>
> “At the grievance hearing you raised for the first time, the notion that you had been victimised as a result of your previously preventing Karen Mitchell from asking a solicitor to change dates in race discrimination case against the RMT. You contend that this amounts to you preventing an act of race discrimination and that therefore your alleged harassment amounts to victimisation on the grounds of race. You evidence this by way of an email you sent yourself noting the incident. Unfortunately, my belief is that you would have to have significantly more robust evidence both of the protected act and, indeed, of any victimisation and detriment you suffered as a consequence. Similarly, you mention other issues with the process which you categorise as “detriments” but whilst potential breaches of procedure may or may not go to issues of compensation in a claim, they do not necessarily constitute claims in themselves.
>
> “Your grievances and claims seem to be constantly evolving and shifting and I do not believe a judge is likely to be convinced by them. That is not to say that you have not been treated badly by the RMT. I would certainly say that they handled your hearing particularly badly but as you know only too well, being treated badly by an employer and winning a claim against them are two very different things. To be perfectly straight with you, Frank, and I know that you may not like this, I would suggest that you focus, rather, on your health and well-being; whether there is a way back with the mediation suggested by the hearing manager, for you to have a productive relationship at the RMT or

> whether you start thinking about negotiating an exit package and moving on. I'm sorry if that sounds brutal but I honestly have spent hours and hours looking at your case and discussing it with Nicole.
>
> "Unite cannot support you further on these issues a) because I do not believe your case has reasonable prospects of success and b) because you already have lawyers advising you."

69. The letter is relatively brief but does indicate that Ms Marcus has given consideration to the merits of the claim and explained her conclusions.

70. On 6 September 2016 (SB138), Nicky Marcus wrote to Owen Granfield, about the claimant. The claimant did not see this correspondence at the time.

> "Unfortunately, he's one of those guys who has objected to everyone he comes into contact with…. both hearing managers (he didn't believe they would look at his case objectively); the GS… he tells Mick Cash that he doesn't trust him and tries to lodge a case against him for refusing to meet with him; all his managers; Nicole whose advice he objected to and now me. I've been trying to give him the benefit of the doubt because I do believe he has mental health issues but we really can't support him any further. If you think it would be useful I am happy to expand on the case further."

71. Mr Passfield sent the claimant a copy of the members' complaints' procedure on 7 September 2016 (294). He wrote that, upon receipt of the claimant's original email complaint, he had responded on behalf of the region via email. He wrote: "it is my view that this covers both the informal and formal route referenced in the procedure towards the Region." He wrote that he assumed the claimant would wish to raise these various matters formally through the complaints procedure and directly to the General Secretary's office. However, he asked that the claimant await further correspondence from his office, which would be formalised on headed paper, and would include both the region's position and further clarification from their legal officer. He wrote that he would seek to ensure his response was out to the claimant by the end of that week.

72. On 9 September 2016, the claimant wrote to Vince Passfield, setting out his complaint about the service he had received from the union (296). He copied the complaint to Jennie Formby, in the mistaken belief that she was the Regional Secretary for London and the Eastern region. She replied, writing that Pete Kavanagh was the Regional Secretary LE so she had copied him as she covered the South-East region.

73. The claimant stated his complaints to be as follows:

> "1) Mr Passfield refused on a number of occasions, the last being on 5 September 2016 to reasonably (in circumstances) provide me with an alternative representative for an investigatory hearing that occurred in August or for a hearing that a date has not been set for as yet.

2) The regional solicitor without having spoken to me, without having all the documents, having requested further documents and information, subsequently when I complained about the tone of one of her emails stated that my employment tribunal case had less than reasonable prospects of success, without obtaining the additional documents requested, without looking at the pleadings, without referring to the facts or the evidence."

74. The letter included an assertion that Ms Charlett had advised him, in an email, to withdraw some of his complaints and stated that his perception was affected by what he considered was an unfair procedure. He wrote that he was offended by this remark, his perception was not affected and he suffered from depression and post-traumatic stress disorder; he also considered, with his experience, that the advice was poor and affected the merits of his claim and requested another officer. He reiterated that he did not wish to complain against Ms Charlett as the case was difficult and he had just wanted another representative for his hearing during August.

75. The claimant wrote that Mr Passfield had refused his requests for an alternative representative on a number of occasions. He wrote: "in the circumstances the refusal was not and is not reasonable and in the circumstances could be discriminatory as he has refused to make a reasonable adjustment for a disabled individual."

76. Mr Passfield responded the same day (297), writing that, as set out in his prior email to the claimant, he was preparing a formal response to the claimant's complaint. He wrote that he would try to conclude this over the weekend and get it sent out Monday morning.

77. The claimant wrote to Mr Kavanagh on 9 September 2016. He wrote that he had first officially complained about Unite services on 5 September and had provided details on 9 September. He wrote that Mr Passfield could not deal with the complaint as he was part of the complaint.

78. In a letter dated 12 September 2016, sent by email on 13 September 2016, Mr Passfield wrote to the claimant (312). He wrote that he had discussed the response Nicky Marcus provided to the claimant so that he could provide a clearer understanding for the claimant. Mr Passfield then set out a fuller advice in his letter. We find that Mr Passfield was relaying advice given by Nicky Marcus. This letter concluded that they did not believe that the claimant's claims had reasonable prospects of success. Mr Passfield also wrote that it was the practice of the union that legal benefits are not available to members who instruct independent legal advice within the claim and then seek Unite support thereafter surrounding the same matters.

79. Mr Passfield wrote:

> "Additionally, as stated previously, we do not uphold your concerns and/or complaint(s) against our regional officer, Nicole Charlett or legal officer, Nicky Marcus. Our position remains that the officer assigned to provide representation, should you request such, will remain Nicole Charlett albeit that

> support will only extend to representation as legal benefits are not available for the reasons set out previously."

80. Mr Passfield noted that, despite his acknowledgement of the claimant's concerns/complaints and the commitment to respond, the claimant had since written again raising the complaints in the claimant's email of 9 September 2016 which Mr Passfield quoted in his letter. Mr Passfield concluded:

> "It is my view that my correspondence responds in full to both these points of complaint nonetheless I have attached a copy of the membership complaints procedure if you should decide to raise the matter further.
>
> "This formally closes the region's response to your complaints, our decision is final."

81. Advice later given by panel solicitors and counsel about the claims was more optimistic about the prospects of success in some of the claimant's claims than the advice of Nicky Marcus.

82. The claimant responded to Mr Passfield (302), writing that Mr Passfield had answered his complaint and questioning whether it was part of normal Unite procedure that, when a member makes a complaint, then the person who the complaint is about answers the complaint. He wrote that he had written to Mr Kavanagh and stated that Mr Passfield should not answer this complaint and asked Mr Passfield to inform him whether or not Mr Kavanagh had supported his approach. The claimant raised some issues about the advice and wrote that he had other issues about the letter and would draft a full complaint about it. He again asserted that Mr Passfield's refusal to provide him with an alternative representative was discriminatory.

83. On 13 September 2016, Mr Passfield wrote again to the claimant (305). He wrote that he acted with the delegated authority of the Regional Secretary in regard to member complaints. He wrote:

> "You previously raised various issues with me to which I have responded to within my letter. That is, in my opinion, the region's final response to those particular matters (Officer support & Legal Officer concerns).
>
> "Separately and whilst I was preparing the above response you have then added an additional complaint regarding myself and forwarded that on to the Regional Secretary and included the complaint against the Legal Officer (and other issues).
>
> "Within my letter I have not responded to the complaint against me aside from providing my opinion that my response answers that particular additional aspect of your complaint. To be precise - in respect of your complaint against me… I have not given a formal response, simply my opinion.

> "A formal response is something you will receive once you follow the procedures I have provided to you. If you do not follow the procedures then a response may not be forthcoming.
>
> "I state again… Put your complaint in writing to the General Secretary and you will be referred to the appropriate senior official."

84. Mr Kavanagh wrote to the claimant on 13 September 2016 (309). He wrote that he had discussed the matters with Mr Passfield who had confirmed he was preparing formal correspondence to the claimant in regard to all concerns the claimant had previously raised with his office. Mr Kavanagh advised that, if the claimant remained dissatisfied, he should follow the complaints procedure and matters would then be dealt with accordingly.

85. The claimant replied (310), that someone who is subject to a complaint should not deal with that complaint. He asserted that the region had not yet dealt with his complaint and there was a breach in procedure.

86. Mr Kavanagh replied on 14 September 2016 (311), writing that Mr Passfield acted with his full authority. He wrote: "He needed an opportunity to do what he committed to - which was to provide a comprehensive response to your concerns. He has also sent you a copy of Unite's complaint procedure."

87. There followed a break in relevant correspondence. The claimant was very ill during this time.

88. Relevant correspondence began again when the claimant wrote to the union via its website on 6 October 2017 (322), making a complaint about trade union services and a request for representation.

89. Owen Granfield, the member relations officer, administered complaints. He has been administering complaints on behalf of Unite since January 2014. He deals with around 1000 complaints per annum, about 200 of which go through the formal process.

90. Mr Granfield emailed the claimant on 6 October 2017 and stated that he awaited the claimant's written complaint (324). In response to an email from the claimant in which the claimant asked who would be dealing with his request for representation, Mr Granfield replied that the route for a valid complaint is determined after receipt, depending upon its content. He wrote that a challenge to a turndown for legal assistance was likely to be the subject of a legal services review (325). Further correspondence between the claimant and Mr Granfield followed on 6 October, in which the claimant referred to his health, informing Mr Granfield that he was currently suffering from post-traumatic stress disorder, depression, anxiety and daily tinnitus and that the above conditions amounted to a disability (328).

91. Following his correspondence with the claimant on 6 October, Mr Granfield wrote to Vince Passfield and Peter Kavanagh (SB139) as follows:

> "I don't know whether or not we have reps at RMT, but I think we are being set up for a claim."

92. We accept that this was the view of Mr Granfield, based on the claimant's correspondence and Mr Granfield's extensive experience in administering complaints on behalf of Unite.

93. Mr Granfield wrote that it would seem wise to allocate a regional officer to oversee this. He noted that the claimant had told them in his 2016 correspondence that he was a solicitor.

94. On 7 October 2017 (SB141), Mr Passfield wrote to Mr Kavanagh and Mr Granfield with his recollection of the claimant's case. He wrote:

> "This is now over a year old and it appears he may still be employed albeit remains absent due to ill-health.
>
> "I see this has 3 considerations:-
>
> "1. If he has a meeting scheduled with his employer then we offer representation as we would any member.
>
> "2. Unless something has materially changed Nicky Marcus's original legal advice stands. If something significant has changed it may need revisiting.
>
> "3. His complaint can be considered once he has quantified exactly what it is."

95. The claimant sent an email to the General Secretary on 9 October 2017 (331) setting out a complaint about the services provided by Unite and a request for representation at a capability meeting on 13 October 2017. He stated that he was disabled and gave details of his conditions and treatment.

96. The claimant wrote that he had originally approached Unite for legal assistance in 2016 but that, because of administrative errors, he could not obtain assistance and had to request help from his legal expenses insurance because of time limits.

97. The claimant wrote that he had been provided with representation by Nicole Charlett. He wrote:

> "Ms Charlett advised me to withdraw allegations against a senior officer of the RMT but I could not as I was telling the truth and because the advice caused me a disabled individual further anxiety, I requested another representative but Vince Passfield and Peter Kavanagh refused my reasonable request and I had to attend the hearing without Unite representation. Refusal to provide alternative representation placed a disabled member of Unite under further strain."

98. The claimant wrote that his complaint was against Vince Passfield, Peter Kavanagh and Nicky Marcus. He made it clear that he did not wish to complain about Ms Charlett. He wrote that he would particularise his complaints when he was feeling better. He wrote that, in July, he had tried to obtain the services of a Unite personal injury lawyer as the legal expenses insurer would not fund his own costs if he lost and he was requested to sign a CFA which he refused and he was still waiting for a return call from a Unite lawyer.

99. Mr Passfield wrote to the claimant on 10 October 2017 (333). He wrote that the region had been made aware of complaints the claimant potentially wished to raise against himself and other senior colleagues within the region. He wrote that he did not intend to respond to such matters at that stage but noted within the claimant's correspondence with Owen Granfield he mentioned that he had a capability meeting with his employer scheduled for 13 October 2017. Mr Passfield requested that, if the claimant required support at this meeting, he should provide the necessary meeting details and the region would source a Unite representative.

100. On 10 October 2017, JF from the General Secretary's office, asked Peter Kavanagh to advise the General Secretary on the claimant's complaint. This request was forwarded on to Vince Passfield.

101. On 11 October 2017, Vince Passfield wrote to JF about the claimant. He started his email with the greeting: "Hi Len". He set out background about events in 2016. He set out the same three points as to what he proposed should be done now as in his email to Mr Kavanagh of 7 October 2016. He wrote that he was in the process of arranging a representative to attend on 13 October. He wrote that he would ask that representative to report back to his office so that they could consider if anything materially had changed from the original position. Legal advice, if necessary (or applicable) could be considered thereafter. He attached a copy of his letter sent to the claimant in September 2016 which provided fuller detail.

102. In the light of what had happened in 2016, Mr Passfield felt it sensible that Nicole Charlett should not be the allocated officer to provide support at the meeting on 13 October. He decided to allocate one of their most experienced Accredited Support Companions, Tom Nixon, to be the claimant's representative at the meeting on 13 October. Accredited Support Companions (ASCs) are either current workplace representatives or former experienced representatives/officers who are accredited representatives they utilise on an ad hoc basis to assist with the representation of members in the workplace. It is the respondent's usual practice that, where appropriate, an ASC may be appointed to provide initial support whilst the allocated officer retains responsibility for any subsequent case management. Mr Passfield informed Mr Nixon that he should provide his experienced representational support for the claimant and report back to Mr Passfield's office thereafter. Mr Passfield intended, at that point, to determine which officer would be best placed to progress matters for the claimant, if further officer support was necessary.

103. Mr Nixon attended the meeting with the claimant. The meeting had been scheduled for 13 October 2017. It appears from Mr Nixon's subsequent note (338), that part, or all, of the hearing, in fact took place on 21 November 2017.

104. The claimant was pleased with Mr Nixon's assistance and wrote subsequently to Unite to say so. He has never made any complaint about Mr Nixon's assistance.

105. On 24 November 2017, the claimant resigned his employment with the RMT. He asserted, in his resignation letter (SB242), that there was a breakdown of mutual trust and confidence and wrote that he resigned with immediate effect for the sake of his health.

106. Mr Nixon forwarded to Vince Passfield on 27 November 2017, a copy of the claimant's resignation letter. Mr Nixon wrote (336) that he concurred with the reasons outlined in the letter regarding the claimant's treatment by his employer. He wrote that the claimant had asked him, on his behalf, to request that Unite refer him to their North West solicitors, Slater and Gordon, as he now wanted to pursue a personal injury claim against his employer, the RMT.

107. On 28 November 2017, Mr Passfield wrote (650), to Owen Granfield, following previous correspondence about the claimant:

> "Frank has serious mental health issues and resides in the NW. He worked for the RMT and is raising untold allegations against senior officials up to GS level. The allocated solicitors will be Thompsons who of course service the RMT as well therefore there is a conflict of interest.
>
> "I will look at it tomorrow and discuss with Nicky/Pete the best approach. If we administer the process our end then it will be allocated to the RO who covers trade unions… Rose K."

108. Mr Granfield replied (656), suggesting they ask the North West for a favour and instruct Slater Walker (meaning Slater and Gordon) to avoid the conflict of interest.

109. Mr Passfield wrote to the claimant on 29 November 2017 (342). He wrote that he was extremely saddened to read about the claimant's health concerns and that this had led to his resignation. He wrote that the union had structured legal processes which would need to be followed and he could not guarantee that they would be able simply to transfer his case directly to another region and be selective around the legal firm which then advised. In the first instance he might need to allocate his case to a London and Eastern regional officer. He wrote that, after Tom Nixon had provided them with the relevant paperwork, he would discuss the case with a Regional Secretary to seek guidance around officer allocation and he would be in touch with the claimant thereafter.

110. Mr Nixon wrote a report about his involvement with the claimant dated 29 November 2017 (337). He included in this note his view that the process of the sickness capability meeting was flawed and there had been a blatant disregard of natural justice. He also wrote that he had heard the chair of the meeting threaten the claimant and that this might be on a recording. He reported that the claimant had had an anxiety attack on the last day of the hearing, that his concern had been to get the claimant safely away from the environment and people who were causing him stress

and that they left the building and the claimant resigned soon after. Mr Nixon noted that the claimant conducted himself in a dignified and professional manner under very difficult conditions. Mr Nixon expressed willingness to continue to support the claimant in future, if he required it.

111. The claimant wrote to Mr Passfield on 1 December 2017 (342). He asked that a legal representative be appointed if there were negotiations. He requested that Tom Nixon also attend any negotiations as he trusted him and he would be able to cope with the negotiations.

112. On 2 December 2017, Mr Passfield wrote to the claimant to say he was discussing the potential of legal advice for the claimant with their legal officer, Nicky Marcus, to ascertain whether they could facilitate this through Slater and Gordon in the North West (341). He wrote that he had been contacted by a solicitor acting for the RMT seeking a discussion. Mr Passfield said he was happy to speak with them on the claimant's behalf and asked the claimant to let him know what he thought was an achievable remedy.

113. The claimant sought assistance from Mr Nixon and Mr Passfield in relation to discussions regarding the potential settlement of any claims against the RMT and this assistance was provided.

114. On 5 December 2017, Mr Passfield sought guidance from Howard Beckett, Assistant General Secretary of Unite, in charge of legal services, for a planned approach towards what he described as "this sensitive matter" (755). He gave some background and attached an email from the claimant outlining his aspirations of a settlement. He then wrote:

> "This has become a bit of an 'hot potato' for various reasons, not least that it is a sister TU and that their representation for the RMT comes from Thompsons.
>
> "The member also has serious mental health issues and is seeking direct access to our solicitors in the NW (Slater & Gordon)."

115. On 6 December 2017, Mr Passfield wrote to the claimant (345). He wrote that he believed the situation with the claimant's employer had got to the point where legal advice may need to be considered. Mr Passfield referred to a conversation with the solicitor acting on behalf of the RMT and that, in this conversation, it had become apparent that the claimant had a number of existing employment tribunal and personal injury claims against the RMT. Mr Passfield requested that, if the claimant wished Unite to consider support, the claimant provide documentation relating to all the tribunal claims submitted and any responses, including any tribunal findings on grounds of appeal, for their consideration. He wrote that upon receipt of this information, the region would liaise with their legal department to ascertain the next appropriate steps with regard to the existing claims. He wrote:

> "In terms of the latest development I am assuming you will be seeking advice relating to the termination of employment through resignation, possibly citing

> ’constructive dismissal’ or some other employment related claim - all of which will likely refer back to the historical claims which appear to have been under progression, some almost to conclusion.
>
> “It is again for this reason that it is imperative we receive all the related historical claim information prior to taking any consideration as to the potential merits and whether Unite support will be facilitated in accordance with membership legal benefits.”

116. Mr Passfield referred the claimant to Unite rule 4.6 governing the provision of legal assistance to members and quoted rule 4.6.3. He wrote that this rule confirmed the provision of legal assistance is discretionary and on such terms as the Executive Council shall consider appropriate. He wrote that members do not have an absolute entitlement to legal advice and/or representation from a solicitor, directly or otherwise. Furthermore, members have no entitlement to be paid the cost of the same by Unite. He wrote that a member’s potential employment tribunal claim is generally required to be assessed to have reasonable prospects of success to qualify for legal assistance, although discretion is maintained in all circumstances.

117. The claimant gave authority for the representatives of RMT to disclose documentation to Mr Passfield. This documentation was forwarded to Howard Beckett, via Owen Granfield. Mr Granfield wrote on 13 December 2017 when forwarding the documentation (761): “it’s well above my head, but on the face of it, there are limitation issues - and the member appears to have instructed [RM] privately.”

118. Howard Beckett told Mr Passfield that, if necessary, the switch of solicitors was fine and then normal processes for legal assistance should be followed. If the case enjoyed merit then, regardless of the respondent, they would support it. He advised that the regional legal officer should look at the matter in the first instance and, if there was any query, they should refer the matter to Alys Cunningham in their Central Legal Department.

119. Mr Passfield forwarded the information received from the RMT solicitors to Nicky Marcus who reviewed it and discussed the matter with Mr Passfield.

120. In a 5 page letter dated 15 January 2018 to the claimant (352), Mr Passfield set out the view of Nicky Marcus that the claims being taken by the claimant did not enjoy a reasonable prospect of success. Mr Passfield wrote that, having now revisited this, Nicky Marcus had seen nothing in the paperwork provided that altered her original assessment of his earlier claims, that unfortunately, they had poor prospects of success at tribunal.

121. We accept that Mr Passfield relied on the advice of Nicky Marcus as to the prospects of success of the claimant’s claims.

122. Mr Passfield then went on to consider the question of whether there were any viable claims arising from the RMT’s subsequent treatment of the claimant, particularly in light of the fact that he had now been assessed as being disabled

under the terms of the Equality Act. He wrote that there were a number of examples of poor process, breaches of procedure and what might be considered to be unnecessary conduct and mismanagement but wrote that, whether those incidences constitute disability discrimination and are unlawful, or constitute fundamental breaches of the employment contract justifying constructive unfair dismissal are, however, very different considerations. The letter included the following advice about the law:

> "In order to demonstrate disability discrimination you would have to demonstrate that you had suffered less favourable treatment than a non-disabled person. Furthermore that, in the same or extremely similar circumstances, a non-disabled employee would not have been treated in the way in which you have allegedly been treated and that the employer has no adequate explanation for the difference in treatment: finally that they treated you in the way in which you were treated because you are disabled."

123. In relation to the constructive unfair dismissal claim, Mr Passfield set out the advice that, whilst it may well be that the RMT's behaviour and practices were poor, nothing they had done with regard to their handling of the claimant whilst he was off sick, could be defined as "so unreasonable as to breach the very fabric of the employment relationship."

124. Mr Passfield wrote:

> "Should you… choose not to accept any settlement (or the settlement is not available) and decide to pursue the various claims instead, then I must advise you that Unite considers there to be no reasonable prospects and for this reason will <u>not</u> provide support for such claims."

125. In relation to personal injury claims, Mr Passfield wrote:

> "Finally, you have also requested Unite legal support for any potential personal injury claims which may result from the prior employment matters in dispute. It is however likely the outcome of the employment tribunal claims will have some (not all) determination upon the merits of such claims, particularly as any liability will, in some areas, relate directly back into the historical employment issues. Notwithstanding this if you wish to make such a PI referral then you should call the legal advice line on [number given].
>
> "This letter concludes Unite's position on the employment matters nonetheless we will await your response in regard to your views around liaising with the respondent's legal adviser in terms of determining the RMT's final position in respect of any potential settlement."

126. Subsequently, one of Unite's solicitors, Alys Cunningham, had concerns about some aspects of the advice of 15 January 2018, particularly, the lack of advice about a discrimination arising from disability claim. As previously noted, Ms Marcus' view of the prospects of success of some of the employment tribunal claims was more pessimistic than the view later taken by panel solicitors and counsel.

127. Mr Passfield forwarded Mr Granfield a copy of his letter of 15 January 2018. He wrote (818) that he suspected the letter would result in a complaint. He wrote: "if so then referral to Alys may be the only step available as this is a matter of legal interpretations and not a complaint about an official (albeit he will probably complain about Nicky Marcus and me)."

128. Mr Granfield replied, copying his reply to Alys Cunningham, (818): "given the history of these matters and the risk of a claim against Unite, from someone who may be a vexatious litigant, it would seem wise to refer further correspondence to Alys, technically as a legal services review."

129. We accept that it was the view of Mr Granfield, based on the correspondence he had seen and his experience in administering complaints for Unite, that the claimant might be a vexatious litigant. Mr Granfield was concerned that a potential core of a good case could be being misdirected by a large number of claims about associated matters. It appeared to Mr Granfield, from what he had read, that the claimant alleged discrimination whenever someone disagreed with him.

130. On 15 January 2018, the claimant replied to Vince Passfield, copying his email to the General Secretary, Nicky Marcus and Peter Kavanagh (674). He wrote that he was deeply distressed by the letter. He referred to evidence he had provided and questioned how his employment tribunal claims and personal injury claims had less than reasonable prospects considering the evidence. He wrote:

> "I can understand that it is difficult for a union to support action against another union, especially as they may know the individuals concerned but to say my claims have less than reasonable prospects is poor and tantamount to negligence, considering the above facts."

131. He set out terms of an offer of settlement which he said could be made to the RMT's solicitors.

132. The claimant asked for a copy of the complaints procedure.

133. The claimant's email was forwarded to Alys Cunningham. She reviewed the claimant email and other documents she had been sent, including Mr Passfield's letter of 15 January 2018, in the evening of 15 January 2018. She was a little concerned at the brevity of Ms Marcus's advice relayed in Mr Passfield's letter and what seemed to be a failure to consider the issue of discrimination arising from disability. She, therefore, wanted to make sure that Ms Marcus's assessment as to negative prospects was right and nothing had been missed. She was also concerned that the claimant had asked Mr Passfield to put a settlement proposal forward that included personal injury as well as employment law claims when it appeared that no personal injury advice had been provided. She did not want an officer seeking to negotiate a settlement that could compromise personal injury claims without first making sure that the member had received legal advice as to the merits and value of any such claims.

134. Ms Cunningham wrote to the claimant on 16 January 2018 (358). She wrote:

> "I am sorry that this matter is upsetting you, but please rest assured that if there was/is a case with legal merits, Unite would support this regardless of the potential respondent or defendant's identity.
>
> "As you know, Unite are not representing you in relation to either your historical or new employment tribunal claims and we have not provided any advice to you regarding personal injury. You were given the number to call to obtain personal injury advice directly.
>
> "Vince Passfield cannot put forward the offer proposal you have suggested regarding your alleged PI claims, absent you obtaining personal injury advice and when it is unclear whether you are represented elsewhere."

135. She asked the claimant to confirm by return whether he had independent solicitors acting for him in relation to any of his employment tribunal claims or on a personal injury claim and, if so, on which claims.

136. Following this letter, on 16 January 2018, the claimant wrote to Mr McCluskey, Ms Cunningham, Mr Passfield and Mr Kavanagh (355). He wrote that the advice in the letter of January 2018 was negligent, making some points as to what he said the advice failed to take account of. Points made included that the letter confused the legal basis of section 15 Equality Act 2010 with disability related discrimination claims, writing that the law was changed after the **Malcolm** case.

137. The claimant wrote that Mr Passfield, who signed the letter, knew that the claimant suffered from complex post-traumatic stress disorder, depression, tinnitus and was taking a large amount of medication. He said his health had been affected further because of the negligence. He asserted that Mr Passfield must have known, with the knowledge he had, the evidence in medical reports and the Unite lay officer's report, that the letter was incorrect and negligent.

138. The claimant questioned why the offer he proposed could not be sent to the RMT's solicitors.

139. The claimant wrote:

> "Ms Cunningham I am not assured that whoever the claims are against, if they had prospects they would be pursued: from the documents I have provided and the report provided by Unite lay representative it must be obvious there is a case: is the reason that people in Unite know Mick Cash, Karen Mitchell (who they would have met when she was a partner in Thompsons in the South East and dealt with Unite matters) or is it because of suing a sister union (I know the politics as I worked on Unite cases in the North West as a lawyer and encountered this myself)."

140. The claimant wrote that he had already complained about contacting the personal injury helpline and obtaining conflicted solicitors but not having his call returned.

141. The claimant wrote that he did not have legal representation for the employment tribunal claims and the personal injury claims had not been submitted.

142. The claimant wrote that he considered the matter should be referred to the General Secretary and the NEC (National Executive Committee) of Unite to investigate the service he had received and the injury it had caused him.

143. RK, in Mr McCluskey's office, acknowledged the claimant's email and wrote that it had been forwarded for the attention of Peter Kavanagh (359).

144. The claimant responded (359), writing that he was based in the North-West of England and would be grateful if the matter was referred to the North West. He requested that Mr McCluskey and the NEC investigate the serious concerns he had raised.

145. Vince Passfield wrote to Mr McCluskey on 16 January 2018 (649), writing: "Len, this matter is being dealt with by Alys Cunningham."

146. Alys Cunningham replied to the claimant's emails of 16 January 2018 (360), writing that his email to the General Secretary had been forwarded to the legal department to review, since his complaint related to the provision of legal services.

147. Ms Cunningham wrote that she would investigate the claimant's complaint regarding the lack of a returned call from the personal injury helpline. She asked for details to assist her investigate. She wrote that she still considered that they needed to ensure that the claimant obtained legal advice regarding any potential PI claims before any offer could be put forward by them.

148. Ms Cunningham wrote that she proposed to instruct a panel firm to review and provide a second opinion as to the merits of the claimant's ET claims and to provide him with advice in relation to any personal injury claim, subject to his agreement on this. We accept the evidence of Ms Cunningham and Mr Gillam that they outsourced the review because the legal department did not have capacity to carry out this review. The legal department is relatively small for the size of the union. Howard Beckett, as Assistant General Secretary, heads the department and is assisted by Mr Gillam, the Senior Employment Solicitor, and Ms Cunningham, covering predominantly employment and industrial matters, and Mr Lemon, who is a personal injury solicitor. We accept Mr Gillam's evidence that the solicitors in the department have an enormous workload and they thought it would be quicker to refer the review of the claimant's case to panel solicitors.

149. Ms Cunningham wrote that, as the claimant was currently living in Liverpool, she intended to refer this to a North West panel firm so that a meeting could be more easily facilitated and without delay. She asked the claimant, if he would like her to do this, to complete the attached request for legal assistance form and return that to her

with relevant documents. She noted what she had already obtained from Vince Passfield.

150. Ms Cunningham wrote:

> "I note you allege that Vince Passfield's letter of 15 January was in some way negligent, discriminatory and/damaging to your health. Clearly there can always be differing legal opinions and I can of course appreciate that this is a very emotional time for you and tensions run high and will therefore put these comments down to this."

151. The claimant replied to Ms Cunningham, copying this to Mr McCluskey, the same evening (361). He wrote that he felt strongly about Mr Passfield's letter of 15 January, that it was incorrect and, at the very least, negligent and that he had asked the General Secretary and/the NEC to investigate this matter. He wrote that he would also ask the NEC to support his employment claims under the rulebook (the provisions contained under rule 4.6.4) until his complaints were investigated. He gave some details about his call to the personal injury helpline. He wrote that he would be unable to complete the form for several weeks due to ill-health and would ask his family and friends to complete the form and provide a copy of the recording, hopefully during February 2018.

152. Mr Granfield wrote to Alys Cunningham on 17 January 2018 (683), apparently in response to a request that he examine his file. Mr Granfield forwarded to Ms Cunningham the claimant's emails to Mr Granfield, which Mr Granfield said did not include a particularised complaint. He wrote that the claimant, after Mr Granfield had sent him a copy of the complaints procedure and said the complaint would need to be put in writing, consistently deferred submitting it. Mr Granfield wrote that his perspective on this matter was that the claimant was potentially a vexatious litigant, whose remedy against his former employer lies in legal pathways which he wants to dictate and control, despite his illness. He wrote:

> "Problematic is his desire to have us support ET claims he has previously submitted without our support. It may be that we rest on the opinions and judgments you have developed - we put a clearly defined brief to a panel Solicitor to review and advise - which appeared to be the path you set out in last night's email."

153. Ms Cunningham replied to the claimant on 17 January 2018 (362). She attached the lay members complaints procedure. She wrote:

> "As the member complaints procedure (also attached) explains, "where a member's complaint concerns advice from the union, union lawyers or the conduct of the union's lawyers, the union shall use its usual procedures for legal service review, which may include the solicitors own internal complaints procedure. The decision shall be final."
>
> "As your complaint concerns advice provided by our regional legal officer, conveyed to you by the deputy regional secretary, I have endeavoured to

> undertake a legal services review by obtaining a second opinion on your ET claims and advice on any potential PI claims from a Northwest panel firm, as you appear to have requested previously. This in itself is exceptional or beyond our normal processes, since as a matter of course legal assistance is not available in relation to claims lodged independently and/or other legal representatives."

154. Ms Cunningham wrote that, as the claimant would be aware, the provision of legal advice and/or representation is discretionary and the Executive Council delegates that discretion and the operation of legal assistance to the legal department. She referred to rules 4.6.4, 4.62, 4.6.3 and 4.6.6.

155. Ms Cunningham wrote that the form she had sent the claimant was a request for legal assistance form, which she assumed he would be familiar with. She wrote that she was sorry that he felt too unwell to complete the form and said that she was happy to refer the documents that he and the RMT solicitors had provided to Vince Passfield to a panel firm to advise the union directly in relation to his ET claims, as opposed to himself. However, she would have liked them to be able to take instructions from the claimant directly and to have all relevant documents from him to consider as part of this. She suggested that, as an alternative to completing the form, if he confirmed that he accepted the declaration and provided the authority detailed below, which she had adapted from the generic form to reflect the unusual nature of referring his independently lodged claims, she would provide the documents she had and his membership contact details to Slater and Gordon and ask that they contact him directly to arrange a meeting. Failing that, she wrote that she would obtain advice to the union directly and report to him following this.

156. On 2 February 2018, the claimant wrote to Mr McCluskey an eight page letter (365) setting out a complaint regarding Mr Passfield, Mr Kavanagh and Ms Marcus. The claimant's complaints about Mr Passfield included allegations that Mr Passfield had refused him a reasonable adjustment by not appointing a different officer than Ms Charlett. The claimant also stated that he considered that Mr Passfield's letter of 15 January 2018 was at the very least negligent or that Mr Passfield had other motives for sending the letter. The claimant asserted that Mr Passfield did more than "convey" the advice in the letter; the advice was Mr Passfield's advice; he signed the letter.

157. The claimant's complaint about Mr Kavanagh was that Mr Kavanagh condoned a discriminatory act by writing that Vince Passfield acted with his full authority.

158. The claimant's complaints about Ms Marcus were that her summary of advice in response to his email of 5 September 2016, was provided without obtaining the additional information she had requested, without reading the claim forms and response, and that, at the very least, she was negligent and caused a disabled member of the union further distress. He also wrote that if, as stated by Mr Passfield in the letter of 15 January 2018, Ms Marcus had said that she still considered his claims had less than reasonable prospects of success, then it was obvious she had still not read the various claims and evidence and caused a disabled member of the union further distress.

159. The claimant wrote:

> "The service I have received at the very least has been poor or negligent, there may be other motives for Mr Passfield's actions: it is difficult for a union to sue a sister union, I am sure the individuals named above know Mr Mick Cash, Mr Andy Gilchrist and other senior figures of the RMT. Mr Passfield and Mr Kavanagh must know Ms Karen Mitchell who as a senior partner in Thompson solicitors, dealt with Unite work in the South East: Mr Passfield may have been motivated by my complaints during 2016."

160. The claimant requested that someone was appointed who was not in the London and Eastern region to investigate his complaints as he had raised a complaint against two senior figures in the union. He also stated that he hoped that he was interviewed as part of his complaint.

161. The claimant wrote that he had completed the form Ms Cunningham had sent him so that his employment case and personal injury case could be referred to Slater and Gordon in Manchester. He asked the General Secretary, under the rule book, to give permission that his claims should be supported and progressed by the union. He wrote that, if the General Secretary was not inclined to support his case, he would be grateful if he would allow him to put his case to the membership as a whole through the NEC.

162. We accept the evidence given by Mr Passfield, under cross examination, that he knew of Karen Mitchell, Mick Cash and Stephen Hedley, Senior Deputy Secretary of the RMT, but had never met them.

163. On 13 February 2018, Ms Cunningham wrote to Slater and Gordon asking them to assess the prospects of the claimant's employment tribunal claims which he had lodged during the period March 2016 to December 2017 (379). She asked that they set up a meeting with the member as soon as possible to take instructions from him and let them have advice on the ET case merits and for a member of their PI team to advise the claimant on any potential personal injury claims. Relevant papers were sent by four separate emails due to the large size of the documents.

164. Also on 13 February 2018, Ms Cunningham wrote to the senior partners at the firm of solicitors dealing with the personal injury line, asking them to investigate the claimant's concerns and return to her as soon as possible.

165. Ms Cunningham wrote to the claimant in response to his letter of 2 February 2018 to the General Secretary on 14 February 2018 (380). She wrote:

> "It is exceptional and outside of Unite's normal process for consideration to be given to providing legal assistance in relation to claims lodged independently. Nonetheless the region undertook to do this. You have raised complaints regarding the advice provided by the region in relation to your claims and the decision not to provide legal support for your employment tribunal claims.

> "Any allegation of disability discrimination and/or negligence in relation to the region's handling of your request for legal assistance is strongly denied.
>
> "As explained previously, where a member's complaint concerns advice from the union, under our complaints procedure, the union uses its usual procedures for legal service review to address any such complaint. In line this with [sic] I have referred the documentation provided by you and those obtained from the respondent's legal representatives, with your consent, to Slater and Gordon solicitors and instructed them to review your cases and advise on the merits of the employment tribunal claims you have brought independently during the period March 2016 until December 2017 as a second opinion. The provision of legal assistance/representation will be reviewed based on that advice."

166. Ms Cunningham wrote that their panel solicitors would contact the claimant directly to arrange an appointment to meet with him and discuss his employment claims and any potential personal injury claim shortly.

167. We accept Ms Cunningham's evidence that the denial of disability discrimination and/or negligence in this letter was written as a lawyer responding to a lawyer's letter. Although the claimant had not written directly to Ms Cunningham, and was writing in his capacity as a member, we find that she wrote in this way, as a normal response of a lawyer to an allegation about her employer made in a letter she was aware had been written by another solicitor. She offered, in evidence, that this was perhaps not best placed in that letter.

168. We accept Ms Cunningham's oral evidence that she viewed the claimant as acting as an employment lawyer, seeking to achieve the outcome he desired, of having his case supported without going through a legal assessment, by making allegations against people who delivered advice. The claimant's letter came to her for a legal review and that is what she tried to do. She noted that the claimant's correspondence in January alleged negligence in the advice given but did not allege disability discrimination; it was not until the claimant's correspondence in February that he made allegations of disability discrimination.

169. On 19 February 2018, the claimant wrote to Mr McCluskey (382), referring to his letter of 2 February and Ms Cunningham's letter of 14 February. He wrote that it must be obvious that his complaints, as contained in the letter of 2 February 2018, were more than as summarised by Ms Cunningham. He wrote:

> "My complaints are about the service provided by the union, in particular regarding three individuals, two senior officers in the Unite the union and the regions solicitor: my complaint raises other serious concerns regarding the way a disabled member of the union was treated by the above three named individuals, the failure to make a reasonable adjustment to the service provided to a disabled member of the union, negligence and more importantly that the above three figures may have an ulterior motive, that of protecting senior figures of another sister union they may know such as Mick Cash, Andy Gilchrist (former General Secretary of the FBU) and Karen Mitchell (a

> former senior partner of Thompsons solicitors who would have met Mr Passfield and Mr Kavanagh during her duties whilst working on Unite matters in the South East)."

170. The claimant asserted that Mr Passfield, a senior union official with many years of industrial experience, must have known his claims had reasonable prospects.

171. The claimant wrote that, according to the members' lay complaints procedure, an assessment should be made as to the most appropriate person to investigate the complaint and, as his complaint involved the Deputy Regional Secretary and the Regional Secretary, a national officer or other official may be appointed and, if he was not happy with the outcome of the decision, he could ask for a review.

172. He wrote:

> "It appears that Ms Cunningham wishes to protect the officials I have named in my complaint, utilising the last paragraph concerning complaints about lawyers, referred to as "agents" earlier in the lay procedure: under this paragraph 2 senior officials of the union and the regional solicitor would not be investigated, all the allegations I have raised would not be investigated and it clearly would not be appropriate to follow this procedure, her decision could be considered to be unlawful discipline (and the actions of the officials above) by a trade union to one of its members, as I have clearly been deprived of union services."

173. The claimant noted Ms Cunningham's denial of disability discrimination and/or negligence in relation to the region's handling of his request for legal assistance and stated there had been no investigation and asserted that Ms Cunningham was not being fair or impartial. The claimant stated that Ms Cunningham's actions needed investigating, including her previous comments in her email dated 16 January 2018, regarding his allegations being made "because of an emotional time and tensions run high and will therefore put these comments down to this".

174. The claimant requested that Unite support his case and pay for a forensic report regarding the authenticity of an email. He wrote that the actions of the RMT were clearly in breach of Unite's union rulebook under 2.1.6 and Unite should oppose their acts of discrimination which had caused the claimant ill health and Unite should "actively oppose such prejudice and discrimination".

175. The claimant wrote that he had a preliminary hearing in the London South employment tribunal and requested that the union appoint a representative to represent him at that preliminary hearing in Croydon on 22 March 2018.

176. Using Mr McCluskey's email address, JF in the General Secretary's office forwarded the claimant's email of 19 February 2018 on 21 February 2018 to Howard Beckett, asking him to look at it and asking whether it was appropriate to send an acknowledgement simply stating that the email had been passed over to their legal department for attention (685). Howard Beckett forwarded the email to Alys Cunningham, asking her for the "low down" on this.

177. On 20 February 2018, Ms Cunningham wrote to Howard Beckett (662). She wrote:

> "As he was a previous Unite panel solicitor and in-house lawyer for the RMT he knows buttons to be pressing on complaints etc. and is clearly also really unwell - in reality his complaint is he does not agree with Nicky's advice and decision not to support claims (which he lodged independently/through legal expenses insurance, who have since gone off record - five separate ET1s with a multitude of claims (discrim/victimisation on race, disability, TU, whistleblowing, breach of contract, constructive dismissal, injury to health, allegations of Karen Mitchell lying to police/professional misconduct - his last claim form was 50 pages long)… But he has phrased complaint as discrimination/negligence by Vince, Pete Kavanagh and Nicky (attached). There is no negligence, discrim or other claims with any merit against us, but it needs an independent panel firm advice on to put [sic] union nepotism allegations etc to bed (member requested he be referred to Slater Gordon previously, so is getting what he wanted in terms of review).
>
> "It is possible there might be a claim hidden in there somewhere with some level of merit against RMT, but not in the main/nothing jumping out of the hundreds of pages of pleadings (!). Was thinking may be best, when have SG advice, for response to go from Neil as member will be able to trace my Thompsons history and will no doubt raise at some point; he alleges L & E region conflicted/in on it because of Karen Mitchell being previous SE branch manager for Thompsons."

178. Ms Cunningham, on 22 February 2018, wrote to Owen Granfield (684) about the claimant's complaints of 2 and 19 February. She referred to her letter of 14 February and that she had referred this to the member's requested NW panel firm to review/meet with him/provide a second opinion on merits and that they would review the decision on legal assistance based on the outcome of this. She wrote: "if the claims have legal merit they will be supported".

179. Ms Cunningham wrote: "the complaint regarding the RS, DRS and RLO are inextricably linked to the legal advice/decision not to provide legal assistance and request for alternate representation based on what he perceived to be inaccurate advice from the officer in summer 2016."

180. Ms Cunningham wrote that she had written to the relevant solicitors in relation to the claimant's complaint that he did not receive a return call following his call the previous summer to the Unite PI line and was awaiting a response on this. She wrote that Slater and Gordon had been instructed to advise the member on the PI claim.

181. Ms Cunningham asked Mr Granfield to write to the member formally acknowledging receipt of his complaints and confirming that they were being investigated.

182. Mr Granfield replied to Ms Cunningham on 22 February 2018 (684), writing that he would email the claimant acknowledging receipt of the complaints and associated correspondence and would await her advice on the outcome of the legal services review. He wrote that he would ask a Regional Secretary to examine the complaints relating to service delivery in the London Eastern region.

183. On 22 February 2018, Ms Cunningham was informed by Slater and Gordon that David Miers would be dealing with the referral from the PI point of view. The following day, she was informed that Sadiq Vohra would deal with this from an employment view.

184. Mr Granfield wrote to Jennie Formby on 22 February 2018, requesting that she consider a complaint including the London Eastern Regional Secretary (765). The subject heading of the email was "Frank Edwards – complaint against Mr Passfield, Mr Kavanagh and Ms Marcus". This was the first review of a complaint she was to undertake as a Regional Secretary.

185. Mr Granfield wrote:

> "It will be appreciated if you will review how the case was handled by the Region and consider whether the service delivered was appropriate and proportional. If it was not, can you advise on what lesson should be learned and if appropriate, what apologies should be made. Once completed, if the complaint is not upheld, you should communicate to the member as quickly as possible your decision and the reasons for it. It is hoped that the member will be informed of the decision at most, no more than one month after this referral. The member may ask for a review of the decision. Any request for review should be submitted to the General Secretary and should specify the grounds on which the member is disputing and appealing against the findings of the investigation."

186. Mr Granfield wrote to the claimant on 22 January 2018, introducing himself as the union's member relations officer, handling complaints to head office with the delegated authority of the General Secretary and the Chief of Staff. He explained that his role was to administer the complaints process and to try to see that the claimant got a full response at the earliest opportunity. He wrote that the claimant's complaints of 2 and 19 February 2018, together with associated correspondence, had been referred to him. He wrote that he had referred the matter to the appropriate senior manager, Jennie Formby, South East Regional Secretary.

187. Some correspondence followed between the claimant and Mr Granfield, including the claimant asking whether Ms Formby would interview him. Mr Granfield wrote that the conduct of the review was a matter for the senior officer.

188. Mr Granfield emailed Mr Kavanagh, Mr Passfield and Ms Marcus on 22 February 2018 (645), attaching the claimant's letters of complaint and informing them that the complaint about LE officers had been referred to Jennie Formby. He wrote that the legal services review was being conducted separately.

189. The claimant emailed Ms Formby on 22 February 2018 (396). He wrote that he was informed that Ms Formby would be dealing with his complaint against Mr Passfield, Mr Kavanagh, Ms Marcus, Ms Cunningham and other matters regarding Unite services. He wrote that he was disabled, suffering from depression, anxiety, post-traumatic stress disorder and tinnitus on a daily basis and gave details of his current medication. He wrote:

> "I often find it difficult to communicate in writing and by telephone: I hope you can interview me face-to-face regarding my complaints so you can understand the true nature of my complaints against senior officials of the union and the impact on my health Unite services has had."

190. Ms Formby replied the same day (396). She wrote that the file of documents was extensive and she needed time to read and digest the file before reaching any conclusion. She wrote that, once she had done this, she would let him know whether she believed it was necessary to interview him personally, although this would be very unusual.

191. We find, based on this letter and the evidence of the respondent's witnesses, that it would have been very unusual to interview a complainant personally; the process is generally a paper based process. The claimant was not able to point to any evidence that other people making complaints had been interviewed.

192. The claimant replied the same evening (397). He reiterated that he had a disability and stated that he had raised serious complaints about two senior officers of the Union and employees of the union. He wrote:

> "I would be grateful if I am interviewed so you can understand fully the nature of my complaints and how the conduct of the individuals concerned has affected the health of a disabled member of the union: as you will notice from the occupational health report that Mr Passfield had, there is a risk of suicide and the treatment I have received from Unite has not helped with my condition.
>
> "I do not think you can reach a fair and reasonable conclusion until I am interviewed (so you fully understand the nature of my complaints and how the actions of officials of the union has affected me) and then Mr Passfield, Mr Kavanagh, Ms Marcus and Ms Cunningham are subsequently interviewed."

193. Ms Formby replied (398) that she would contact the claimant again after she had read and reviewed the full file.

194. On 7 March 2018, the claimant travelled to Manchester and delivered six lever arch files of documents to enable Slater and Gordon to assess the merits of his employment tribunal claims.

195. Ms Formby did not interview the claimant or contact him again, after the email exchanges on 22 February, until she issued him with the outcome of her investigation on 10 March 2018. Ms Formby had a brief telephone conversation with

Mr Passfield. We were not shown any notes of a conversation with Mr Passfield or any other notes in relation to her investigation.

196. On 8 March 2018 (SB146), Ms Formby sent to Howard Beckett and Owen Granfield a draft outcome she proposed to send to the claimant. Mr Granfield suggested a change because Ms Formby had incorrectly stated that her findings represented the outcome of an adjudication and were final. Mr Granfield advised that there was a possibility of a review by the Assistant General Secretary and her decision was not the final decision in the process. Ms Formby made the suggested changes to her letter, changing references to "adjudication", which is a term used by Unite for a final decision, to "review" and removing a statement that her decision was final.

197. On 10 March 2018, Ms Formby sent to the claimant the outcome of her investigation (401). This was a two-page letter. She wrote that she had been asked to review the claimant's complaints against Unite which had two main themes: concerns about the representation the claimant received from the London and Eastern region; and concerns about legal support he had received. She wrote:

> "In addition, for some time you also indicated that you intended to complain about alleged poor treatment of you by Unite but you have not particularised this, so I am unable to uphold your concerns in that regard. Unite's Lay Member Complaint process makes it clear that the responsibility lies with members to set out details of their concerns in order that they might be investigated and addressed but as you did not do this, we cannot take the allegations of poor treatment any further."

198. In relation to concerns about representation, she wrote: "I have concluded that whilst I acknowledge that there were some difficulties with communication, the region responded by providing an ASC to represent you. This is consistent with regional practice, and I do not find that you were in any way disadvantaged by this." She wrote that the ASC worked to a brief the claimant provided, but it was not possible to resolve the difficulties experienced through the internal workplace procedures operated by his employer. She wrote that detailed legal advice was, therefore, now being sought with the prospects of litigation under consideration. This process was continuing and he would be advised of the outcome in due course.

199. In relation to concerns about legal services, she wrote: "a legal services review is in the process of being conducted, so I am satisfied that the complaints procedure is being appropriately applied."

200. She expressed her conclusions as follows:

> "**Your concerns regarding the representation you received from the London and Eastern region**
>
> I acknowledge that communications could have been better between you and the region, but the representation provided was appropriate and the process

> of the provision of workplace representation did not in any way hinder your case.
>
> **Your concern regarding the legal support provided to you**
>
> This is currently subject to a legal services review in accordance with the provisions of our lay member complaints procedure."

201. The letter made no express reference to allegations of disability discrimination. It does not mention Mr Passfield, Mr Kavanagh, Ms Marcus or Ms Cunningham by name or job title.

202. Since Ms Formby did not attend to give evidence and did not provide a witness statement, we have no direct evidence as to Ms Formby's reasons or motivation for dealing with the matter as she did, other than her outcome letter and the draft.

203. We accept the evidence given by Gail Cartmail that her own experience of Ms Formby is that Ms Formby acts in good faith and undertakes duties thoroughly. However, she considered Ms Formby's outcome letter to be brief and would have preferred to have seen a fuller response.

204. The claimant replied about an hour after receiving the outcome letter (403), asserting that Ms Formby had not answered his complaints and this in itself could be construed as a detriment. He wrote:

> "Considering the serious allegations I have raised you should have had the courtesy to interview: your failure to do so indicates that you have not thoroughly investigated my complaints and the effects of the service provided by Unite on my health.
>
> "You have shown no duty of care to a disabled member of the union, who suffers from post-traumatic stress disorder, depression, anxiety, tinnitus on a daily basis and who is currently on stepped-up care provided by mental health professionals: have no doubt I am deeply distressed by your actions.
>
> "I am concerned that the manner in which you have investigated my complaints has been dictated by the serious issues I have raised, including a breach of the Equality Act.
>
> "You have failed even to address the various concerns I have raised, including my allegation that senior officers of Unite discriminated against me contrary to the Equality Act 2010.
>
> "The manner of the investigation and the conclusion could be deemed to be discriminatory."

205. He asked whether Ms Formby had interviewed Mr Passfield, Mr Kavanagh, Ms Marcus and Ms Cunningham. He asked for Ms Formby to inform him how he could complain about the way she conducted the interview and her conclusions. In a

subsequent email, the claimant wrote that there was an error in this email; it should have stated “the way you conducted the investigation and your conclusions”.

206. Ms Formby forwarded the claimant’s email immediately on receipt to Mr Granfield and Howard Beckett, copying this to Len McCluskey (730), writing “over to you….”.

207. On 10 March 2018, Mr Granfield wrote to the claimant (404), stating that he had been copied into the claimant’s earlier email to Jennie Formby. He attached a copy of the complaints process and referred the claimant to the part which stated that the member may ask for a review of the decision and that any request for review should be submitted to the General Secretary and should specify the grounds on which the member was disputing and appealing against the findings of the investigation. Mr Granfield quoted from the complaints process, that the General Secretary, on receipt of a request for a review, would consider it and ask an Assistant General Secretary or other appropriate officer of senior rank, together with the Chair of the Executive Council (or nominated EC substitute) to conduct a review of the case and adjudicate. Their decision would be final. Mr Granfield informed the claimant that, if he emailed or wrote to Mr Granfield specifying the grounds on which he was disputing and appealing against the findings of the investigation, Mr Granfield would expedite the request.

208. The claimant sent two emails to Mr Granfield in the evening of 10 March 2018 (405 and 406), writing that his complaint had not been answered by Ms Formby. He wrote that he would be complaining directly to the General Secretary.

209. Mr Granfield wrote to Gail Cartmail, an Assistant General Secretary, and Tony Woodhouse, Chair of the Unite Executive Council, on 12 March 2018 (697) giving them the “heads up” on an impending appeal to an AGS from the claimant. Ms Cartmail responded to say she was on leave 28 March to 11 April. Mr Granfield agreed with the Chief of Staff that this could wait for Ms Cartmail’s return from leave, rather than asking someone else, since the claimant had said that he would not submit his appeal until the last week in March.

210. On 12 March 2018, Owen Granfield wrote to RK and JF in the General Secretary’s office (687). He wrote that he had a difficult case that would need to involve Tony Woodhouse alongside Gail Cartmail and asked for Tony Woodhouse’s email address.

211. Tony Woodhouse, after being contacted by Mr Granfield, wrote on 12 March asking whether there was any chance of getting the file sent to him, writing that he might as well look it over while they were waiting for the written request for review (693).

212. Mr Granfield passed on the request to Alys Cunningham. She wrote to Tony Woodhouse, copied to Gail Cartmail, (692) that she was happy to send the file she had but suggested it might be better to wait for the member’s appeal to come in and she could then send him the documents relevant to the appeal points raised. She wrote that the claimant’s claims were being reviewed by Slater and Gordon and they

had a conference with the claimant's counsel on that Friday. She wrote: "not the norm, but given the size of the file, number of claims and issues/allegations involve the best way of handling review."

213. She sent a further email on 14 March 2018 (706), writing that there was an additional complication since the original complaint referred to Jennie Formby was a 52MB electronic file which she could not push through the IT systems since it was too big. She wrote that she was wary about sending the files from head office by post so perhaps it was best to await the outcome of the legal services review, which would be a final response to that element of the complaint, if the preceding advice was confirmed. She wrote: "that would leave only the complaints against the various Regional Officers etc to be adjudicated and, if the complaint is not upheld, what would be a final response given."

214. Gail Cartmail replied that she would take Alys's guidance and wait for the member's appeal in order to confine to documents relevant to the appeal (706). We understand the reference to taking Ms Cunningham's guidance to be that Ms Cartmail was accepting the advice about waiting to receive relevant papers until the claimant's written appeal had been received. We accept Ms Cartmail's evidence that she did not take advice from Ms Cunningham during the review.

215. On 16 March 2018, the claimant attended a five hour meeting with counsel and Mr Vohra of Slater and Gordon to discuss the merits of his employment tribunal claims.

216. On 20 March 2018, Mr Vohra wrote to the claimant (1024), recording that they were able to discuss three of the claimant's five claims with counsel and, based on those discussions, their initial advice was that there may be elements of his claim with reasonable prospects of success. He wrote that counsel would need to further review the claimant's papers and the fourth and fifth claims before giving meaningful advice. He recorded that it had been agreed that he would endeavour to report back to the claimant in the week commencing 9 April, noting that the claimant expected his case to be listed for a preliminary hearing on or after 16 April.

217. Mr Vohra forwarded a copy of this email to Alys Cunningham (1024), writing: "as suspected the matter is not straightforward and the various components are likely to have varying prospects. I will update you w/c 9th April."

218. Ms Cunningham was due to be on annual leave for two weeks from 6 April 2018. She informed Mr Vohra of this and pressed to get advice back from counsel prior to this, but this was not possible due to the complexities, extensive documents and counsel's availability.

219. The claimant had correspondence directly with Mr Miers of Slater and Gordon, which was not copied to Alys Cunningham, about the personal injury matter. Mr Miers wrote on 11 April 2018 (418) that Ms Cunningham had instructed him to obtain a copy of the claimant's previous solicitors' file before proceeding and that, if the claim was union backed, they had to proceed in accordance with the union's instructions. Mr Miers wrote that the claimant could, of course, always instruct them

as a private client (also CFA) although the terms would not be as advantageous to him.

220. Shortly after receiving Mr Miers' email, on 11 April 2018, the claimant wrote to Mr McCluskey and Ms Cunningham (409). He wrote that he had been contacted by Mr Miers who requested his file from previous solicitors. He wrote that he had replied to Mr Miers, stating that he had requested his file from RM, that they had refused to provide him with a copy and he had had to make a complaint to the legal ombudsman. He wrote that, to his great distress, he had received an email from Mr Miers on 10 April 2018 stating that the union had refused to allow him to see Mr Miers because he had not provided his file from previous solicitors. He wrote that Mr Miers had again that day informed him that Ms Cunningham had refused to allow him to see union solicitors to discuss his personal injury claims but, to his disadvantage and detriment, he could instruct him on a private client basis under a CFA. The claimant informed Mr McCluskey of various points including that RM had never submitted a civil claim on his behalf and that he had informed Slater and Gordon of this and that what documents he had from RM regarding his personal injury claims he had provided to Mr Miers. He wrote that he had delivered four lever arch files of documents to Slater and Gordon so that they could assess his claims. He wrote that Slater and Gordon and Unite could not be disadvantaged by not having his file from his previous solicitors.

221. In a further letter later on 11 April 2018 (412) to Mr McCluskey, copied to Neil Gillam and Alys Cunningham, the claimant made a complaint about Ms Cunningham. He wrote that he had mentioned Ms Cunningham in his letter of complaint of 2 February 2018 but stated in that letter that he did not wish to make a complaint against her because he considered as a solicitor she was acting in the best interests of her client. He wrote:

> "Please note Ms Cunningham knew full well I had raised a serious complaint in my letter dated 2 February 2018 as she was provided with a copy and she is aware that I was critical of her responses to me (stating I may be a disabled person but my allegations against Mr Passfield were based on sound reasons and evidence, not suffering an emotional time).
>
> "I still contend that Ms Cunningham's actions result from my complaint dated the 2nd of February, against senior union officials and my complaints including unlawful action as her denying me of a Union service is not reasonable in the circumstances (please refer to my earlier emails to you today and my correspondence with Slater and Gordon)."

222. The claimant asked Mr McCluskey to treat this as a complaint against Ms Cunningham and asked for Slater and Gordon to be contacted and instructed to review his personal injury claims as a union member rather than a private client.

223. Since Ms Cunningham was on holiday at this time, Mr Gillam began to deal with this matter. He made enquiries of Slater and Gordon (1025). Then on 13 April 2018, he tried to call the claimant, leaving him a voice message.

224. Mr Gillam then sent the claimant an email on 13 April 2018 (414). He referred to trying to call to reassure the claimant about the matters he then set out in the email. He wrote that the situation, as he understood it, was that the claimant's employment tribunal claims were being considered by Slater and Gordon at the union's request and they awaited advice from counsel. In relation to the personal injury matter he wrote:

> "Your personal injury claim is also being considered however what would be helpful for the solicitor involved is any correspondence that has been passed between your previous solicitors and your employer/their insurer. You will of course know that this would be helpful. I appreciate that you believe that the access to the file will be denied and you may well be right but it is standard practice for a solicitor looking at something afresh to at least try and retrieve this file. If they don't try (and as you say they may well be refused) then they could find themselves in difficulty should something come to light later that they should have been aware of."

225. He wrote: "no one has been deprived of any service and no one is trying to complicate matters here - they are simply attempting to try and gather as much information as possible so they can advise you properly."

226. He wrote that he hoped this reassured the claimant and said he would be grateful if the claimant could return the permission to Slater and Gordon to allow them to try to retrieve the file. If they did not get it, so be it, and they would cross that bridge if and when it came before them.

227. The claimant replied to Mr Gillam's letter on 16 April 2018 (419). He gave reasons why he considered the file from his former solicitors was not relevant. This included that he had informed Slater and Gordon that he did not want any contact with RM from himself or Slater and Gordon until the legal ombudsman had completed their investigation into his complaint. He attached an email to RM requesting his file, which had been refused and an email from the legal ombudsman demonstrating that his complaint was still active. He wrote:

> "Mr Gillam I have experienced numerous problems in accessing Unite services from 2016 to January 2018 and the deadline to submit my personal injury claims is August 2018: the pre-action protocols will need to be adhered to and I would be grateful if you contact Slater and Gordon and inform them to consider my claims as soon as possible so deadlines are not missed (the approaching deadline is causing me further anxiety)."

228. The claimant referred to being disabled, his various conditions and medication and wrote that the correspondence from Slater and Gordon had caused him further stress and anxiety. He requested that an appointment be organised as soon as possible to set his mind at ease and ensure deadlines were not missed.

229. On 22 May 2018, the claimant wrote to Mr McCluskey (422). He referred to his complaints of 2 and 19 February 2018. He wrote that Jennie Formby provided an outcome to his complaints on 10 March 2018 which caused him further distress as it

did not address the nature of his complaints, the evidence he provided or the individuals involved in his complaint and amounted to a further detriment for the complaints raised (including breaches of the union rulebook) and an act of disability discrimination. The claimant requested Mr McCluskey to personally address his complaint.

230. The claimant alleged that he had been deprived of union legal services in 2016 and again on 15 January 2018 contrary to the rulebook because of the protected concerns he had raised. The claimant asserted that he had given Mr McCluskey and the union enough information to realise that aspects of his employment tribunal claims had reasonable prospects of success. He requested that Mr McCluskey make adjustments on the grounds of his disability and authorise the union to support his various legal claims (including employment tribunal claims of a detriment for whistleblowing and discrimination) as the continued delay was causing him further distress. He asked that, if Mr McCluskey was unwilling to make an adjustment on the grounds of his disability or unwilling to authorise the union to support his various claims, that he be allowed to put his case to the membership as a whole through the NEC as, under the Unite rulebook, he wrote that the NEC makes the final decision as to whether or not legal support should be provided to members.

231. On 26 May 2018, Mr Vohra informed Mr Gillam that he had just received the advice from counsel on the claimant's matter (425), following some delay on the part of counsel. He wrote that some elements were deemed to have reasonable prospects whilst others were not.

232. Mr Vohra copied counsel's advice to the claimant.

233. Late on 26 May 2018, the claimant wrote by email to Mr Vohra, Mr McCluskey, Neil Gillam and Alys Cunningham (426). The claimant wrote that he was deeply distressed by the advice. He made some points about matters which he did not consider counsel had taken into account.

234. On 29 May 2018, Mr Vohra sent Mr Gillam a letter summarising counsel's advice and seeking the union's instructions. His summary included that counsel had advised in relation to some of the claims that they had reasonable prospects of success. He noted that counsel had invited the claimant's comments on one point and that the claimant had raised some queries following receipt of the advice. Mr Vohra wrote that he anticipated that some of the claimant's claims would remain as not having reasonable prospects of success. He sought instructions as to whether the union considered the advice so far to be sufficient to decide on legal support or whether the claimant's comments should be considered by counsel. Mr Vohra noted that his colleague, Mr Miers, told him that he was considering the personal injury claim resulting from the assault in August 2015 as a pre-instruction matter and they agreed that there may be some overlap regarding injury caused by the allegations made in the tribunal. Mr Vohra said that Mr Miers would consider this overlap further in light of counsel's advice and would seek further advice from counsel as necessary.

235. Mr Gillam replied, asking whether there was a full advice on personal injury as well (1027).

236. On 29 May 2018, the claimant wrote to Mr McCluskey a nine page letter requesting legal assistance (442). He wrote that counsel's advice was flawed/defective in a number of ways and requested Mr McCluskey to instruct the Unite legal department to support his employment tribunal claims. He set out in detail ways in which he considered counsel's advice to be flawed/defective. The claimant asked Mr McCluskey to authorise legal support and, if he was not inclined to do so, to allow him to appeal directly to the NEC under the rulebook for legal support. He wrote: "I request you make a reasonable adjustment and allow me with the support of a Unite member to not follow a procedure through any branch, which could be damaging to my health but address the NEC directly."

237. The claimant understood that the normal procedure did not allow him as an individual to approach the NEC directly but believed that this could be done through a branch resolution. He did not feel able to address a substantial number of people at a branch meeting to obtain a resolution.

238. During the course of proceedings, the claimant obtained a document from the respondent's website about the Executive Council which gives an email address for contacting the Executive Council or, as an alternative, states that contact can be made by writing care of the General Secretary who will forward any post received. The claimant was not aware of this document at the time that he was asking the General Secretary to allow him to address the Executive Council directly.

239. We accept the evidence of the respondent's witnesses, including Neil Gillam and Gail Cartmail, that decisions on the provision of legal assistance are delegated by the Executive Council to the legal department and that, to the best of their knowledge, there has never been a case where the Executive Council has itself considered and decided on whether to grant legal assistance. The Executive Council is a body consisting of 75 lay members which sits quarterly, on average for 3-4 days. It considers matters of policy and sets policies for officials and staff to work towards. Senior Officers, including the Assistant General Secretary responsible for legal services, reports to the Council at the quarterly meetings. The Executive Council does not consider individual matters like requests for legal assistance.

240. Also in the letter of 29 May 2018, the claimant noted that counsel had advised that elements of his claim had reasonable prospects and wrote: "Ms Nicky Marcus and Mr Passfield should not have refused a disabled member of the union legal assistance (and alternative representation on the grounds of my disability) causing me further stress in an already difficult situation and this matter should be investigated."

241. In addition to the request for legal assistance, the claimant requested that Mr McCluskey authorise the Unite publicity department to publicise what the RMT had done to him to ensure that Mick Cash and others never had the opportunity to do what they had done to him to another member of staff or another trade union member.

242. Also on 29 May 2018, the claimant wrote to Mr Vohra and Mr McCluskey (434), taking issue with a comment in Mr Vohra's summary of advice that he anticipated that prospects would not change. He made various detailed points and questioned how Mr Vohra could say that prospects of success were not likely to change.

243. On 30 May 2018, Mr Miers wrote to Mr Gillam (1044), informing him that there was no official PI advice, although he suggested one could be provided after a proposed conference. He advised that any claim for PI arising out of the assault and two subsequent altercations with Ms Mitchell was strong and said he would be happy to advise them to support the claimant's claim under the terms of their CCFA. He referred to a substantial overlap between the personal injury and existing employment tribunal claims and that the claimant was seeking double recovery. He proposed that, subject to Unite's approval, he intended to invite the claimant to attend a conference with a specialist barrister with a view to preparing particulars of claim. He suggested counsel's specialist advice on the matter should be sought before proceedings were served.

244. Mr Gillam had a telephone conversation with Mr Vohra on 4 June 2018 (1051) about where the matter was up to. Mr Gillam stated that he was minded to allow the claimant's queries to be answered by counsel and then take a view on the matter. If only some claims had reasonable prospects, he would invite the claimant to withdraw those before the union supported the remainder. Mr Vohra informed Mr Gillam that the claimant had recently mentioned the Protection from Harassment claim. Mr Gillam's view was that, if this was a stand-alone civil claim, it was not normally something that the union would fund.

245. Mr Gillam wrote to the claimant on 5 June 2018 (452).

246. Before sending his letter, he asked Mr Vohra and Mr Miers to cast an eye over it (1049).

247. Mr Gillam wrote to the claimant that he had been asked by the General Secretary to consider the points the claimant had made and to respond. He wrote that this was an entirely standard practice when detailed letters are received concerning complex points of a legal nature. He wrote that the claimant had also raised issues concerning the conduct of officers, notably Messrs Passfield, Kavanagh and legal staff, Ms Marcus and Ms Cunningham. He wrote that he understood these had been dealt with by Ms Formby and commented that he was not convinced that they added to achieving a satisfactory resolution of the claimant's issues. He wrote: "they are not matters for me, other than that they had to be considered prior to responding to you." He wrote that the claimant had been given a point of contact, Mr Granfield, should he wish to pursue the matter further and wrote: "we should detach these procedures now from the matters that I have been asked to consider, which are your legal cases." He wrote that the views expressed by Mr Passfield and Ms Marcus on the merits of the claimant's claims had been overtaken by the decision of Ms Cunningham to refer the matter to Slater and Gordon and subsequent advice received by counsel. He wrote: "it would seem more productive to

look at these matters rather than back." He wrote that Mr Granfield would be in touch concerning an appropriate review of the decision of Ms Formby.

248. In relation to the personal injury claim, Mr Gillam wrote that Mr Miers had advised that the matter enjoyed a reasonable prospect on his initial consideration and that the matter had now been referred to counsel to consider both the issue generally and specifically the relationship between any personal injury claim and any employment tribunal claim and compensation. Once the advice had been received, he wrote that they would consider, well in advance of the claimant's limitation date in August, how best to proceed with this matter.

249. In relation to a claim under the Protection from Harassment Act 1997 against Ms Mitchell, he wrote:

> "The union's general rule is that civil matters are not normally supported under the terms of union legal assistance and this will not be undertaken. I see no reason, particularly when other avenues of redress are open to you that our general policy on civil proceedings be relaxed in the circumstances."

250. In relation to the claimant's employment tribunal claims, Mr Gillam wrote that they had been considered by both Slater and Gordon and now counsel and that they had taken the view that certain parts of his five tribunal claims enjoyed a reasonable prospect of success and others did not. Mr Gillam wrote that he had noted the claimant's comments and these would be relayed back to counsel on his return from leave and he would be asked to consider them to ascertain whether his view changed as a result. He noted counsel had also asked for some further instructions and Mr Vohra would write to the claimant seeking those instructions.

251. Mr Gillam wrote:

> "I must however be clear at this point that in line with every other member who applies for legal assistance from the union the advice of our panel solicitor and in this case counsel will normally be followed and should it remain the same we will require you under the terms of any legal assistance grant to do the same. In this case I would imagine (though I await to hear) that your claims will be consolidated at some point and at that juncture you will be required, should you avail of Unite's legal assistance to follow the advice of counsel in withdrawing those claims which do not enjoy a reasonable prospect and focusing on those that do. This is entirely in accordance with our established practices, practices that I am know [sic] you are well aware of.
>
> "Should you decide that you wish to continue with all of your currently lodged claims you are perfectly at liberty to do so, privately, at your own expense."

252. Mr Gillam noted the claimant's disability and that the correspondence was causing him further anxiety or distress. He suggested that the claimant could nominate someone to receive the correspondence on his behalf to limit any negative effect this may have on his health.

253. Mr Gillam wrote that the request for funding of an IT report would be considered by the solicitor and counsel tasked with dealing with his claim and that the union would be guided by them as to the necessity for any expert report in these matters. He wrote:

> "On a general note, whilst the union's legal department (or the General Secretary's office) are content to look at the conduct of any panel solicitor's conduct or where advice falls short of what is expected, what we will not be doing is intervening in your case at your request when you do not agree with the advice being given to you. This is not a practical way to run any union legal assistance scheme and is not something that can or will be undertaken."

254. In relation to the Executive Council, Mr Gillam wrote that the provision of legal advice and/or representation is discretionary and that the Executive Council delegates that discretion and the operation of legal assistance to the legal department. He wrote:

> "There is no provision for an appeal directly to the Executive Council. Nor is there provision for any procedure through a branch as you describe. Decisions on legal assistance are taken in accordance with professional advice.
>
> "I further fail to see how any such appeal can be properly described as a reasonable adjustment."

255. In relation to an immediate employment tribunal hearing, Mr Gillam wrote:

> "I can however see how a decision on a hearing venue is of great importance to you and regardless of your decision in respect of pursuing your substantive claim(s) with union legal assistance I am prepared to grant assistance with any hearing at first instance in respect of such a request (should it be opposed by the respondent) as a reasonable adjustment and regardless of merit."

256. This paragraph related to the claimant's request that his employment tribunal claims be moved from the London South employment tribunal region to the North-West region.

257. In relation to publicity, Mr Gillam wrote:

> "The union press office is not routinely utilised in the prosecution of individual cases and certainly not before any success is achieved.
>
> "Whilst we appreciate the high standards that we expect of other trade unions we do not intend to hand succour to those in the media intent on attacking another trade union. This is not related to the provision of legal assistance. If and when the necessity for consideration of any media response occurs we can consider it then."

258. Mr Gillam wrote that he appreciated that some of this letter would be disappointing. He wrote that, on a general note, decisions on legal assistance and the conduct of individual cases would not be made unconditionally or on request by the General Secretary's office or indeed in the legal department. He wrote:

> "We will consider what has been provided in the way of professional advice and we will in the main follow that. This is a process you are more than familiar with, having spent a large part of your working life (I understand) working in the same field. Whilst I do appreciate your frustration when advice is not what you want it to be, particularly when you are as knowledgeable as you are, these are long-standing procedures which govern the operation of our legal assistance scheme which normally works well."

259. We find that Mr Gillam was correctly stating what he understood to be Unite's normal policies, at that time, in this letter. We accept his evidence that Unite requires members to follow the advice of panel instructed solicitors and, where instructed, counsel, in relation to what legal claims should be pursued with legal assistance from Unite, and that claims will not normally be given legal assistance if they are not assessed as having a reasonable prospect of success. On occasion, Unite may support a case despite advice that the case does not have a reasonable prospect of success, because the union has a strategic interest in running it. We accept that it is Unite's policy that claims between individuals will not normally be supported and this was one of the reasons that he informed the claimant that the Protection from Harassment claims would not be supported. We accept that, using Mr Gillam's words, representing people in the workplace is their "raison d'être." In addition, they had been advised by Mr Miers that he did not view the Protection from Harassment claim against Ms Mitchell had reasonable prospects of success.

260. Mr Gillam wrote to RK and JS in Mr McCluskey's office on 5 June 2018 (814). He informed them that the claimant's complaint about officer conduct looked at by Jennie Formby originally was being reviewed by Gail Cartmail and that his legal services complaint had now been looked at and Mr Gillam had responded. He wrote:

> "I don't think it wise to get into a dialogue with him however leave that to you. He has lodged a complaint against everyone who has dealt with him (from his former solicitors to his officer/RCO/Reg Sec/Jenny through to Alys/panel solicitor and now counsel) and it looks increasingly like he is attempting to build a further claim against us.
>
> "He is also clearly very unwell."

261. Mr Gillam accepted, under cross examination, that it was not correct that the claimant had lodged a complaint against everyone who had dealt with him; the claimant had praised the assistance given by Mr Nixon and he had not described his concerns about Nicole Charlett as a complaint.

262. We accept Mr Gillam's evidence that it was his opinion, based on the correspondence they continued to receive from the claimant, that the claimant's main objective was to have his claim supported in the manner he wanted it supported. He

was of the view that the claimant, as an employment solicitor, was aware how to build a case.

263. Following receipt of Mr Gillam's letter, the claimant wrote to Mr McCluskey on 5 June 2018 (456). The claimant wrote that Mr Gillam had stated the claimant had received Mr Granfield's contact details to pursue the matter of complaints against senior officials and employees of Unite further. The claimant wrote:

> "This is not the procedure as contained in the Unite rulebook and/or the Unite members complaints procedure, as I have submitted my complaint and/or appeal (request for a review even though my original complaints were not addressed) to you and I am still awaiting an acknowledgement to my email dated 22 May 2018 and the next steps in the process as per the Unite rulebook and/or members complaints procedure."

264. The claimant requested that Mr McCluskey investigate his complaints, writing that his complaint contained serious allegations against Mr Kavanagh, Ms Formby, Mr Passfield and other employees who he alleged may have been motivated to deprive a member of a legal right, a service under the rulebook because he had raised serious allegations, such as discrimination and that the senior officers were depriving him of union service because of the complaints he had against senior officials of the RMT, who the claimant asserted that they must know.

265. The claimant referred to Mr Passfield refusing to make a reasonable adjustment when he refused to change the claimant's workplace representative in 2016.

266. The claimant referred to being informed by Slater and Gordon that his personal injury claim would be submitted only against the RMT and gave reasons why he considered the claim should be submitted against both the RMT and Ms Mitchell. He asked Mr McCluskey for confirmation that the claims against both parties would be submitted. In relation to the Protection of Harassment Act 1997 claim, the claimant wrote that he had worked in the capacity of a solicitor for panel Unite solicitors who had submitted both employment tribunal claims, personal injury claims and Protection from Harassment claims at the same time to protect members' interests. He asked why he was being deprived of this service. He asked Mr McCluskey to confirm that what he described as the usual practice of submitting all claims to protect the members interests was followed in his case. The claimant wrote:

> "Mr McCluskey, ever since I managed to actually contact Unite for help and assistance, there has been a reluctance to pursue matters against Mick Cash (General Secretary of the RMT) and my claims generally and this matter should be addressed in my complaints."

267. The claimant questioned Mr Gillam's statement that counsel's advice would normally be followed and that the claimant should do so and withdraw claims which did not have reasonable prospects. The claimant wrote that he knew from his own experience that it was not always the policy that counsel's advice should be followed. The claimant wrote that Mr McCluskey, with his own industrial experience, and Mr Gillam, with his legal experience, should both know, following his letter of 29 May

2018, that counsel's advice was incorrect. He requested that Mr McCluskey and Mr Gillam acknowledge that counsel's advice was wrong and support his employment tribunal claims.

268. The claimant wrote that he was grateful that Unite would represent him during any preliminary hearing. He requested Mr McCluskey to instruct the legal department and Mr Gillam to support his employment tribunal claims so he did not have to suffer any further anxiety because of delays. He wrote that, because of recent developments in trying to obtain support for his employment and civil claims, he was suffering from regular panic attacks which was further affecting his mood.

269. The claimant referred to a case where a claimant submitted claims of discrimination with over 17 incidents but only succeeded on one and wrote that, therefore, his own claims, some of which had been assessed as having merit, should be supported.

270. The claimant asserted that it was normal procedure when he had worked as a panel solicitor to submit all claims to protect the trade unionist's interests but this was not the case in his cases. He said this service was affecting his disability.

271. The claimant again requested Mr McCluskey to instruct solicitors to request an IT report.

272. He wrote that he had the right as a union member to complain about poor service from panel solicitors and it was not for Mr Gillam to deprive him of this right.

273. The claimant wrote that Slater and Gordon and Mr Gillam had refused to protect his interests (to his detriment and to the benefit of the RMT) and that the matters he raised should be investigated and rectified.

274. The claimant wrote:

> "Mr McCluskey in a member led union, it is not for an employee of the union such as Mr Gillam to decide who appeals to the NEC. Under the union rulebook it is still the NEC who decides who will be granted legal assistance. I am a disabled person and rather than going through a branch I would be grateful if you would allow me to appeal to the NEC; if you are not inclined to authorise legal assistance. The union rulebook does not state that it is Mr Gillam who finally decides who can appeal to the NEC for assistance and it is the NEC which governs our union."

275. The claimant wrote that he presumed, in a member led union, a member through his branch could approach the NEC and, rather than appealing directly to his branch in London, it would be an adjustment for him to appeal directly, to avoid further stress and recounting "triggering" incidents.

276. In relation to publicity, the claimant suggested that Mr Gillam seemed interested in protecting the interests of the RMT and that this was not the first time he had

encountered this in Unite. He requested that Mr McCluskey personally consider his request to publicise his case.

277. We find that it was not the case by this time, even if it had been the claimant's experience in the past, that Unite would support all legal claims a member wished to bring, irrespective of merit. We accept the evidence of Mr Gillam, supported by the letters he wrote to the claimant, that members, as a condition of legal assistance, were normally required to follow the advice of the legal representatives appointed for them as to which cases had sufficient merit to be pursued.

278. As previously found, there was no procedure, in practice, for members to have their requests for legal assistance considered by the Executive Council itself. All decisions as to legal assistance were delegated to the legal department (see paragraph 34).

279. On 6 June 2018, Owen Granfield sent to Gail Cartmail and Tony Woodhouse the claimant's request in relation to Jennie Formby's decision of 10 March 2018 (713). He wrote that he looked forward to receiving a note of their adjudication and final decision in the matter. He gave advice that they make and keep clear notes of the reasons for their decisions, writing "as this may not be the last that we hear of this matter."

280. Also on 6 June 2018 (1050), Neil Gillam wrote to Mr Vohra and Mr Miers thanking them for their help to date and saying that his letter had gone, producing the predicted overnight complaint to the General Secretary. He asked them to make sure that their "pieces of the jigsaw" were done and in a timely fashion to avoid any further complaints. He asked them to (i) have employment counsel look at the claimant's comments and take his instructions on a particular aspect. (He noted that counsel was not back till the following week but asked them to keep the claimant informed of this). (ii) Have their personal injury meeting with counsel and privately consider (a) the overlap with tribunal proceedings (b) merits generally and (c) whether a 1997 claim was strictly necessary. He wrote "advice to union only at this stage".

281. On 8 June 2018, Owen Granfield sent further documents to Gail Cartmail and Tony Woodhouse, writing that he had discovered since his previous email that the claimant had been sending additional information to the office of the General Secretary and had not copied him in (711). He wrote that the entire file had now been sent to him and he was forwarding it directly to them as decision-makers so they could be aware of the full facts and the claims and complaints made by the claimant in order that these may be taken into account in their decision which he stated would be "an adjudication and final response". He wrote:

> "I look forward to receiving your decision once you have had an ample opportunity to properly consider the full facts of this referral, which relate only to the officer and administrative service given to this member, as a legal services review has been conducted in relation to the legal advice and associated aspects of this matter, our procedure being explicit."

282. Mr Granfield then quoted from the complaints procedure as follows:

> "Where a member's complaint concerns advice from the union, union lawyers or the conduct of the union lawyers, the union shall use its usual procedures for legal service review, which may include the solicitors own internal complaints procedure. The decision shall be final."

283. On 8 June 2018, the claimant notified ACAS of potential claims against Jennie Formby and Unite under the early conciliation procedure (SB116 and SB117). The certificate was issued on 8 July 2018.

284. On 8 June 2018, Mr Miers wrote to Mr Gillam (1053) asking for confirmation that he was to obtain a written advice from counsel on the potential overlap and the merits of pursuing the Protection from Harassment Act claims on a private paying basis. He clarified that counsel would be instructed on a CFA for all other work. He asked if he was right in thinking that the union support would depend on counsel's advice but any PI claim supported by counsel would be supported by Unite.

285. Mr Gillam replied to this on 11 June 2018 (1053). He wrote:

> "I would like to know and yes you can take advice from counsel on whether he is correct in the assertion that he may be left without remedy if the PHA claims are not pursued.
>
> "On the PI claim yes you are correct that the advice of counsel is critical to whether the PI claim will be pursued."

286. In relation to personal injury claims brought by members, the support which Unite provides, if it agrees to do so, is to indemnify the member for costs awarded against them, if the claim is unsuccessful, and to fund disbursements during the progress of the claim. Legal fees are not paid by Unite, since cases are taken by panel solicitors and counsel under CFAs (conditional fee agreements).

287. We accept the evidence of Mr Gillam that he wanted the specialist advice of counsel on the best way forward before deciding whether the claimant's personal injury claims should be supported by Unite because of what he considered to be a substantial overlap with the employment tribunal claims.

288. On 12 June 2018, the claimant wrote to Mr Vohra copied to Len McCluskey, Neil Gillam and Mr Miers (464). He asserted that the service provided by the solicitors was causing him further distress. He requested that they ask the union if they would still fund his employment tribunal claims if he had to seek representation and funding elsewhere for the civil claims.

289. On 12 June 2018, the claimant was informed by a solicitor at Slater and Gordon who was dealing with matters in Mr Miers' absence, that the conference arranged for the next week with counsel on the PI matter would not go ahead unless he wanted to instruct counsel on a private basis (1059).

290. On 14 June 2018, Mr Vohra replied to the claimant's letter of 12 June (468). Mr Vohra wrote that he stood by his comment that the likely outcome was that, once counsel had reviewed his points, there would be elements of the claimant's claim which were likely to be successful and elements which were not, based on reasonable prospects of success. He wrote that the claimant's comments would be put on a direct basis to counsel so that counsel could independently provide his revised advice. His letter included that his current instructions remained that he was advising the union regarding prospects of success and that, if Slater and Gordon were instructed to represent him, they would do so. Issues of funding remained a matter between the claimant and his union and the claimant would need to contact the union directly in this regard. Mr Vohra wrote that the priority at this stage was for the claimant to provide his comments on counsel's advice so that Mr Vohra could discuss with counsel whether or not it was appropriate to have a further conference with the claimant. Mr Vohra suggested that it was imperative that the claimant provide his written comments so that counsel's updated advice could be obtained before the union could decide whether or not they would support his claims.

291. The claimant requested Slater and Gordon's complaints policy. This was provided to the claimant by Mr Gillam on 24 June 2018 (491).

292. The claimant wrote again to Mr McCluskey on 15 June 2018 (474). He referred again to complaints against senior officials and employees of the union and repeated allegations in his letter of 5 June 2018 about their motivation to deprive him of services. He requested an urgent response to his request for Mr McCluskey to intervene to ensure all his allegations were fully investigated and that he was not subjected to any further detriments. He repeated a request that Mr McCluskey intervene to ensure all his civil claims were submitted. He asked Mr McCluskey to instruct panel solicitors to follow what he described as the normal practice and submit all his personal injury claims, which included claims against Ms Mitchell and Protection from Harassment claims. He wrote that the continued delay was causing him more anxiety and affecting his mood and that his claim should be submitted by 26 August 2018. He repeated his request that, if Mr McCluskey was not inclined to support either his employment or all his civil claims, then to allow him to directly appeal to the NEC as they made the final decision whether a legal claim should be supported.

293. On 15 June 2018, Mr Gillam wrote to the claimant (477) referring to correspondence from the claimant to Slater and Gordon which had been copied to Mr Gillam and Mr McCluskey. He suggested that the email exchanges were not serving anyone well and referred to his previous suggestion that the claimant nominate someone to deal with this on his behalf, if his health was suffering. He wrote that it was best that the matter was discussed with counsel at the conference and thereafter the union would take a view, based on the advice that emerged following the meeting. He wrote that he understood that, in the last few days, Mr Miers and Mr Vohra had agreed to the claimant's requests to see counsel again in respect of both the employment and PI matters. We find that it was Mr Gillam's understanding that they were to go ahead with the PI conference. Mr Gillam expressed regret that the claimant had been inconvenienced by the misunderstanding that week on the conference.

294. The claimant replied the same day (479). He again asserted that it was normal policy to submit all civil claims and protect the union member's interests and questioned why he was being treated differently. He wrote that Mr Vohra had not agreed that he see counsel again until he, friends and his family drafted full reasons as to why counsel's advice should not be followed. He wrote that this was "triggering". He wrote that he had not received good service and it was affecting his health. He wrote that when his health improved, he would cooperate. He asked Mr Gillam to respond when he had had a response from Mr McCluskey regarding the claimant's request to him in previous correspondence and his letter of that day's date.

295. On 15 June 2018 (815), Mr Gillam wrote to RK and JF in the General Secretary's office. He wrote:

> "I know his emails are now daily but I would suggest you retain your silence as I know that replying just provokes a flurry of responses from him.
>
> "The situation is that we cannot give the assurances as we do not have full and complete advice. Once we do a decision in accordance with that advice and our usual practices will be made.
>
> "Privately, it is likely (subject to what comes out of the conference with Counsel) he will partly disappointed [sic] as we will not be doing everything he seeks. There are some of this [sic] points that have merit but others that do not."

296. The conference with counsel advising on personal injury had, incorrectly, been cancelled and Slater and Gordon had then sought to reinstate it but the claimant asked for it to be postponed because he could not cope with the change in plans, which made him anxious. The claimant was invited, on the day of the conference, to join in the conference by telephone, which he refused, and Mr Miers and counsel went ahead with the conference on 18 June 2018 in his absence, counsel taking the view that he could advise on the basis of the papers.

297. On 19 June 2018, Mr Miers sent to Mr Gillam counsel's advice to Unite on the claimant's PI case (SB193). This dealt with the overlap with tribunal proceedings, merits generally and whether a 1997 Act claim against Ms Mitchell was strictly necessary and whether the claimant was correct that he may be left without remedy if the Protection from Harassment Act claims were not pursued. This was not copied to the claimant at the time. It was copied to him on 10 July 2018.

298. On 22 June 2018, the claimant wrote to Mr McCluskey (487). He referred to his previous correspondence. He reminded Mr McCluskey that he had raised allegations that officers/employees failed in their duty of care towards a union member and/or conspired to deny a member of a trade union service and discrimination contrary to the Equality Act. He wrote that these allegations included serious breaches of the Unite rulebook. The claimant made complaints about the service being provided by Slater and Gordon and counsel. He alleged that the service provided by Mr Gillam

and Slater and Gordon was affecting his health. He asked Mr McCluskey to inform him whether or not all his personal injury claims would be supported and, if not, whether the union would still support his employment tribunal claims if he had to go to other solicitors to have all his personal injury claim submitted.

299. On 22 June 2018, Mr Granfield sent to Gail Cartmail and Tony Woodhouse correspondence relating to the claimant which had been forwarded to him (709). Mr Granfield wrote that the letter substantially concerned the legal support issue, which had been subject to a legal services review and was in the hands of Neil Gillam. He wrote that the letter referred, en passant, to the complaint about service, and it was for that reason that he was forwarding this additional correspondence to them. Ms Cartmail replied on the same day to Mr Granfield and Mr Woodhouse that she was finalising her reply to the claimant based on the extensive material in her possession and that would be sent to the claimant on Monday. She wrote that she could see nothing in the attached that would require a review of her decisions.

300. The review outcome letter in the name of Gail Cartmail (483) is dated 22 June 2018. However, given Ms Cartmail's email to Mr Granfield of 22 June, it appears it may have been sent instead on Monday, 25 June 2018.

301. The outcome letter is expressed in the first person and signed only by Ms Cartmail. The claimant has suggested that Mr Woodhouse took no part in the decision making process. We find that Mr Woodhouse was involved in the decision making. The complaint was referred to him as well as Ms Cartmail, as were all relevant papers. His email asking if papers could be sent to him before the claimant had presented his written appeal, so that he could get on with the reading, evidences his intention to play an active part in the process. We accept the evidence of Ms Cartmail that she discussed the matter with Mr Woodhouse by telephone. Mr Woodhouse works as a lorry driver in Merseyside and it was more convenient to discuss the matter by telephone than by email exchanges or a meeting in person. We find that Mr Woodhouse and Mr Cartmail discussed and agreed on the response to be given to the claimant, although it was then written and sent by Ms Cartmail. Given Mr Woodhouse's role in the union, and the interest he expressed an at early stage at having the papers to look at, we consider it inconceivable that he would not insist on taking an active part in deciding on a matter referred to him for that purpose.

302. The letter is four pages long. Ms Cartmail upheld and confirmed Ms Formby's conclusions. The section dealing with her overall response to the decisions made by Ms Formby adds little, if anything, to what had been set out in Ms Formby's letter. Ms Cartmail then referred to the claimant having set out in various letters and emails, including that of 22 May, a number of specific complaints concerning Unite officers and administration. She wrote that, in addition, the claimant had complained that the union did not make sufficient reasonable adjustments relating to conditions that he had disclosed.

303. In relation to the complaint about Ms Formby, Ms Cartmail wrote:

> "It appears to be the case that you are unhappy with the decisions, so wish to complain about the decision maker, as a means of seeking a review of the decision.
>
> "There is no evidence of any misconduct by Jennie Formby, nor of any negligent act or omission. She undertook a review of the files and drew conclusions that were consistent with the methods and procedures applied by and within Unite.
>
> "I find no grounds for a complaint about the conduct or performance of Jennie Formby.
>
> "This is an adjudication and final response."

304. In brief terms, Ms Cartmail wrote in respect of allegations concerning Peter Kavanagh, Vince Passfield, Alys Cunningham, Neil Gillam and Owen Granfield. She wrote that she found none of the complaints to have sufficient grounds. She wrote that she found no evidence of any misconduct, negligent act or omission by Peter Kavanagh, Vince Passfield and Alys Cunningham. She wrote that she found no evidence of professional misconduct in relation to Neil Gillam. She wrote that Mr Granfield made an appropriate adjustment to the general 21 day timescale for the claimant to make written submissions.

305. The outcome letter does not specify that Ms Cartmail has considered and reached conclusions as to whether the named officers or employees have subjected the claimant to disability discrimination, although she makes a general finding that she could find no evidence of misconduct. Ms Cartmail did not seek clarification from the claimant as to his allegations of disability discrimination before she and Mr Woodhouse reached their conclusions.

306. Ms Cartmail referred to what she described as "the broad allegation of disability discrimination". She wrote:

> "It is not evident what adjustments would be required for tinnitus within a written procedure.
>
> "In relation to the mental health conditions, we have received your many emails and have worked hard to try to accommodate your reasonable requests. We have facilitated workplace representation. We have enabled detailed and increasingly specialist legal advice and we continue to be willing to support viable claims, within the confines of our rule 4."

307. Ms Cartmail wrote that it was not accepted that a reasonable adjustment for the claimant's conditions was to be interviewed by a decision maker in relation to his many and various complaints.

308. We accept Ms Cartmail's evidence that the review process is, in her experience, a paper exercise**.**

309. In oral evidence, Ms Cartmail said that she understood the clearest complaint of disability discrimination by the claimant was in respect of the suggestion that it would have been a reasonable adjustment to provide an alternative official. She said she understood this to be under her remit. However, if she reached a conclusion at the time that Mr Passfield did not fail to make a reasonable adjustment by not appointing an alternative representative to Ms Charlett (until, at a later date, he did appoint Mr Nixon), she did not explain in her letter why she reached her conclusion. Neither does her witness statement explain her reasoning.

310. There are no notes which explain the thought processes of Ms Cartmail and Mr Woodhouse. Ms Cartmail said she did not take any notes during the process.

311. On 25 June 2018, the claimant wrote to Mr Gillam (492). He wrote that he would, with the assistance of friends and family, draft a complaint and consult with the Solicitors' Regulatory Authority and Bar Standards Board regarding who was the client of Slater and Gordon and counsel. This related to an issue which had arisen as to whether the claimant was jointly a client of Slater and Gordon with the union or whether the union alone was the client. The claimant asserted that he should receive a substantive response to his various correspondence from the General Secretary. He wrote that he required sufficient notice as to whether the union would support all his personal injury claims, which he again asserted to be normal practice, so he could protect his interests and seek alternative representation to submit all his claims by 26 August 2018.

312. On 2 July 2018, the claimant sent a 10 page letter to Mr McCluskey (498). The claimant set out complaints about Mr Passfield, Mr Kavanagh, Ms Marcus and Ms Cunningham which he wrote had been included in previous correspondence and set out evidence relating to this. He referred to Ms Formby's response to his complaints. He asserted that she failed to address his various complaints, including failing to address acts of disability discrimination. He referred to his email of 10 March 2018 to Ms Formby, copied to Mr McCluskey, in which he alleged that Ms Formby had failed to provide a duty of care to a disabled member of the union and alleged that the way she conducted the investigation and her conclusions could be deemed to be discriminatory.

313. The claimant then referred to Ms Cartmail's response to his complaints. The points he made in relation to this included an assertion that this was the first time his allegations had been "answered" against Mr Passfield but Ms Cartmail described her decision as final, therefore depriving him of an important right and that this was a detriment for the concerns he had raised including discrimination contrary to the Equality Act 2010. He made the same argument in relation to the decision about Ms Cunningham.

314. He wrote that he was deeply offended by Ms Cartmail's comments regarding his "broad allegation" of disability discrimination, writing that he had made specific allegations regarding disability discrimination. He wrote that he required the assistance of family and friends to compose letters and that, when interacting with a sympathetic investigator, the union could have learnt more about his complaints and how it had affected his health, something it was difficult to do in writing. He wrote

that, if the union needed further information about his disability and how it should make adjustments, it should have asked him rather than simply dismiss the allegations as part of what he described as the "cover-up" or "whitewash".

315. In relation to legal assistance, the claimant wrote that he had only approximately 53 days to submit his personal injury claims. He requested Mr McCluskey to instruct the Unite legal department to submit all his personal injury claims as the continued delays were causing a disabled member further anxiety. He also requested Mr McCluskey to fully support all his employment tribunal claims.

316. The claimant asserted that Ms Cartmail had not addressed his complaints or the evidence and had been discriminatory. He also asserted that she had no right to state that he had no appeal or redress against her decisions. He requested a full and impartial investigation into her letter of 22 June 2018.

317. On 5 July 2018, Mr Gillam sent to the claimant a letter dated 4 July 2018 (509). He referred to the claimant's correspondence to the General Secretary, most recently that of 22 and 15 June and the claimant's correspondence with himself, specifically that of 25 June. He wrote that he had been asked to reply on behalf of the union and the General Secretary. He wrote:

> "I respect your right to correspond directly with whomever you wish however the General Secretary also has a right (and indeed in a union of 1.4 million members, the need) to refer the matter to an appropriate officer and that is the way this matter will be dealt with.
>
> "Your complaint about the service you have been provided with by a number of Unite officers has, I understand, been dealt with by the Assistant General Secretary and you have been advised that you have received an adjudication in those matters and they are now closed as far as the union is concerned and will not be reopened."

318. Mr Gillam summarised the position relating to the claimant's legal claims. He wrote that it was a condition of the grant of legal assistance that the claimant followed advice and that this was the same for every union member, avoiding the unnecessary waste of union resources on matters which are not likely to be successful. He asked the claimant to indicate to Mr Vohra and himself whether he was prepared to accept the advice of counsel and Mr Vohra regarding the merits of some of the claims (and that they should be withdrawn if not meritorious) and if so, Mr Gillam said they were prepared to support his claims by coming on record. He wrote that he understood that the claimant was presently preparing some written comments for counsel with a view to pointing out where he believed counsel may not be correct. He looked forward to receiving any updated advice from counsel on whether his position changed in any respect.

319. In relation to the personal injury claims, Mr Gillam wrote that they had considered the position with Mr Miers and counsel and specifically the question of which claims would take precedence as they arose from many of the same or similar facts. He wrote that counsel's advice was very clear that any court proceedings

should be stayed pending the conclusion of the employment tribunals. On that basis, Mr Gillam said they were prepared to support the issue of part eight proceedings in the claimant's personal injury case and, thereafter, seek to secure a stay to protect his position. He wrote that counsel had taken the view that the Protection from Harassment Act claim did not enjoy merit and questioned the point of pursuing the same. Mr Gillam said this would not be supported by the union. He wrote that, if the claimant wished the personal injury claim to be issued, then he should advise Mr Miers of this and this could be undertaken.

320. Mr Gillam wrote:

> "This is a decision and a final one from the legal department based on the advice we have received and which accords with our practice applied to every member of the union. I do appreciate your disability and have offered to have this discussion with a member of your family/friend or associate (whom you refer to in correspondence as assisting you) should this be too difficult for you to deal with. Of course should you wish a meeting with me to discuss I am prepared to meet with you and explain the system for assisting cases, a system though I imagine you are quite familiar with.
>
> "Please therefore take this opportunity to consider your response and advise whether you wish to avail of the offer of legal assistance in respect of both matters above on the terms set out herein."

321. Mr Gillam requested that the claimant's correspondence in relation to the provision of legal services be directed to him and that, if the claimant required any adjustments, to indicate what he considered these should be. He wrote:

> "It is undoubtedly the case that solicitors will have different views on matters and I accept that yours may differ to those we have asked to advise us but this is not entirely unusual for members and this cannot be adjusted beyond removing any barrier you have firstly in communicating with us and secondly in either the union or its panel solicitors communicating with you. It patently cannot affect any decision on legal merits."

322. Mr Gillam informed the claimant that he would be on annual leave for a week and, on his return, if the claimant had made a decision on the offer, he would advise Messrs Vohra and Miers as to the extent of the assistance being granted by the union. He wrote: "there is no appeal from this decision and it is one taken with the delegated authority of the General Secretary and Executive Council in accordance with our rulebook."

323. On 6 July 2018, the claimant asked Mr Gillam for a copy of the advice prepared by counsel regarding his personal injury claims (512). Mr Gillam asked Slater and Gordon to send this to him and it was sent to him on 10 July 2018.

324. By letter dated 11 July 2018, the claimant wrote to Mr Gillam (516). Although the letter was dated 11 July, it enclosed various letters dated 13 July, so it appears the date on the letter may be incorrect.

325. The letter referred to Mr Gillam's letter of 4 July 2018. In his letter, amongst other things, the claimant referred to complaints against senior officials, including allegations of discrimination. In relation to his legal claims, he wrote that he was preparing a complaint against the services of Slater and Gordon, alleging discrimination, specifically that Mr Vohra had referred to the claimant being "paranoid" during the conference in March 2018.

326. It later emerged that the claimant had recorded the conference with counsel, including leaving his phone recording a private conversation between Mr Vohra and counsel, when the claimant had left the room. The allegation about Mr Vohra referring to the claimant as "paranoid" related to a time when the claimant was not present.

327. In relation to the employment claims, the claimant stated that Mr Gillam, with his legal experience, must be aware that counsel's advice could not be relied on. He wrote that, for some reason, Mr Gillam insisted on doing so. The claimant alleged that Mr Gillam was in breach of a duty of care to him, referring to the decision in **Friends v Institution of Professional Managers and Specialists** [1999] IRLR 173, for the proposition that the fact that they had counsel's advice does not remove the union's duty of care; the file had not been transferred to solicitors for representation; Mr Gillam was still responsible for the decision whether or not the claimant's cases would be supported. The claimant enclosed a copy of a complaint to counsel's chambers regarding counsel's advice.

328. In relation to the personal injury claims, the claimant asked Mr Gillam to explain why they were refusing to support various personal injury claims and enclosed a copy of a complaint to the chambers of counsel who advised on the personal injury matters.

329. The claimant wrote that he could not understand why Mr Gillam insisted that his decision was final and asserted that he had the right under the rulebook to appeal to the NEC.

330. The claimant alleged that his disability and health were being affected by the discriminatory manner union services had been provided by Mr Passfield, Mr Kavanagh, Ms Marcus, Ms Cunningham, Ms Formby, Ms Cartmail and Mr Gillam's duty of care.

331. The claimant wrote that he was prepared to meet Mr Gillam and the General Secretary to discuss a way forward in good faith and to determine how they could resolve the claimant's internal complaints and why his various legal claims should be supported.

332. On 13 July 2018, the claimant wrote to Mr McCluskey (520). His five-page letter included an allegation that Mr Gillam, in his letter of 4 July 2018, tried to deprive the claimant of a right to appeal to the NEC under the Unite rulebook against the decision to deprive the claimant of legal services. The claimant referred to having raised serious allegations that he had suffered discrimination contrary to the Equality

Act 2010 against senior officials of Unite, which was a breach of the union rulebook and that the complaints had not been investigated. The claimant wrote that Mr McCluskey must be aware from his industrial experience and the claimant's letter to him of 29 May 2018, that counsel's advice could not be relied upon and that it was wrong of Mr Gillam to refuse him legal support based on that advice. He enclosed a copy of his complaint to counsel's chambers and a complaint to Slater and Gordon, including the complaint of disability discrimination relating to his allegation that Mr Vohra described him as "paranoid". The claimant said he was willing to meet Mr McCluskey but, if Mr McCluskey was not minded to meet him, he repeated his request that Mr McCluskey place his appeal regarding the refusal to support all his legal claims to the NEC under the Unite rulebook.

333. The claimant alleged that he had been subjected to victimisation for protected concerns he had raised, the last incident being Ms Cartmail's letter of 22 June 2018. He wrote that Ms Cartmail was the first official to investigate his complaints and that, contrary to the rulebook and Unite procedures, she had defined her outcome as an "adjudication" and had tried to deprive him of an appeal. The claimant asked Mr McCluskey to investigate the concerns he had raised, writing that "if you fail to do so there is a danger you could be seen to condone the above actions and damage the reputation of the union".

334. JF, in Mr McCluskey's office, forwarded the claimant's letter on 16 July 2018 to Mr Granfield and Mr Gillam for their attention (671). He wrote "Len is in receipt of the attached email and also hardcopy".

335. On 16 July 2018, Mr Gillam wrote to Mr Granfield and Mr McCluskey's email addresses, copied to JF and RK in Mr McCluskey's office and Howard Beckett (782). He addressed the body of his email to JF, writing that he was arranging to meet the claimant in Manchester the following week.

336. On 20 July 2018, Mr Gillam wrote to the claimant, referring to his letter of 11 July 2018 (526). Mr Gillam wrote that there were a number of matters in the correspondence with which he took issue. However, he did not think it helpful to engage in further protracted correspondence and was pleased that the claimant was able to meet with him in an effort to move things forward. He wrote that he was prepared to travel to Manchester and "I think it essential due to the intimate knowledge of your potential claims, that Mr Miers and Mr Vohra attend also". He suggested they met on 25 July.

337. We accept Mr Gillam's evidence that he considered it essential for Mr Vohra and Mr Miers to attend the meeting because they had intimate knowledge of the claimant's claims. They were all professionals and Mr Gillam would be there. He believed they could all conduct themselves properly and try to reach a consensus.

338. The claimant replied on 22 July 2018 (527). He wrote that he was unable to meet Mr Miers and Mr Vohra, referring to his letter of complaint to Slater and Gordon regarding the services provided by them. He wrote that he was sure Unite had sufficient knowledge of his claims to assess whether or not they had reasonable prospects.

339. Mr Gillam replied on 23 July 2018 (531). He did not accept that the claimant was unable to meet with Mr Vohra and Mr Miers and stated again that they had intimate knowledge of the claimant's potential claims and had provided advice to Unite on them and that it was essential they were present. He wrote that, should there be matters which cut across the claimant's complaints or that claimant did not wish to discuss, then they would be able to meet in private as necessary. He wrote: "I think it is in your interest that you make every effort to attend this meeting and discuss the way forward in respect of your legal claims, which is what I am trying to achieve."

340. The claimant replied the same day (530), reiterating that he could not meet with the solicitors from Slater and Gordon.

341. The claimant also wrote to Mr McCluskey on 23 July, saying it was wrong for Mr Gillam to expect him to meet panel solicitors about whom he had raised a serious complaint (541).

342. Mr Gillam wrote again to the claimant on 23 July 2018 (529). He wrote that he had read the claimant's complaints and they were a matter for him. He wrote that he had a job to do and presently the two individuals concerned were in the best position to advise him as to the position in respect of the claimant's legal claims. Bearing in mind the time issues, he saw a meeting with Mr Miers and Mr Vohra as the best way to find a way forward in respect of the claimant's legal claims.

343. He reminded the claimant of Unite rule 4.6.6, quoting this and adding underlining:

> "A member who is given advice and/or representation under this rule shall provide all relevant information and <u>cooperate fully with the compilation of evidence for any legal proceedings and shall comply with any other obligations and/condition set out in any arrangements for the provision of legal assistance</u>. If a member fails to do so or provides false or misleading information or fails to act upon the advice of those appointed to represent him/her, the Executive Council may at its absolute discretion annul all legal assistance or withdraw any further legal assistance to that member."

344. Mr Gillam referred to the rule because he felt, by this stage and considering the time pressure, that there was a lack of co-operation on the claimant's part.

345. Mr Gillam wrote that he was tasked with dealing with the claimant's legal claims and presently he had advice which said that some did not enjoy merit. He wrote that the claimant disagreed with this. He wrote that he would like to hear from the claimant on these matters and hear from the solicitors who had provided an alternative view. He repeated his offer that, if the claimant found the receipt of such communications difficult, he was happy to communicate with someone nominated on the claimant's behalf.

346. The claimant replied the same day (535). He wrote that the suggestion that he meet Mr Vohra and Mr Miers was distressing and repeated his refusal to meet them. He wrote:

> "I do consider you reminding me of Unite rule 4.6.6 is a threat and I will not meet a person who has discriminated against me and who I have raised serious allegations which you must be aware is a breach of the SPR, despite your threat. Your actions are causing a disabled member of the union further distress."

347. The claimant wrote again to Mr McCluskey referring to his email exchange with Mr Gillam (542), alleging that Mr Gillam threatened him, reminding him of rule 4.6.6, and pressurising him to meet solicitors who had discriminated against him. He requested that Mr McCluskey take action over Mr Gillam's distressing actions.

348. There was further correspondence and, in the end, Mr Gillam agreed to meet the claimant alone.

349. The meeting took place in Salford on 25 July 2018. The meeting was difficult at times. There were differences in views on what claims could and should be advanced. The claimant would not agree to anything being taken forward unless the union assisted all his claims. At the meeting, Mr Gillam became aware of the claimant's strength of feeling about Mr Vohra. Immediately after the meeting, Mr Gillam instructed Slater and Gordon's head of department to take Mr Vohra off the case. We accept Mr Gillam's evidence that he did not move the claimant to other panel solicitors because they were running up against a time limit and moving to another firm of solicitors would not have been reasonable at that stage; another solicitor within Slater and Gordon could deal with the case.

350. On 27 July 2018, the claimant wrote to Mr McCluskey (551). He referred to his letter of 13 July 2018 and to the meeting with Mr Gillam on 25 July 2018. The claimant disagreed with the position put forward by Mr Gillam that the union would support certain non-employment tribunal claims but not others. The claimant asked Mr McCluskey to intervene to instruct the legal department to support his various claims.

351. On 2 August 2018, the claimant wrote again to Mr McCluskey (557). He wrote that he was now just over three weeks from a deadline in a personal injury claim and did not know whether or not the claim would be supported. He wrote:

> "I do consider because of the protected concerns I have raised I have suffered detriment regarding the unfair, not impartial and discriminatory manner my internal complaints were investigated by Ms Formby and Ms Cartmail. As stated, I also consider that Unite the union the union [sic] by not willing to support civil claims that arise from my employment have breached its duty of care to a disabled member and this is contrary to the rule book."

352. He alleged that Unite was in breach of its duty of care to him as a disabled member.

353. On 2 August 2018, the claimant was sent further advice from counsel in relation to the PI claim and the interrelationship with the ET claim (1106).

354. On 3 August 2018, Robert Lemon, in the respondent's legal department, wrote to the claimant in the absence of Neil Gillam (559). He wrote:

> "Unite's position is that it will be guided by counsel's advice in terms of which claims it is able to support and tactically which proceeding should be advanced first. Unite will only support those claims which are advised to have reasonable prospects of success. Any claims which counsel advises does not enjoy reasonable prospects will not be supported.
>
> "As counsel has advised that a claim under the Protection from Harassment Act 1997 does not enjoy reasonable prospects then such a claim will not be supported by Unite as a freestanding claim. However, Unite would agree to such a claim being included as an addition to the main claim."

355. He also wrote that counsel did not recommend that a stress claim be pursued.

356. He wrote:

> "Tactically, counsel is advising that you lead with your employment claim and commence part eight protected proceedings which are then stayed pending outcome of the employment tribunal claims. Unite will support your claims on that basis and not if you choose, against counsel's advice, to lead with your personal injury claim and stay the employment tribunal claims.
>
> "If you are not willing to accept and follow counsel's advice, then you will need to instruct other solicitors on a private basis. For the avoidance of doubt, Unite would not be providing any legal support in the circumstances."

357. Mr Lemon asked the claimant to confirm his instructions to Slater and Gordon.

358. On 3 August 2018, the claimant wrote to Mr Lemon (562). He enclosed a letter he had sent to Slater and Gordon regarding counsel's advice on his personal injury claims. He wrote:

> "As you are aware, Unite the union have a duty of care to me as a member to assess the claims, considering my comments before they make a decision to support or not to support my personal injury claims (you are aware of cases such as **Friend v Institution of Professional Managers and Specialists** 1999 IRLR that the duty of care will still be with the union to determine what claims to support until the file is passed to solicitors for representation)."

359. Mr Lemon replied on the same day (561). He wrote that Slater and Gordon would be responding to the claimant's letter. He wrote that Unite had instructed Slater and Gordon to advise the claimant upon the merits of his personal injury claim. Slater and Gordon had instructed a specialist barrister to advise the claimant

on the merits of his claims. Mr Lemon wrote: "Unite is taking the reasonable position of following the advice of Slater and Gordon and the specialist barrister." He also wrote:

> "Part of the member's obligations when they are supported by Unite in respect of the personal injury claim is that they agree to accept and act in accordance with the solicitors' advice relating to the conduct of the case.
>
> "If you do not wish to accept and proceed in line with the advice provided, then you are of course entitled to instruct other solicitors on a private basis."

360. The claimant replied (561) that he had informed Unite about the defects in counsel's advice which he said was prepared without reading all the documentation/evidence. He wrote: "as officers and employees with substantial industrial and legal experience Unite has a duty of care to a member in deciding whether or not to support claims: at this stage of the process the duty still exists."

361. On 6 August 2018, the claimant wrote to Mr McCluskey (571). He referred to his previous correspondence and enclosed letters to Slater and Gordon and counsel's chambers, regarding counsel's advice on the personal injury matters. He wrote: "Your own solicitors must be aware that it is reckless and careless to prepare an advice on the merits of personal injury claims for funding purposes without reading all the evidence and such an advice should not be relied upon but in breach of Unite the union's duty of care, the union is insisting on such a reckless and careless advice being followed." He wrote that, for the sake of his health, he had no alternative, as a result of Unite's actions, but to reject the services provided by Unite and to seek independent legal advice and support for his various employment tribunal claims and civil claims.

362. The claimant presented his first claim (case number 2205756/2018) on 6 August 2018.

363. An updated counsel's opinion on the employment tribunal matters was provided to Slater and Gordon on 9 August 2018. This was sent to the respondent on 14 August 2018. It was also sent to the claimant.

364. On 15 August 2018, Mr Gillam wrote to the claimant (580). He referred to the claimant's letter to Mr McCluskey of 6 August. He wrote that, on his return from leave, he noted the claimant's final position, communicated in his letter to Mr McCluskey of 6 August, in respect of his injury claims, that being that he did not wish union support for those claims and intended to seek other legal advice. He wrote that he had now been alerted to conflicting instructions sent to Slater and Gordon, indicating that the claimant did wish to avail of legal assistance in respect of those claims and wished proceedings to be lodged as per counsel's most recent advice. He wrote that, on this basis, he had advised Slater and Gordon that the claims should be issued and thereafter stayed as per counsel's advice, to allow the employment tribunal claims to continue.

365. Mr Gillam wrote that he had received an updated advice from counsel on the employment tribunal claims. He noted that counsel had made considerable amendments as a result of the claimant's interventions. He wrote that, upon the claimant's return to better health, a discussion would need to ensue as to the best way to progress those claims and how the claims that did not enjoy prospects should be withdrawn. Mr Gillam wrote:

> "The offer of legal assistance in both these matters is contingent on you continuing to follow advice and the continuation of Slater and Gordon as the panel solicitor dealing with these matters. I appreciate you have an outstanding complaint with Slater and Gordon and neither Mr Miers nor Mr Vohra will have conduct of these matters. It is a matter for Slater and Gordon who would be allocated to deal with however I do urge you to reconsider, particularly in respect of Mr Miers who is an acknowledged expert in this area.
>
> "The grant of legal assistance is also contingent on cooperation with solicitors. You do have the right to make your points to them but once they are made, considered and either accepted or rejected, to retain the union's assistance, their advice should be followed."

366. Mr Gillam replied to a number of points in the claimant's recent correspondence. He wrote:

> "(i) You have had a reply from the union to all of your correspondence. It is accepted not directly from Mr McCluskey, however as you are well aware correspondence of this nature is passed in any organisation to those able to respond directly to the points you make. This is a union of 1.4 million members and it is simply inconceivable for Mr McCluskey to respond directly to every point in some detail particularly concerning matters of a legal nature.
>
> "(ii) Your continuing allegation that in some way officials of this union seem more concerned in protecting the RMT is demonstrably untrue, has no evidence to support it and is rejected. As I indicated in our meeting I have never met or had any dealings with any of these individuals and do not accept that others have done anything of the sort in the course of their dealings with you.
>
> "(iii) Your internal complaints (see letter of 27 July) have been dealt with as I informed you at our meeting in Salford. There is no further right of appeal or process available under the rulebook as you seem to suggest."

367. Mr Gillam wrote that he appreciated that the claimant was presently unwell and wrote that he would ensure that Slater and Gordon lodge the claim as per counsel's advice and advise them to await further contact from the claimant in respect of the employment matters. Mr Gillam wrote that he thought it in the best interests of the claimant and Slater and Gordon that they come on record in respect of the employment tribunal claims as soon as possible. He wrote:

> "For the avoidance of doubt and in view of the impending limitation this offer of assistance is non-negotiable and whilst I accept you are unwell I would appreciate your brief confirmation that you wish to accept this. As I have suggested before, maybe it would be better if the friends and family referred regularly to in correspondence were tasked, even temporarily, with dealing with these matters on your behalf, however that is a matter for you."

368. We accept Mr Gillam's evidence that he did not move the claimant to solicitors other than Slater and Gordon because the firm had invested a substantial amount of time in the case and he did not consider the whole case needed to be moved, particularly since they were 11 days away from the end of the limitation period. He had accepted the claimant's concerns about Mr Vohra and asked that he be moved from the case.

369. The claimant wrote to Mr Gillam on 16 August 2018 agreeing to the terms in Mr Gillam's letter of 15 August 2018 and requesting that the personal injury claims be submitted (585). In the letter he also wrote that his health had declined and he would be unable to meet with anyone until he recovered. He wrote that, when his sister returned from holiday on 25 August 2018, he would ask her permission to receive further correspondence in the future. He wrote that he was suffering increasing thoughts of self harm.

370. At some point, the claimant gave Mr Gillam his sister's address and asked Mr Gillam to contact her. We accept that Mr Gillam was happy to communicate with the claimant's sister or anyone else on the claimant's behalf.

371. By 12 October 2018, the claimant was corresponding directly with Mr Gillam again.

372. On 12 October 2018, Mr Lee of Slater and Gordon wrote to the claimant with the outcome of his investigation of the claimant's complaint about solicitors at Slater and Gordon (1149). The claimant was unhappy with the outcome.

373. On 12 October 2018, the claimant wrote to Mr Gillam (601), writing that he was deeply distressed by the letter he had received from Mr Lee. He attached an email he had sent to Mr Lee. He wrote that he considered the outcome to be unfair, not impartial and discriminatory contrary to the Equality Act 2010. He alleged that the service he had received had been poor, negligent and discriminatory contrary to the Equality Act 2010. He asked that this be raised with the head of legal services and the NEC. He asked for confirmation that he would be referred to other solicitors in the North West and such referral would include County Court claims against Slater and Gordon under the Equality Act 2010.

374. Mr Gillam replied within a few minutes (601), writing that he had not read it but would do so the following week. In the interim, he asked if the claimant would deal with the other matter he had emailed him about. This was a reference to withdrawing the claimant's first case (and, at that time, only, case) in these proceedings, which Mr Gillam understood the claimant had undertaken to do.

375. Proceedings in the employment tribunal had been served on the respondents. Discussions had ensued with the assistance of ACAS and Mr Gillam had, at this point, formed the view that they had reached an agreement. The union's response to the claimant's claims against the respondents in the first claim forming part of these proceedings was due on 15 October 2018.

376. There was further correspondence between the claimant and Mr Gillam on 12 October (603). The claimant asked Mr Gillam to inform him on Monday morning whether or not he would be referred to other solicitors in the North West. Mr Gillam replied that he could not and would not do as the claimant demanded. He wrote "I have a job to do to and if you are not prepared to withdraw your claims as you have openly said you will do /and I have agreed to not pursue costs I /will need to spend Monday drafting a response to your claim. Once a response is lodged we are potentially in a conflict situation which I do not want to see occur. Please prioritise."

377. The claimant wrote again on 12 October, this time to Mr Gillam and Mr McCluskey. He again asked that, before he take any action, they confirm his request by Monday morning that he would be referred to other solicitors in the North West and his complaints regarding Slater and Gordon would be referred to the head of legal services and the NEC (606). Mr Gillam replied (606):

> "I am sorry you are distressed and who your panel solicitor going forward is will be dealt with in due course.
>
> "So you are in no doubt and to avoid disappointment your request cannot be dealt with in the timescale you seek.
>
> "Unless I hear to the contrary I will draft a response to your claims on Monday and we will take matters from there."

378. The claimant replied that he was far too distressed by the service he had received to deal with any other matters (608). Mr Gillam wrote (608) that this was disappointing and not in the spirit of where he thought they had got to after much hard work. He wrote that he understood the claimant was distressed but this was a relatively simple request the claimant had already said he would undertake and that he seemed able to deal with matters that were of concern to him. He wrote "Patently wasting a day doing the response is not helpful." He wrote that he would be in touch once the response was filed.

379. There was a further exchange of emails that evening (607A). Mr Gillam wrote that the claimant was failing to address the issue both ACAS and he had asked the claimant to do that day. He wrote:

> "That is fine and your prerogative however you seem perfectly capable of communicating with me on other matters without any difficulty.
>
> "Copying in Mr McCluskey makes no difference. I do as you know report to him but I have been tasked with dealing with this matter for unite and indeed as Mr McCluskey is a named respondent it is arguably inappropriate."

380. Mr Gillam subsequently sent a further email, writing that, from memory, Mr McCluskey was not a named respondent and he apologised for his error.

381. Mr Gillam asked the claimant to consider his position concerning the tribunal applications against Unite and to revert to him as a solicitor of record. He wrote that, if the claimant wished to discuss the matter or have someone do so on his behalf, he was available on the phone over the weekend if it was to save unnecessary work on the response on Monday.

382. The claimant did not contact Mr Gillam to say that he was withdrawing his employment tribunal claim and the response to the first claim was lodged on 15 October 2018.

383. On 24 October 2018, the claimant terminated his retainer with Slater and Gordon. He did so without the agreement of Unite.

384. We accept the evidence of Mr Gillam that Unite would have continued to assist the claimant's cases to a conclusion had he not rejected the legal assistance by terminating the relationship with Slater and Gordon before Unite had an opportunity to consider whether that relationship could continue. Until 24 October 2018, when the claimant unilaterally terminated the retainer with Slater and Gordon, the position was still as Mr Gillam had advised the claimant on 12 October 2018, that Mr Gillam was still to consider who the panel solicitors should be going forward; this could have been Slater and Gordon or potentially another firm.

385. The claimant copied Mr McCluskey in to a letter to Slater and Gordon dated 7 November 2018. JF, in Mr McCluskey's office, forwarded this to Neil Gillam. Mr Gillam wrote to JF on 13 November 2018 (816). He wrote:

> "And it won't be the last.
>
> "He is now suing us. I thought I had him in a position where we could work and try and bring this matter to a head - indeed he had given me authority to open discussions with the RMT but it has now gone pear-shaped again as a result of Slater and Gordon turning down his complaint against them and he has cut off contact.
>
> "He is simply not well.
>
> "I would just say (if you need to say anything) that you have referred his correspondence to the legal department - the problem with replying is that it will simply provoke further correspondence and complaints."

386. We accept the evidence of Mr Gillam that he wrote as he did, informing JF that the claimant was not well as a matter of fact and that this was not something intended as being derogatory; the claimant's state of health was something which the claimant referred to in almost every piece of correspondence. He considered that

the claimant's state of health was relevant to the amount of correspondence the claimant was sending.

387. The claimant wrote to Mr McCluskey on 9 November 2018 (612). He enclosed a copy of his letter to Slater and Gordon dated 24 October 2018, detailing his allegations of discrimination. He alleged that there was a further act of victimisation following that letter. The claimant wrote that, as a disabled member of the union, he could not attend branch meetings and request a resolution to the National Executive Committee. He requested a reasonable adjustment and that Mr McCluskey place in front of the NEC a request that the NEC investigate his complaints of disability discrimination against Slater and Gordon and provide legal assistance for disability discrimination claims against Slater and Gordon.

388. On 3 December 2018, the claimant wrote again to Mr McCluskey referring to his letter of 9 November 2018 and saying that he had not had a response (621).

389. The claimant did not receive any response to his letters of 9 November and 3 December 2018.

390. Mr Gillam was never instructed by Mr McCluskey to investigate the claimant's allegations against Slater and Gordon. Mr Gillam said in evidence that the allegations against Mr Vohra were investigated under Slater and Gordon's internal procedure and, by this stage, these proceedings were underway. Mr Gillam also referred to proceedings being taken against Slater and Gordon. We had no evidence about when proceedings against Slater and Gordon were begun, However, a pre action letter had been sent by the claimant on 24 October 2018 (1160).

391. The claimant has not provided any evidence to suggest that Unite has ever provided legal assistance for a member to take proceedings against solicitors who have been acting for that member, for disability discrimination or any other type of claim.

392. On 9 January 2019, the claimant presented his second claim to this tribunal (case number 2401913/2019).

393. The claimant has relied as a basis for some of his complaints on documents which were not addressed or copied to him when originally sent but which were provided to him during the process of disclosure in preparation for this hearing. Documents disclosed on 9 December 2018 included emails between Mr Gillam and Mr McCluskey's office dated 5 June 2018 (814) and 13 November 2018 (816). The claimant read these emails during the week commencing 25 January 2020. The claimant did not give any evidence to the effect that he felt his dignity was violated by these emails or that they created, in some way, an intimidating, hostile, degrading, humiliating or offensive environment for him. In closing submissions, the claimant asserted that he was humiliated when he received these emails but he had given no evidence to that effect.

394. The claimant has asserted that Slater and Gordon were advising Unite on the claimant's claims against Unite at the same time as acting for the claimant in his

claims against the RMT, with legal assistance from Unite. The claimant relied on a paragraph in the respondent's skeleton argument for a preliminary hearing scheduled for 30 October 2019 in support of this assertion (SB8, paragraph 12). Mr Gillam denied that Slater and Gordon ever advised Unite in respect of complaints the claimant was making against Unite. Mr Potter referred to a discussion at the preliminary hearing before Employment Judge Tom Ryan on 10 February 2020, saying that this matter had been raised and dealt with then. The note of the preliminary hearing shows that a discussion took place in the context of an application by the claimant for disclosure by Slater and Gordon. Employment Judge Ryan's note records, at paragraph 16, that Clyde & Co, instructed on behalf of Slater and Gordon had written to the claimant on 31 January 2020 stating,

> "Our client (S&G) informs us that it did not advise Unite the Union (Unite) on any complaint against it."

395. Employment Judge Ryan recorded that the claimant accepted that there was no other evidence on which he could submit that assertion was other than accurate and accepted, for that reason, that he could not ask the judge to go behind it and make any further order.

396. We find that Slater and Gordon did not, at any time, advise the respondents on the claimant's claims against the respondents.

397. The claimant has suffered from significant mental health issues during times relevant to his claims. These have been more serious during some periods than others. However, the claimant is clear in his evidence about his belief that his judgment in relation to the internal complaints he pursued and the claims he is bringing in this tribunal has not been affected by his mental health issues.

Submissions

398. The claimant and Mr Potter made oral submissions. At the outset of the hearing, Mr Potter had provided to the Tribunal and the claimant, in accordance with a suggestion made by Employment Judge Tom Ryan, at the preliminary hearing on 19 February 2020, a note on the relevant legal principles applying to the case. Mr Potter referred us, in this note, to the case of **Beaumont v Amicus** [2007] ICR 341 EAT in relation to the claims of unjustifiable discipline. In oral submissions, Mr Potter referred to the recent case of **Ishola v Transport for London** [2020] EWCA Civ 112 CA as of possible application to Equality Act 2010 claims, in relation to what constitutes a provision, criterion or practice, but did not refer us to any particular parts of this.

399. The claimant referred us to evidence which he considered supported his complaints. The claimant stated that his allegations of victimisation were argued in the alternative to his unjustifiable discipline complaints in nearly all cases. He made reference to complaints under the 1992 Act at the same time as dealing with the complaints of victimisation. We do not record in these reasons the claimant's detailed submissions on evidence, but refer to his principal arguments in our conclusions.

400. In relation to time limit issues, the claimant accepted that the failure to make reasonable adjustments in 2016 was out of time and was not a complaint forming part of the current claims, but background to the current claims. The claimant submitted that there was continuing discrimination and detriment from 2018 onwards. The claimant submitted that, if complaints were out of time, it was just and equitable to extend the deadline because of the claimant's serious illness; the claimant said he remained under the care of a consultant psychologist. The claimant submitted that, in relation to any complaints of unjustifiable discipline brought out of time, it was not reasonably practicable to submit them in time.

401. We do not seek to record the respondent's submissions on the evidence, but we have taken account of these in reaching our conclusions. We record some of the main points made on behalf of the respondent.

402. Mr Potter submitted that Unite and its officers had acted in a bona fide manner at all times and in a non-discriminatory manner, not seeking to protect the RMT in the face of claims against the RMT and had not sought to discipline the claimant. Unite did offer the claimant, on 15 August 2018, legal assistance in relation to all meritorious claims as identified by independent counsel. Mr Potter expressed concern on behalf of the respondent that the claimant has been too ready to make serious allegations without a proper basis; the respondent believes that the claimant has weaponised the legislation to pressurise Unite to fund all his claims, meritorious and unmeritorious.

403. Mr Potter submitted that any claims in relation to matters before 9 March 2018 were out of time in terms of the 3 months' time limit. The respondents did not concede anything in relation to the time point. Mr Potter submitted that the paperwork demonstrates the claimant's ability throughout the relevant time; the claimant made articulate and considered arguments on paper and was apprised of relevant legal issues including time limits for lodging claims.

404. In relation to the complaints under the 1992 Act, Mr Potter submitted that there was no determination to subject the claimant to a detriment; there was no evidence of any determination having taken place and certainly no evidence of a determination to subject the claimant to detriment because he did the sort of acts which triggered the provision. There was no nexus in this case. The claimant had made allegations of unlawfulness but that did not mean that the perceived detriment was connected in any way. The same point applied to the complaints of victimisation.

The Law

405. This case concerns complaints under the Trade Union and Labour Relations (Consolidation) Act 1992 (the 1992 Act) and the Equality Act 2010 (EqA).

The Trade Union and Labour Relations (Consolidation) Act 1992

406. Section 64 of the 1992 Act sets out the right not to be unjustifiably disciplined. Subsections 64(1) and (2) provide:

> "(1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.
>
> "(2) For this purpose an individual is "disciplined" by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that —
>
> (a) he should be expelled from the union or a branch or section of the union,
>
> (b) he should pay a sum to the union, to a branch or section of the union or to any other person;
>
> (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,
>
> (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
>
> (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or
>
> (f) he should be subjected to some other detriment;
>
> and whether an individual is "unjustifiably disciplined" shall be determined in accordance with section 65."

407. Section 65 sets out the meaning of "unjustifiably disciplined". The relevant parts of that section for this case are as follows:

> "(1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is —
>
> (a) conduct to which this section applies, or
>
> (b) something which is believed by the union to amount to such conduct;
>
> but subject to subsection (6) (cases of bad faith in relation to assertion of wrongdoing).
>
> (2) This section applies to conduct which consists in—

……..

(c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whenever passed) or any rule of law;

408. "Official" is defined in section 119 of the 1992 Act as "(a) an officer of the union or of a branch or section of the union, or (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them."

409. "Officer" is defined in section 119 as including: "(a) any member of the governing body of the union, and (b) any trustee of any fund applicable for the purposes of the union."

410. Harvey on Industrial Relations and Employment Law at paragraph 833 states: "An 'officer' is taken to mean the holder of some office or post created and defined by or under the union's rules—a member of the union hierarchy—the president, secretary, treasurer, and so on, at national level, or at area or district level, or at branch level, depending on the constitution of the particular union. But statute extends the meaning of 'officer' to include every member of the union's principal executive committee and also the trustees of any union funds.''

411. At paragraph 836, Harvey says this about officials: "The expression 'official' in relation to a trade union includes not only every 'officer' of that union but also any other person elected or appointed to represent the members or some of them (TULR(C)A 1992 s 119)—that is, whether his position is part of the union's formal constitution or not. In particular a shop steward or other workplace representative is an 'official' even if he is not an officer."

412. There appears to be little case law relating to the unjustifiable discipline provisions. In **Beaumont v Amicus** [2007] ICR 341 EAT, HHJ Ansell commented that they had only been able to find one relevant authority, *Transport and General Workers' Union v Webber* [1990] ICR 711, which related to predecessor legislation.

413. In **Beaumont v Amicus** [2007] ICR 341, at paragraph 6, HHJ Ansell described what he considered to be the general purpose of these provisions as follows:

> "I certainly read the general purpose of this section as an attempt to prevent union officers or officials either using or misusing union rules and powers to discipline members of the union in various ways, for example by expulsion, by fine, by removing their benefits, as a response to the individual's complaint that a union official had acted to breach of the rules of the union, and, thus, it would appear that the discipline that can give rise to a finding of unjustifiable discipline relates to the powers of the particular union officials concerned under the union rules, namely whether they are using the rules properly or misusing those powers. The only authority that has been found in this area of

> law is a case from 1990 under predecessor legislation, namely section 3 of the Employment Act 1988, being *Transport and General Workers' Union v Webber* [1990] ICR 711, a decision of this court presided over by Wood J."

Burden of proof

414. There are no express provisions dealing with the burden of proof relating to claims of unjustifiable discipline in the 1992 Act. We understand, therefore, that the normal civil burden of proof applies i.e. it is for the person seeking to make out the claims to establish, on a balance of probabilities, the facts on which they rely.

Time limits

415. Complaints of unjustifiable discipline may be brought in an employment tribunal under section 66 of the 1992 Act. Subsection (2) provides that the claim must be brought before the end of the period of three months beginning with the date of the making of the determination claimed to infringe the right or, if the tribunal is satisfied it was not reasonably practicable to bring it within that period, or that the delay in making the complaint was wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it reconsidered or reviewed, that the claim was brought within such further period as the tribunal considers reasonable.

416. Time limits are extended to take account of time spent in the early conciliation process with ACAS, if notification to ACAS is made within the normal time limit.

The Equality Act 2010

417. Provisions relating to prohibited conduct in Chapter 2 EqA coming under the heading of "discrimination" include section 13 (direct discrimination) and section 19 (indirect discrimination). That Chapter also contains provisions relating to the duty to make reasonable adjustments (sections 20-22). "Other prohibited conduct" in that Chapter includes section 26 (harassment) and section 27 (victimisation).

Section 57 EqA

418. Section 57 EqA contains provisions which include making it unlawful for trade organisations, which includes trade unions, to discriminate against their members or to harass or victimise their members and which require reasonable adjustments to be made. The relevant parts of the section for this claim are as follows.

419. Section 57(2) provides:

> (2) A trade organisation (A) must not discriminate against a member (B)—
>
> (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;
>
> (b) by depriving B of membership;

(c) by varying the terms on which B is a member;

(d) by subjecting B to any other detriment.

420. Section 57(3) provides:

(3) A trade organisation must not, in relation to membership of it, harass—

(a) a member, or

(b) an applicant for membership.

421. Section 57(5) provides:

(5) A trade organisation (A) must not victimise a member (B)—

(a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;

(b) by depriving B of membership;

(c) by varying the terms on which B is a member;

(d) by subjecting B to any other detriment.

422. Section 57(6) provides that a duty to make reasonable adjustments applies to a trade organisation.

Protected characteristics

423. Section 4 lists protected characteristics which include disability.

Direct discrimination

424. Section 13 EqA sets out the law relating to direct discrimination.

"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".

Indirect discrimination

425. Section 19 EqA sets out the law relating to indirect discrimination.

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

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

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

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

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

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

426. Subsection (3) sets out the relevant protected characteristics, which include disability.

The duty to make reasonable adjustments

427. Section 20 EqA and Schedule 8 contain the relevant provisions relating to the duty to make adjustments. Schedule 8 imposes the duty on employers in relation to employees. Section 20(3) imposes a duty comprising "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."

428. Paragraph 20 of Schedule 8 provides that an employer is not subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the relevant disadvantage.

Harassment

429. Section 26 EqA sets out the law relating to harassment.

"(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."

430. Subsection (5) lists relevant protected characteristics which include disability.

Victimisation

431. Section 27 of the Equality Act 2010 (EqA) sets out the law relating to victimisation.

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act."

Burden of proof

432. Section 136 contains the provisions relating to the burden of proof

"(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."

Time limits

433. Section 123 EqA provides that proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates,

or such other period as the employment tribunal thinks just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.

434. Time limits are extended to take account of time spent in the early conciliation process with ACAS, if notification to ACAS is made within the normal time limit.

Detriment and causation

435. Section 64 of the 1992 Act, section 57 of the EqA and section 27 (victimisation) EqA refer to subjecting someone to a detriment. Case law on the EqA and protected disclosure detriment in the Employment Rights Act 1996 suggest that "detriment" is to be considered as putting someone at a disadvantage by an act or omission. By analogy, we would expect the same concept to be applied in the 1992 Act.

436. In complaints of direct discrimination, the detrimental treatment must be because of the protected characteristic. In the case of victimisation, it must be because of the protected act. The protected characteristic or the protected act does not have to be the only cause of the detrimental treatment but it must be an effective cause.

437. In a complaint of unjustifiable discipline under the 1992 Act, the section 65 conduct relied on must be the reason, or one of the reasons, for the determination to discipline the member.

Conclusions

438. We take each of the claimant's incidents in the Scott Schedule and the Scott Schedule for the Amendments allowed on 18 November 2019 and 10 February 2020 in turn, in considering whether the complaints made by the claimant in relation to that allegation are well founded, assuming that the Tribunal has jurisdiction to consider those complaints.

439. In relation to some of the complaints, there are time limit issues. Mr Potter submitted that any complaints relating to matters before 9 March 2018 are out of time. He did not make any submissions that any complaints relating to later matters not included in the first claim and included in the second claim or added by way of amendment were out of time. We, therefore, approach the time limit issue on the basis that we only need to consider whether we have jurisdiction in relation to complaints about incidents occurring before 9 March 2018. We deal with the issue of jurisdiction after we have dealt with the merits of the complaints.

440. Incident numbers refer to the incidents listed in the Scott Schedule. Amendment numbers refer to the incidents included in the Scott Schedule for the Amendments.

441. In relation to each type of complaint, we set out the issues we consider we need to consider, leaving aside the time limit issues.

Complaints of unjustifiable discipline contrary to sections 64 and 65 of the 1992 Act

442. The claimant identified in his Scott Schedules that he was relying on subsections 65(2)(c) and 64(2)(f) of the 1992 Act for all these claims.

443. It appears to us, therefore, that the issues we need to consider in relation to these complaints are as follows:

443.1. Does the conduct relied upon fall within section 65(2)(c) of the 1992 Act? In relation to the conduct identified by the claimant in the Scott Schedules, did the claimant assert (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property had contravened, or was proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whenever passed) or any rule of law?

443.2. If the conduct relied upon does fall within section 65(2)(c):

443.2.1. Was a determination made, or purportedly made, under the rules of the union or by an official of the union or a number of people including an official that the claimant should be subjected to some other detriment (the detriment being as identified by the claimant in the Scott Schedules); and, if so,

443.2.2. Was the conduct falling within section 65(2)(c) the reason, or one of the reasons, for the determination?

444. When considering the legislation during our deliberations, which included looking at the definition of “official” in the 1992 Act, we gave some thought to whether all the people named as individuals involved in alleged unjustifiable discipline properly fell within the definition of “official” e.g. Ms Cunningham. However, this had not been identified as an issue at the start of the hearing and we heard no evidence or submissions on this point. Since the respondent did not rely on an argument that certain individuals were not “officials” as a defence to any of the complaints, we have decided that the correct course of action is to reach our conclusions based on an assumption that all those named do fall within the definition of “official”.

The conduct relied upon as falling within section 65(2)(c) of the 1992 Act

445. Before we look at the individual incidents, we consider the conduct relied upon as constituting, the claimant alleges, conduct falling within section 65(2)(c) of the 1992 Act and the reason(s) for the conduct which the claimant asserts to be unjustifiable discipline. The claimant relies on 18 matters for this purpose. Not all are relied upon for each incident. We use the numbering given to this conduct in the Scott Schedule. The same conduct is relied upon in the Scott Schedule for the

Amendments, using the same numbering. When we deal with each incident, we will refer to the conduct relied on for that incident by using this numbering.

Conduct number 1

446. The claimant relies on his email of 9 August 2016 (270). We referred to this email in paragraph 54. The claimant refers to him stating, as a result of his disability, he did not like the suggestion his judgment was affected and that this was a breach of the Equality Act 2010 and rule 2.1.6. In his letter, the claimant took particular offence at the suggestion from Ms Charlett that he should say that his judgment at the time had been affected. He considered this to be advice that he should say something that was untrue, since he believed in the truth of his allegations. We conclude that the email cannot reasonably be understood as making an allegation of disability discrimination, or any other breach of the EqA and that it cannot reasonably be understood as alleging a breach of rule 2.1.6 (see paragraph 29), as asserted by the claimant. We understand rule 2.1.6 to be the expression of an object of the union, rather than a rule which imposes a specific obligation on any individual. We, therefore, conclude that this email is not an act which falls within section 65(2)(c) of the 1992 Act.

Conduct number 2

447. The claimant relies on his email of 11 August 2016 (273), to which we referred in paragraph 60. The claimant refers to him stating, as a result of his disability, he did not like the suggestion his judgment was affected and that this was a breach of the Equality Act 2010 and rule 2.1.6. The email asserts that Ms Charlett advised him to withdraw some of his complaints, stating that his judgment was affected by his grievance being denied. We conclude that the email cannot reasonably be understood as making an allegation of disability discrimination, or any other breach of the EqA and that it cannot reasonably be understood as alleging a breach of rule 2.1.6 (see paragraph 29), as asserted by the claimant. We understand rule 2.1.6 to be the expression of an object of the union, rather than a rule which imposes a specific obligation on any individual. We, therefore, conclude that this email is not an act which falls within section 65(2)(c) of the 1992 Act.

Conduct number 3

448. The claimant relies on his email of 9 September 2016 (300), to which we referred in paragraph 72. The claimant refers to a complaint which includes an allegation of a failure to make a reasonable adjustment on the grounds of the claimant's disability, which he asserts is a breach of the Equality Act 2010 and rule 2.1.6. The claimant alleges in this email that Mr Passfield failed to make a reasonable adjustment. This is an allegation of disability discrimination. We conclude that it falls within section 65(2)(c) as being an allegation that an official of the union has contravened an enactment. We do not consider it can reasonably be understood as an allegation that the union or Mr Passfield has breached rule 2.1.6. We understand rule 2.1.6 to be the expression of an object of the union, rather than a rule which imposes a specific obligation on any individual.

Conduct number 4

449. The claimant relies on his email of 9 October 2017 (331) to which we referred in paragraph 95. The claimant refers to him stating, as a result of his disability, he did not like the suggestion his judgment was affected and asserts that he makes an allegation of a failure to make a reasonable adjustment and that he was alleging a breach of the EqA and rule 2.1.6. The email does not refer expressly to the suggestion that he should say his judgment had been affected, although it states that Ms Charlett's advice to withdraw allegations caused him, a disabled individual, further anxiety. We do not consider this can reasonably be understood as making an allegation of a breach of the EqA. Although he mentions that he has a complaint about Mr Passfield, amongst others, he does not state what this is, writing that he will particularise his complaints when he is feeling better. We conclude that the email cannot reasonably be understood as making and allegation of a failure to make reasonable adjustments and, therefore, a breach of the EqA or of a breach of rule 2.1.6. We, therefore, conclude that this email is not an act which falls within section 65(2)(c) of the 1992 Act.

Conduct number 5

450. Number 5 is the claimant's email of 16 January 2018 (355). This email complained that the advice in Mr Passfield's letter of 15 January 2018 (which passed on advice from Nicky Marcus) was negligent. We conclude that this allegation is an act which falls within section 65(2)(c) of the 1992 Act.

451. The claimant also asserts that the email falls within section 65(2)(c) because he was making a complaint of victimisation for bringing claims against the RMT. The claimant asked a question in the email about whether an offer of assistance was not being made because he would be suing a sister union. He does not expressly allege that the complaints to be made about the sister union were of unlawful discrimination under the Equality Act 2010 or say anything which could reasonably be understood as making such an allegation. We conclude that the claimant was not making an allegation of victimisation under the Equality Act 2010 by raising the question about whether he was not being offered assistance because of suing a sister union. The raising of the question is not an act which falls within section 65(2)(c) of the 1992 Act.

Conduct number 6

452. Number 6 is the claimant's email of 2 February 2018 (365). The email includes complaints of failure to make reasonable adjustments and other, unspecified, types of disability discrimination by Mr Passfield and repeats the allegation of negligent advice. There is also an allegation that Mr Passfield may have been motivated by the claimant's complaints in 2016 (which included an allegation of failure to make reasonable adjustments) which is an allegation of victimisation under the Equality Act 2010. We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

453. We do not consider that the email makes an allegation that the claimant was being victimised by any of the respondents because he was making complaints of discrimination under the Equality Act 2010 against the RMT; the allegation is rather than the refusal of assistance may have been because people at Unite know relevant people at the RMT which is an allegation of a different nature. The making of such an allegation is not an act which falls within section 65(2)(c) of the 1992 Act.

Conduct number 7

454. This is the claimant's letter of 19 February 2018 (382) sent to Mr McCluskey, complaining about Mr Passfield, Mr Kavanagh and Ms Marcus. This included allegations of failure to make reasonable adjustments and negligence. We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

455. We do not consider that the email makes an allegation that the claimant was being victimised by any of the respondents because he was making complaints of discrimination under the Equality Act 2010 against the RMT. There is no act falling within section 65(2)(c) based on such an allegation in this email.

Conduct number 8

456. This is the claimant's email of 10 March 2018 (403) to Jennie Formby. This refers to allegations that senior officers of Unite discriminated against the claimant contrary to the Equality Act 2010. The claimant alleges that the way Ms Formby investigated his complaints had been dictated by the serious issues he raised, including a breach of the Equality Act, which we consider can reasonably be understood as an allegation of victimisation. The claimant makes an allegation that the manner of Ms Formby's investigation and conclusion could be deemed to be discriminatory. We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

457. The email does not, contrary to what is written in the Scott Schedule, raise a complaint of victimisation for bringing claims against senior officials of the RMT.

Conduct number 9

458. This is the claimant's letter dated 9 May 2018 (422) to Mr McCluskey. The letter includes allegations of disability discrimination in relation to Ms Formby's outcome and breaches of the Union Rule book. We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

Conduct number 10

459. This is the claimant's letter dated 29 May 2018 to Mr McCluskey (letter begins at page 442 but the claimant refers to pages 449 and 450 of that letter). We conclude that this can be understood as making a complaint of a failure to make a reasonable adjustment in relation to alternative representation. We conclude that this allegation is an act which falls within section 65(2)(c) of the 1992 Act.

460. The making of a request that a reasonable adjustment be made to refer his request for legal assistance to the Executive Council is not conduct falling within section 65(2)(c). The making of a request is not the assertion of a contravention of the rules of the union or any other agreement or any law.

Conduct number 11

461. This is the claimant's letter dated 5 June 2018 to Mr McCluskey (beginning 456, relying on 456, 457 and 461). The claimant alleges victimisation and a failure to make reasonable adjustments. We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

462. The making of a request that a reasonable adjustment be made to refer his request for legal assistance to the Executive Council is not conduct falling within section 65(2)(c). The making of a request is not the assertion of a contravention of the rules of the union or any other agreement or any law.

Conduct number 12

463. This is the claimant's letter dated 15 June 2018 to Mr McCluskey (beginning 474, relying on 474 and 475). This refers back to the allegation of victimisation in the claimant's letter of 5 June 2018. We conclude that this allegation is an act which falls within section 65(2)(c) of the 1992 Act.

Conduct number 13

464. This is the claimant's letter dated 22 June 2018 to Mr McCluskey (487). This includes allegations that officers/employees of Unite have discriminated against him contrary to the Equality Act 2010. We conclude that this allegation is an act which falls within section 65(2)(c) of the 1992 Act.

Conduct number 14

465. This is the claimant's letter dated 2 July 2018 to Mr McCluskey (499). This includes reference back to complaints of discrimination previously made against Mr Passfield and includes complaints of discrimination against Ms Formby and Ms Cartmail. We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

Conduct number 15

466. This is the claimant's letter dated 11 July 2018 to Mr Gillam (516). Although the letter is dated 11 July, as previously noted, the date seems to be incorrect since it refers to enclosures dated 13 July. The letter includes reference to complaints of discrimination against officers/employees of Unite. We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

Conduct number 16

467. This is the claimant's letter dated 13 July 2018 to Mr McCluskey (520). This includes allegations of victimisation because of raising allegations of race discrimination against the General Secretary of the RMT; and failure to make reasonable adjustments. The claimant also asserted that Mr Gillam tried to deprive him of a right he considered he had to appeal to the Executive Council under the Unite Rule Book. We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

468. We do not consider that the allegation of disability discrimination against Mr Vohra of Slater and Gordon falls within section 65(2)(c) of the 1992 Act. The allegation has to be about the union, any official or representative of it or a trustee of its property for section 65(2)(c) to apply. Mr Vohra does not come within these categories.

Conduct number 17

469. This is the claimant's letter of 2 August 2018 to Mr McCluskey (557). This includes allegations of discrimination against Ms Formby and Ms Cartmail and breaches of the Union Rule book (without specifying what rule was alleged to have been broken). We conclude that these allegations are acts which fall within section 65(2)(c) of the 1992 Act.

Conduct number 18

470. This is the claimant's letter to Mr McCluskey dated 6 August 2018 (571). The claimant alleged in this letter that there was a breach of the union's duty of care to him in insisting on following what the claimant considered to be reckless and careless advice from counsel about the merits of personal injury claims being followed. We conclude that this allegation is an act which falls within section 65(2)(c) of the 1992 Act.

Whether there was unjustifiable discipline contrary to section 64(2)(c)

Complaints in the Scott Schedule

Incident 1

471. This is a complaint of unjustifiable discipline under the 1992 Act. It relates to the allegation that Vince Passfield and Nicky Marcus refused, on 15 January 2018, to support the claimant's employment tribunal claims as a consequence of the claimant raising complaints, including that of disability discrimination. The claimant alleges that the refusal was because of four matters which the claimant asserts to be conduct falling within section 65(2)(c) of the 1992 Act. The claimant alleges that refusing to support his employment tribunal claims was subjecting him to a detriment within the meaning in section 64(2)(c).

472. The claimant relies on conduct numbers 1 to 4 as being conduct within section 65(2)(c) which was, he says, the reason for what he alleges to be unjustifiable discipline. For reasons given in paragraphs 446 to 449 above, we concluded that only number 3 fell within section 65(2)(c) i.e. the email of 9 September 2017 in which the claimant alleges that Mr Passfield failed to make a reasonable adjustment by not appointing an alternative representative to Ms Charlett.

473. In his submissions, the claimant made submissions about this incident, together with incident 20 (victimisation) and Amendment 2 (victimisation). He submitted, in the alternative to arguing that the "discipline" was because of complaints he raised in 2016, that the "discipline" was because of discrimination he raised against the RMT. However, the raising of discrimination complaints against the RMT is not conduct relied on for this incident as identified in the Scott Schedule.

474. The conduct relied upon as the "discipline" is Mr Passfield's letter of 15 January 2018 (352) in which he relayed advice from Nicky Marcus that the claimant's claims had no reasonable prospect of success and informed him that legal representation would not be provided because of this assessment (paragraph 120).

475. There was a decision that the claimant should not be given legal representation for his claims. We are doubtful, however, having regard to what is said about the purpose of the legislation in **Beaumont v Amicus**, whether this can properly be considered to be a "determination" that the claimant should be subjected to a detriment, within section 64(2)(f). Although it was, no doubt, detrimental to the claimant not to have legal assistance, that is not necessarily the result of a determination to subject him to a detriment. If the decision was made improperly, to punish him for doing an act falling within section 65(2)(c), then we conclude it would be capable of being such a determination. We consider that a conclusion cannot be reached on whether it was such a determination, without looking at the reason for the decision.

476. The crucial issue is whether the claimant was refused legal assistance because he had made an allegation in his email of 9 September 2017 that Mr Passfield had failed to make a reasonable adjustment by not providing him with alternative representation to Ms Charlett. The burden of proof is on the claimant to prove, on a balance of probabilities, that there is a causal connection between that allegation and the refusal of legal assistance in the letter of 15 January 2018. The claimant says that Mr Passfield should have known that the claimant's claims had merit. However, we have found that Mr Passfield relied on the advice of the legal officer, Nicky Marcus (paragraph 121). We conclude that legal representation was refused at that time because, rightly or wrongly, Nicky Marcus formed the view that the claimant's claims did not have a reasonable prospect of success. The claimant has not proved, on a balance of probabilities, that Nicky Marcus formed the view that the claims did not have a reasonable prospect of success because of the allegation against Mr Passfield, nor that Mr Passfield adopted her view of the merits because of the allegation. We conclude, therefore, that, if the Tribunal has jurisdiction to consider the complaint, it fails on the merits.

477. Since we are not satisfied that the refusal of legal representation was because of a section 65(2)(c) conduct reason, we also conclude that there was no determination to subject the claimant to a detriment.

478. The allegation is about conduct on 15 January 2018. The complaint is out of time unless it forms part of a continuing act of discrimination. We return to the time limit issue later in our conclusions.

Incident 2

479. This is a complaint of unjustifiable discipline under the 1992 Act. It relates to an allegation that Unite adopted the wrong complaints procedure after the claimant raised allegations of disability discrimination, breaches of the Union Rule Book and other unlawful action. The claimant alleges that the refusal was because of six matters which the claimant asserts to be conduct falling within section 65(2)(c) of the 1992 Act. The claimant alleges that refusing to support his employment tribunal claims was subjecting him to a detriment within the meaning in section 64(2)(c).

480. The claimant relies on conduct numbers 1 to 6 in relation to incident 2 as, he asserts, falling within section 65(2)(c). For the reasons given in paragraphs 446 to 452 above, we concluded that the conduct set out in numbers 3, 5 and 6 falls within section 65(2)(c) of the 1992 Act, but not that in numbers 1-2 and 4.

481. The conduct relied upon as unjustifiable discipline, is Unite on 14 February 2018, by the actions of Alys Cunningham, allegedly adopting the wrong complaints procedure. The claimant asserts that this was subjecting him to a detriment. We deal with relevant events in paragraphs 165 to 168.

482. We conclude that the majority of matters referred to Ms Cunningham were about the advice given to the claimant about his complaints and these were rightly dealt with under a legal services review. However, the claimant had also made a complaint about Mr Passfield failing to make a reasonable adjustment. This was a matter which would not be the subject of a legal services review. This was a matter which would have been appropriately dealt with under the Members complaints procedure.

483. We do not consider that Ms Cunningham made any “determination” that the claimant should not have a complaint about Mr Passfield dealt with under the Members’ complaints procedure. She was given the matter to conduct a legal services review because the claimant was dissatisfied with the advice given to him by Mr Passfield (passing on the advice of Nicky Marcus), and that is what she did. If we were wrong in that and Ms Cunningham should be viewed as having made a decision that the claimant should not have a complaint dealt with under the Members’ complaints procedure, for the reasons given in relation to incident 2, we would not consider that there was a determination to subject the claimant to a detriment unless the decision not to deal with the complaint under the Members’ complaints procedure was taken because of a section 65(2)(c) reason.

484. We turn, therefore, to the question of causation. Was the reason Alys Cunningham failed to identify the complaint that Mr Passfield failed to make reasonable adjustments as one which should be dealt with under the Members' complaints procedure because of one or more of the allegations in numbers 3, 5 and 6 i.e. because the claimant had complained that Mr Passfield had failed to make reasonable adjustments and had subjected the claimant to other, unspecified, disability discrimination, because he alleged that Mr Passfield's advice (which passed on Nicky Marcus' advice) was negligent and/or that Mr Passfield had victimised him because he had complained in 2016 that Vince Passfield had discriminated against him?

485. We accepted the evidence of Alys Cunningham that she viewed the claimant as a lawyer using tools to achieve the outcome which he wanted of getting legal representation. Her denial, on behalf of Unite, of unlawful discrimination by those at Unite was a lawyer's response to a letter she knew to have been written by a lawyer, albeit to get assistance as a member. (See paragraphs 167 to 168). She considered that the real issue was that the claimant wanted legal assistance. She considered the correct way to address his real concerns was to undertake a legal services review.

486. The burden of proof lies on the claimant to satisfy us that there was a causal connection. We conclude that the claimant has failed to discharge the burden on him to prove the causal connection. Since we conclude the "determination" was not for a section 65(2)(c) reason, we also conclude that there was no determination to subject the claimant to a detriment.

487. We conclude that this complaint is not well founded on the merits.

488. We will consider later the issue of jurisdiction, having regard to time limits.

Incident 3

489. The conduct which the claimant alleges to be unjustifiable discipline is Unite, through the actions of Alys Cunningham, deciding that the claimant was not subjected to any discrimination and/or Unite's staff had not committed the tort of negligence against the claimant on 16 January 2018 and 14 February 2018. The letter of 16 January 2018 (360) informed the claimant that she proposed to instruct a panel firm to review and provide a second opinion as to the merits of his ET claims and to provide him with advice in relation to any personal injury claim, subject to the claimant's agreement on this. In the letter, Ms Cunningham wrote:

> "I note you allege that Vince Passfield's letter of 15 January was in some way negligent, discriminatory and/or damaging to your health. Clearly there can always be differing legal opinions and I can of course appreciate that this is a very emotional time for you and tensions run high and will therefore put these comments down to this."

490. We conclude that this letter does not contain any "determination" within the meaning in section 64 of the 1992 Act to subject the claimant to a detriment. We

conclude that Ms Cunningham had not reached a decision that there was no discrimination and/or negligence by Unite's staff. We consider the quoted comments to be more an indication of a view that the claimant's allegations were not the result of a serious considered view (in accordance with Ms Cunningham's view that the claimant was using such allegations as a tool to get what he wanted i.e. legal assistance), rather than a decision on the merits of the allegations.

491. The letter of 14 February 2018 we considered in relation to incident 2. We concluded that Ms Cunningham's denial, on behalf of Unite, of unlawful discrimination by those at Unite was a lawyer's response to a letter she knew to have been written by a lawyer, albeit to get assistance as a member. (See paragraphs 167 to 168). She considered that the real issue was that the claimant wanted legal assistance. She considered the correct way to address his real concerns was to undertake a legal services review. We conclude that this was not a determination to subject the claimant to a detriment.

492. The claimant relied on conduct numbered 1 to 6 as the reasons for what he alleged to be unjustified discipline. Of these, we concluded that 3, 5 and 6 fell within section 65(2)(c) of the 1992 Act.

493. Even if we had concluded that Ms Cunningham had made a determination to subject the claimant to a detriment, the claimant would not have satisfied us that the reason she did this was because of conduct numbers 3 and/or 5 and/or 6. Ms Cunningham sought to address what she considered to be the real issue, which was that the claimant wanted legal assistance. She considered the correct way to address his real concerns was to undertake a legal services review. She viewed the claimant's allegations as a lawyer's means to achieve his desired goal.

494. We conclude that this complaint is not well founded on its merits.

495. We will consider later the issue of jurisdiction, having regard to time limits.

Incident 4

496. The conduct which the claimant alleges to be unjustifiable discipline is Jennie Formby failing to deal with the specific allegations the claimant raised in his complaint to Unite in her outcome letter dated 10 March 2018.

497. The claimant, in his submissions, relied on Jennie Formby not interviewing the claimant but interviewing Mr Passfield. He described Jennie Formby's allegation that he had failed to particularise his complaints as "nonsensical". He submitted that the tribunal should uphold his complaint since Jennie Formby had failed to give evidence.

498. Ms Formby did not interview the claimant but we found that it would have been very unusual to interview a complainant personally (see paragraph 191). Ms Formby had a brief telephone conversation with Mr Passfield. (See paragraph 195).

499. We found that Ms Formby's outcome letter made no express reference to allegations of disability discrimination. It does not mention Mr Passfield, Mr Kavanagh, Ms Marcus or Ms Cunningham by name or job title. The letter was brief and does not expressly deal with specific allegations of disability discrimination.

500. The claimant has not satisfied us that Ms Formby made a deliberate decision not to deal with specific allegations, rather than, for example, not understanding what specific allegations had been made. Jennie Formby's assertion in her letter that the claimant had not particularised complaints about alleged poor treatment by Unite might, in the claimant's view, be "nonsensical" but we consider his complaints were not all so clearly identified as to persuade us that Jennie Formby's expressed view was not a genuinely held view. Since the claimant felt the need to be interviewed to explain his complaints, this suggests that he may not himself have considered his complaints could all be clearly understood from his correspondence. This was the first time Jennie Formby had dealt with such a complaint. If there was no decision not to deal with specific allegations, we conclude there could not be a determination to subject the claimant to a detriment. Even if there was a decision not to deal with the specific allegations, for the reasons given in relation to incident 2, we do not consider that there could be a determination to subject the claimant to a detriment unless the reason for the decision was one of the section 65(2)(c) reasons. We must, therefore, look at causation before deciding whether there was a determination to subject the claimant to a detriment.

501. The claimant relies on conduct numbers 1 to 7 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, 5, 6 and 7 fall within section 65(2)(c) of the 1992 Act.

502. Whilst it would have been preferable to hear evidence from Jennie Formby as to the reasons why she acted as she did, her absence as a witness does not automatically mean that the claimant succeeds in his complaints about her.

503. The burden of proof is on the claimant to satisfy us that the reason Jennie Formby did not deal with his specific allegations was one of the section 65(2)(c) reasons relied on for this complaint. The claimant has not satisfied us, on a balance of probabilities, that it was because of those conducts. The failure to interview the claimant does not provide us with any assistance, since we found it would be very unusual to do so and it was a brief telephone conversation with Mr Passfield rather than what we would consider to be an interview. As noted above, the claimant has not persuaded us that her expressed view that he had not particularised complaints about poor treatment by Unite was not a genuinely held view. This was the first complaint Jennie Formby had dealt with. We have no evidence that she subsequently dealt with any other complaints and, therefore, how she did so where there was no section 65(2)(c) conduct. The only evidence that could suggest that Jennie Formby might have dealt with another complaint in more detail is the evidence of Gail Cartmail that she considers Jennie Formby to be very thorough. However, even if Jennie Formby is very thorough in the way she considers things, that does not necessarily mean that she would express her conclusions in a detailed way. We conclude that the claimant has not satisfied us, on a balance of probabilities, that the reason Jennie Formby acted as she did was because of the

section 65(2)(c) conduct relied on in relation to this complaint. We, therefore, also conclude that there was no determination to subject the claimant to a detriment.

504. We conclude that this complaint is not well founded. This complaint was presented in time.

Incident 5

505. The conduct which the claimant alleges to be unjustifiable discipline is Jennie Formby failing to address in her investigation into the claimant's complaints specific allegations against specific individuals/officers of Unite.

506. The claimant relies on conduct numbers 1 to 7 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, 5, 6 and 7 fall within section 65(2)(c) of the 1992 Act.

507. For the same reasons as in relation to incident 4, we conclude that this complaint is not well founded.

Incident 6

508. The conduct which the claimant alleges to be unjustifiable discipline is Jennie Formby failing to deal with or address the claimant's allegation of disability discrimination. The letter of 10 March 2018 (401) does fail to address the allegations of disability discrimination.

509. The claimant relies on conduct numbers 1 to 7 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, 5, 6 and 7 fall within section 65(2)(c) of the 1992 Act.

510. For the same reasons as in relation to incident 4, we conclude that this complaint is not well founded.

Incident 7

511. The conduct which the claimant alleges to be unjustifiable discipline is Unite deliberately failing in its duty of care and, on 5 June 2018 and 4 July 2018, insisting that Counsel's advice should be followed. The reference to 5 June 2018 is to a letter from Mr Gillam to the claimant of that date (452) and the reference to 4 July 2018 is to another letter from Mr Gillam to the claimant (509).

512. We conclude that there was no determination that the claimant should be subjected to a detriment. We do not consider that the claimant was put at any disadvantage by a requirement to follow Counsel's advice to pursue only the claims which counsel considered had reasonable prospect of success. This was a reasonable course of action to take.

513. The claimant relies on conduct numbers 1 to 14 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3 and 5-14 fall within section 65(2)(c) of the 1992 Act.

514. Even if we had concluded that there was a determination that the claimant should be subjected to a detriment by insisting that Counsel's advice be followed, the claimant would not have satisfied us that the reason for the determination was because of one or more of the conduct numbered 3 or 5 to 14. It was standard practice to require members who applied for legal assistance from Unite to follow the advice of panel solicitors and Counsel. Even if it had been the case in the past, which the claimant believed to be the case from his own experience, that claimants were supported to pursue whatever claims they wished to, regardless of the merits of those claims, this was not the case at the time Mr Gillam was dealing with the claimant's request for legal assistance. The evidence of Mr Gillam as to the current practice is entirely in line with what we would expect. Unite does not have unlimited funds which would allow it to support complaints regardless of merit. In any event, in our judicial experience, it does not advantage claimants to bring many complaints which are of little merit; it is much better to focus on those complaints which have a reasonable prospect of success.

515. We conclude that this complaint is not well founded on the merits. This complaint was presented in time.

Incident 8

516. The conduct which the claimant alleges to be unjustifiable discipline is Unite refusing an appeal regarding Legal Services to the NEC (National Executive Committee) under the Rule Book on various dates including 29 May 2018, 5 June 2018, 22 June 2018 and 3 August 2018. The claimant names Mr Lemon, Mr Gillam and Mr McCluskey as those responsible.

517. Dealing with applications for legal assistance is delegated to Unite's legal department. Individuals do not make appeals to the Executive Council in practice. (See paragraphs 34 to 35). We conclude that there was no determination to subject the claimant to a detriment, in not allowing him to appeal to the Executive Council to be granted legal assistance. The claimant was not subjected to any detriment by not being given a form of appeal that was not given to anyone else.

518. The claimant relies on conduct numbers 1 to 17 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3 and 5-17 fall within section 65(2)(c) of the 1992 Act.

519. We conclude that there was no causal connection between the conduct relied upon and the refusal of an appeal to the Executive Council. Not putting forward the claimant's request to the Executive Council was in line with Unite's usual practice.

520. We conclude that this complaint is not well founded. This complaint was presented in time.

Incident 9

521. The conduct which the claimant alleges to be unjustifiable discipline is Unite refusing to refer the claimant's internal complaints to the NEC. The claimant refers to various dates, including 29 May 2018, 5 June 2018, 22 June 2018 and 3 August 2018 and names Mr Gillam and Mr McCluskey as the people responsible.

522. There was no process in practice for individuals to make complaints to the Executive Council. There was a Members' complaints procedure which was used for complaints. We found that this process had been adopted by Unite. There was a reporting mechanism, with quarterly reports about members' complaints being made to the Executive Council. (See paragraphs 33 to 42).

523. We conclude that there was no determination to subject the claimant to a detriment by refusing to refer the claimant's internal complaints to the Executive Council. The claimant was not subjected to any detriment by not being given an opportunity to use a process that was not available to anyone else.

524. The claimant relies on conduct numbers 1 to 17 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3 and 5-17 fall within section 65(2)(c) of the 1992 Act.

525. We conclude that there is no causal connection between the conduct relied upon and the refusal to refer the claimant's internal complaints to the Executive Council. Not referring internal complaints to the Executive Council was in line with normal practice.

526. We conclude that this complaint is not well founded. The complaint is brought in time.

Incident 10

527. The conduct which the claimant alleges to be unjustifiable discipline is Unite refusing to support certain civil claims. The claim names Mr Gillam as the responsible person and gives the dates of 5 June 2018 and 5 July 2018 as when this occurred. The dates refer to letters sent on those dates from Mr Gillam to the claimant (452 and 509). The letter sent on 5 July 2018 was dated 4 July 2018.

528. The letter of 5 June 2018 informs the claimant, amongst other things, that a claim under the Protection from Harassment Act 1997 against Ms Mitchell would not be supported. Mr Gillam wrote that the Union's general rule was that civil matters are not normally supported under the terms of the union's legal assistance and he saw no reason, particularly when other avenues of redress were open to the claimant, that the union's general policy on civil proceedings should be relaxed in those circumstances.

529. The letter dated 4 July 2018 included a statement that claims under the Protection from Harassment Act would not be supported by the union. Mr Gillam wrote that Counsel had provided a view in respect of the merits of these claims and

had taken the view that not only did this not enjoy merit but questioned the point of pursuing this.

530. We accept that Mr Gillam, in writing to the claimant in these terms, was acting in accordance with what he understood to be the union's normal position in relation to such civil claims and, in relation to the letter dated 4 July 2018, was also acting in accordance with advice given by Counsel. On 5 June 2018, he asked Mr Vohra and Mr Miers at Slater and Gordon, if speaking to Counsel on the personal injury matters, to ascertain whether the Protection from Harassment claim was strictly necessary to protect his position (1049).

531. We conclude that there was no determination to subject the claimant to a detriment. Mr Gillam was acting in accordance with normal policy and seeking Counsel's advice to check that the claimant would not be disadvantaged in his personal injury claim if he did not pursue a claim under the Protection from Harassment Act. Although the claimant held, and continues to hold, a strong view that his interests were best served by pursuing all possible claims with union support, he has not satisfied us that not being supported to pursue this particular claim did put him at a disadvantage.

532. The claimant relies on conduct numbers 1 to 14 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3 and 5-14 fall within section 65(2)(c) of the 1992 Act.

533. Even if there was a determination to subject the claimant to a detriment, we conclude that there was no causal connection between this conduct and the decision not to support claims under the Protection from Harassment Act. Mr Gillam acted as he did, because he understood this to be the union's normal practice and was, in relation to the second letter, acting in accordance with advice given by Counsel.

534. We conclude that this complaint is not well founded. The complaint was presented in time.

Incidents 11 to 16 inclusive

535. We deal with all these incidents together, since they all relate to the outcome of the review conducted by Gail Cartmail, set out in a letter from her dated 22 June 2018 (483) (see paragraphs 300 to 307).

536. Common to the conduct which the claimant alleges to be unjustifiable discipline in incidents 11 to 16 is Gail Cartmail subjecting the claimant to what he describes as an unfair and not impartial review. The allegations in relation to the individual incidents are as follows:

536.1. Incident 11: failing to address all the claimant's allegations on 22 June 2018.

536.2. Incident 12: not addressing the evidence provided by the claimant.

536.3. Incident 13: blaming the claimant for not particularising his complaints.

536.4. Incident 14: failing to explain why she could not uphold any allegation of misconduct against senior officials of the Union.

536.5. Incident 15: not addressing specific allegations of disability discrimination against Mr Passfield and other officials of the Union.

536.6. Incident 16: addressing her review as an adjudication and therefore not allowing the claimant an appeal on decisions/outcomes which were made on the first occasion.

537. We are doubtful that all of these incidents represent deliberate decisions being taken by Gail Cartmail. If there was no decision, we do not consider it can constitute a determination. Also, for the same reasoning as applied in incident 2, we consider we cannot reach a conclusion as to whether these were determinations to subject the claimant to a detriment without looking at the reasons for Gail Cartmail acting as she did.

538. The claimant relies on conduct numbers 1 to 12 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 12 fall within section 65(2)(c) of the 1992 Act. These include allegations about Mr Passfield failing to make reasonable adjustments, allegations of discrimination including victimisation against Jennie Formby and other allegations of discrimination against various people at Unite.

539. The burden of proof is on the claimant to satisfy us, on a balance of probabilities, that one or more of the section 65(2)(c) conduct reasons was the reason, or one of the reasons, for Gail Cartmail acting as she did. The claimant referred, in submissions, to his assertion that the outcome was that of Gail Cartmail alone. We found that Mr Woodhouse was involved in the decision making process. The claimant also referred to Gail Cartmail failing to explain her reasoning. Gail Cartmail does not explain her reasoning in the detailed way that one might expect from a lawyer but Ms Cartmail is not a lawyer and the members' complaints process does not lay down any particular form of response.

540. We formed the view, based on Ms Cartmail's letter and her evidence to us, that she was making an honest attempt to deal with the complaints which she understood the claimant to be making. In relation to her "adjudication" on matters the claimant had raised for the first time in his appeal, notably a complaint of discrimination by Jennie Formby in dealing with his complaint, we agree with the claimant that there should have been a two stage process, if he had made a complaint about Jennie Formby under the members' complaints procedure. The claimant may have felt that he had done this, but we conclude that Gail Cartmail did not recognise it to be as such. She viewed the complaint as a way of complaining about the decision taken by Jennie Formby, rather than a fresh complaint, writing: "It appears to be the case that you are unhappy with the decisions, so wish to complain about the decision maker, as a means of seeking a review of the decision."

541. In relation to other complaints, where the claimant says that Gail Cartmail should not have made an adjudication because she was dealing with the complaints for the first time because Jennie Formby had failed to deal with the complaint, we do not agree that there should have been a further stage. The complaint was before Jennie Formby; her failure to deal with it was a ground of appeal, rather than meaning that a new two stage process should be started.

542. We conclude that the claimant has not satisfied us, on a balance of probabilities, that Gail Cartmail acted as she did in relation to any of the incidents 11-16 in whole or in part because of any of the section 65(2)(c) conduct relied on for these incidents. We also, therefore, conclude that there were no determinations by Gail Cartmail to subject the claimant to a detriment.

543. We conclude that these complaints are not well founded. The complaints were presented in time.

Incident 17

544. The conduct which the claimant alleges to be unjustifiable discipline is Mr McCluskey refusing to take any action when the claimant informed him that Unite's staff were subjecting the claimant to detriments. The claimant refers to various dates including 27 July 2018.

545. The claimant relies on conduct numbers 1 to 16 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 16 fall within section 65(2)(c) of the 1992 Act.

546. The claimant wrote to Mr McCluskey on many occasions. Mr McCluskey never replied directly. The majority of the correspondence was passed to others to deal with e.g. on 15 August 2018, Mr Gillam wrote to the claimant (580), referring to the claimant's letter to Mr McCluskey of 6 August. (See paragraph 364).

547. There was very little evidence to suggest that Mr McCluskey might have looked personally at the claimant's correspondence. Although his email address was used, it is clear from the body of emails that this email address was used and monitored by people in his office: JF and VK. There were a couple of emails when Mr Passfield addressed an email to "Len", and an occasion when he was asked by someone in Mr McCluskey's office to "brief Len". JF, in Mr McCluskey's office, forwarded a letter from the claimant letter on 16 July 2018 to Mr Granfield and Mr Gillam for their attention (671) writing "Len is in receipt of the attached email and also hardcopy". There are no emails which give any evidence of a view taken by Mr McCluskey in relation to matters raised by the claimant.

548. The internal complaints went through a process with Jennie Formby first considering them and then Gail Cartmail and Tony Woodhouse reviewing the decision. Matters to do with legal services were dealt with by Mr Gillam.

549. Mr McCluskey did not give evidence. The claimant could not point to any evidence to suggest that Mr McCluskey would have taken action and intervened

directly in relation to complaints about Unite staff if any other member had written to him in similar terms. The claimant relied on his experience of another General Secretary of another union once intervening directly so that a member got legal assistance. However, this experience of another General Secretary does not give us any indication that Mr McCluskey would have taken action had it not been for the conduct the claimant relies on for this complaint.

550. Letters from Mr Gillam to the claimant in which Mr Gillam writes of the need for the General Secretary, in a union of 1.4 million members, to refer correspondence to appropriate officers, suggests that Mr McCluskey does not, in practice, read and respond personally to much, if any, correspondence from members (see paragraphs 317 and 366).

551. The burden of proof lies on the claimant and we conclude that he has not proved, on a balance of probabilities, that the reason Mr McCluskey did not take any action personally in response to the claimant's letters was because of the conduct relied on for section 65(2)(c) of the 1992 Act.

552. The complaint was presented in time, if it formed part of a continuing act of discrimination. However, we conclude that this complaint is not well founded.

Incident 18

553. The conduct which the claimant alleges to be unjustifiable discipline is Unite adopting a procedure in assessing the claimant's various claims which departed from the respondent's standard procedure. The claimant relies on various dates, including 3 August 2018 and names the responsible people as Ms Cunningham, Mr Gillam, Mr Lemon and Mr McCluskey.

554. The claimant's view was that all potential claims should be assisted, regardless of merit. The respondent was offering assistance to the claims assessed by counsel and panel solicitors as having reasonable prospects of success. The claimant has not satisfied us that the respondent diverted from their standard procedure in assessing his claims for the purpose of deciding whether to offer legal assistance to pursue them. Indeed, the explanation given by the respondent's witnesses at the time in correspondence and in evidence at this hearing has been consistent and in accordance with what we would expect in relation to the prudent use of members' funds. Mr Gillam explained to the claimant in correspondence that they had a duty not to waste members' money on unmeritorious claims (see, for example, paragraph 318). The claimant relies on his past experience as a panel solicitor, that unions, including Unite, would provide legal assistance for claims, irrespective of merit. Even if that was the case in the past, we have found that it was not the case at the time the claimant's claims were being assessed by Unite. Since the claimant has not proved the facts on which he relies in relation to this complaint, we conclude that the complaint is not well founded.

555. Even if the complaint had not failed for this reason, it would have failed on other grounds.

556. The claimant relies on conduct numbers 1 to 17 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 17 fall within section 65(2)(c) of the 1992 Act.

557. The claimant has failed to satisfy us, on a balance of probabilities, that there was any causal connection between the conduct relied upon and the way Unite assessed his claims for the purpose of deciding whether to offer legal assistance. This complaint would also, therefore, fail for this reason.

558. This complaint was presented in time.

Incident 26

559. The conduct which the claimant alleges to be unjustifiable discipline is Unite not responding to the claimant's allegations that he had been subjected to disability discrimination by panel solicitors. The claim gives 12 October 2018 as the relevant date and names Mr Gillam as the individual involved.

560. The claimant wrote to Mr Gillam and Mr McCluskey on 12 October 2018 (606), including an allegation that panel solicitors referred to him as "paranoid" and requesting that he be referred to other solicitors and his complaints relating to panel solicitors be referred to the Head of Legal Services and the NEC. Mr Gillam replied the same day (see paragraph 377). It was not the case that Mr Gillam was not responding to the claimant. He was recognising the claimant's request to be moved to other solicitors but explaining that it could not be done in the timescale requested. He wrote that who the claimant's panel solicitor was going forward would be dealt with in due course. We conclude that the claimant has not proved the facts on which he relies.

561. Even if Mr Gillam could be regarded as not responding to the claimant's allegations about panel solicitors, this complaint would fail because we conclude the claimant has not proved a causal link between what Mr Gillam did, or failed to do, and the conduct relied upon for section 65(2)(c) of the 1992 Act.

562. The claimant relies on conduct numbers 1 to 18 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 18 fall within section 65(2)(c) of the 1992 Act.

We conclude that this complaint is not well founded. The complaint was presented in time.

Incident 27

563. The conduct which the claimant alleges to be unjustifiable discipline is Unite and Mr McCluskey not responding to or investigating the claimant's complaints of being subjected to an unfair or not impartial investigation into his complaints against the respondent. The claimant relies on various dates including 2 July 2018 and names Mr McCluskey as the individual involved.

564. On 2 July 2018, the claimant wrote to Mr McCluskey (498) including complaints about the way Ms Formby and Ms Cartmail had dealt with his complaints (see paragraphs 312 to 316).

565. The respondents considered the claimant had exhausted the internal members' complaints procedure. We conclude that, by not responding to the claimant's complaints or investigating, the respondent was not making a determination that the claimant should be subjected to a detriment. We conclude that the complaint is not well founded for this reason.

566. Even if we had decided that there was a determination to subject the claimant to a detriment, the complaint would fail because of a lack of causal connection between the conduct relied upon for section 65(2)(c) of the 1992 Act and the respondent's actions, or failure to act.

567. The claimant relies on conduct numbers 1 to 13 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 13 fall within section 65(2)(c) of the 1992 Act.

568. The claimant has not proved that the respondent's actions, or failure to act, were because of any of the conduct relied upon. Rather, it appears to us from the evidence, that the respondents acted as they did because they took the view that the claimant had exhausted the internal members' complaints procedure.

569. We conclude that the complaint is not well founded. The complaint was presented in time.

Incident 28

570. The conduct which the claimant alleges to be unjustifiable discipline is Unite and Mr McCluskey not responding to or investigating the allegations that Unite's legal team were not assisting the claimant to have a fair and impartial assessment into his employment and civil claims. The claimant relies on various dates including 29 May 2018 and names Mr McCluskey as the individual involved.

571. The claimant wrote on 28 May 2018 to Mr McCluskey (442) (see paragraph 236). The claimant was explaining at length why he was disagreeing with counsel's advice as to the merits of his employment tribunal claims. He was asking Mr McCluskey to authorise legal support or to allow him to appeal directly to the Executive Council for support.

572. The request for legal assistance was delegated to the legal department to deal with in accordance with Unite's usual process. For most of the relevant period, this was being dealt with by Mr Gillam. There is no evidence to suggest that Mr McCluskey or the Executive Council had any practice of dealing themselves with requests for legal assistance. We conclude that there was no determination to subject the claimant to detriment, by Unite and Mr McCluskey not acceding to the claimant's requests. We conclude that the complaint is not well founded for this reason.

573. Even if we had decided that there was a determination to subject the claimant to a detriment, the complaint would fail because of a lack of causal connection between the conduct relied upon for section 65(2)(c) of the 1992 Act and the respondent's actions, or failure to act.

574. The claimant relies on conduct numbers 1 to 11 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 11 fall within section 65(2)(c) of the 1992 Act.

575. The claimant has not proved that the respondent's actions, or failure to act, were because of any of the conduct relied upon. Rather, the respondents were acting as they did because it was normal practice for the legal department to deal with and make decisions about granting legal assistance.

576. We conclude that the complaint is not well founded. The complaint was presented in time.

Incident 29

577. The conduct which the claimant alleges to be unjustifiable discipline is Unite and Mr McCluskey failing to assist the claimant or deal with allegations that panel solicitors were providing the claimant with an inadequate service as a complaint. The claimant relies on various dates including 2 and 6 August 2018 and names Mr Gillam and Mr McCluskey as the individuals involved.

578. The claimant wrote to Mr McCluskey on 2 August 2018 (557) (see paragraphs 351 to 352). He wrote again to Mr McCluskey on 6 August 2018 (571) (see paragraph 361).

579. Mr Gillam took the view that the complaint was a matter for Slater and Gordon to deal with initially. He obtained their complaints procedure for the claimant. From 25 July 2018, different solicitors at Slater and Gordon to those the claimant had complained about were acting for the claimant. The letters of 2 and 6 August 2018 were sent during the period when Slater and Gordon were investigating the claimant's complaints internally. The outcome to this internal investigation was sent to the claimant on 12 October 2018 (594). Mr Gillam informed the claimant on 12 October 2018 (606) that who the claimant's panel solicitor was going forward would be dealt with in due course. Mr Gillam was, at the time, waiting to hear whether the claimant was going ahead with a settlement of the claim he had presented against the respondents in August, and, if the claimant did not, Mr Gillam was to draft a response to that claim which was due on 15 October 2018. The claimant terminated his retainer with Slater and Gordon on 24 October 2018.

580. The matter of the legal assistance being provided to the claimant via panel solicitors and the claimant's concerns about this were being dealt with by Mr Gillam. All matters to do with legal assistance were delegated to the legal department. There is no evidence that Mr McCluskey was taking any decisions in relation to matters raised by the claimant.

581. We conclude that there was no determination that the claimant should be subjected to a detriment. For this reason, the complaint would fail. However, it would also fail because of the lack of a causal link between the conduct relied on and the acts of the respondents.

582. The claimant relies on conduct numbers 1 to 18 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 18 fall within section 65(2)(c) of the 1992 Act.

583. We conclude that the claimant has not proved that the respondents acted as they did because of any of the conduct relied upon. The claimant has failed to establish a causal link between the conduct and the way the respondents acted in response to his allegations about the panel solicitors.

584. We conclude that the complaint is not well founded. This complaint was presented in time.

Incident 30

585. The conduct which the claimant alleges to be unjustifiable discipline is Unite and Mr McCluskey failing to appoint alternative representation when the claimant stated he could not be represented by panel solicitors who had discriminated against him. The claimant relies on various dates including 12 October 2018, 9 November 2018 and 3 December 2018 and names Mr Gillam and Mr McCluskey as the responsible individuals.

586. The claimant wrote on 12 October 2018 to Mr Gillam (601) (see paragraph 373), to Mr McCluskey on 9 November 2018 (612) (see paragraph 386) and again to Mr McCluskey on 3 December 2018 (621) (see paragraph 388).

587. Mr Gillam informed the claimant on 12 October 2018 (606) that who the claimant's panel solicitor was going forward would be dealt with in due course. Mr Gillam was, at the time, waiting to hear whether the claimant was going ahead with a settlement of the claim he had presented against the respondents in August, and, if the claimant did not, Mr Gillam was to draft a response to that claim which was due on 15 October 2018.

588. In response to JF forwarding to Mr Gillam an email from the claimant to Slater and Gordon, copied to Mr McCluskey dated 7 November 2018, Mr Gillam suggested that they say (if they needed to say anything) that they had referred the claimant's correspondence to the legal department. He wrote that the problem with replying was that it would simply provoke further correspondence and complaints (see paragraph 385).

589. The respondent presented a response to the claimant's first claim on 15 October 2018. The claimant terminated his retainer with Slater and Gordon on 24 October 2018. Unite would have continued to provide legal assistance had the claimant not unilaterally terminated the retainer (see paragraph 384).

590. We conclude that, prior to the termination of the retainer, there was no determination to subject the claimant to a detriment. Mr Gillam had not yet reached a decision on whether Slater and Gordon should continue to represent the claimant (different individuals to those the claimant had complained about having already been allocated to his case) or whether alternative panel solicitors should be appointed.

591. There is no evidence to suggest that another member who unilaterally terminated a retainer with solicitors appointed to act for them, with legal assistance from Unite, would have been offered further legal assistance with different solicitors.

592. We do not consider there was a determination to subject the claimant to a detriment in these circumstances, where we consider any member would have been treated in the same way. We conclude that the complaint is not well founded for this reason.

593. Even if this did constitute a determination to subject the claimant to a detriment, the complaint fails because the claimant has not satisfied us that there is a causal connection between the conduct relied on and the failure to appoint alternative representation.

594. The claimant relies on conduct numbers 1 to 18 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 18 fall within section 65(2)(c) of the 1992 Act.

595. There is no evidence to suggest that alternative representation was not arranged because of any of this conduct. Rather, the evidence indicates that legal assistance came to an end because the claimant had unilaterally terminated the retainer with Slater and Gordon and before a decision was made by Mr Gillam as to whether Slater and Gordon should continue to act, or whether alternative solicitors should be appointed.

596. We conclude that this complaint is not well founded. The complaint was presented in time.

Incident 31

597. The conduct which the claimant alleges to be unjustifiable discipline is Unite and Mr McCluskey refusing or failing to refer the claimant's complaint about disability discrimination to the Executive Council. The claimant relies on various dates including 12 October 2018, 9 November 2018 and 3 December 2018. These dates correspond to the same letters referred to in connection with incident 30 (see paragraph 586). The claimant names Mr McCluskey as the responsible person.

598. The claimant was asking that the Executive Council investigate complaints of disability discrimination against Slater and Gordon.

599. The claimant relies on conduct numbers 1 to 18 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 18 fall within section 65(2)(c) of the 1992 Act.

600. There was no process in practice for individuals to make complaints to the Executive Council. There is no evidence to suggest that the Executive Council has itself ever investigated complaints by a member about panel solicitors or any other form of complaint.

601. We conclude, in these circumstances, where the claimant was not being treated any differently to how any other member who made such a request would have been treated, there was no determination by Unite to subject the claimant to a detriment.

602. Even if there was such a determination, the claimant has not satisfied us that there was any causal connection between the conduct relied upon and the refusal or failure of Unite or Mr McCluskey to refer his complaint about Slater and Gordon to the Executive Council.

603. We conclude that the complaint is not well founded. The complaint was presented in time.

Incident 32

604. The conduct which the claimant alleges to be unjustifiable discipline is Unite and Mr McCluskey refusing or failing to put to the NEC the claimant's complaint that he had been subjected to disability discrimination and his request for legal assistance. The claimant relied on various dates including 12 October 2018, 9 November 2018 and 3 December 2018 and names Mr McCluskey as the responsible person. The dates correspond to the same letters referred to in connection with incident 30 (see paragraph 586).

605. To the extent that this incident refers to failing to put to the NEC the complaint that the claimant had been subjected to disability discrimination by Slater and Gordon, this repeats incident 31 and the complaint in relation to this failed for the reasons given in relation to that incident.

606. The part not contained in incident 31 is the complaint about not putting the claimant's request for legal assistance to the Executive Committee. The claimant was requesting legal assistance for a claim of disability discrimination against Slater and Gordon.

607. The claimant relies on conduct numbers 1 to 18 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 18 fall within section 65(2)(c) of the 1992 Act.

608. As noted in relation to incident 8, dealing with applications for legal assistance is delegated to Unite's legal department.

609. We conclude that there was no determination to subject the claimant to a detriment. There was no process by which individual complaints or requests for legal assistance were put to the Executive Committee. Requests for legal assistance were delegated to the legal department. Individual complaints were dealt with under the members' complaints' procedure. There was no decision that the claimant was to be put at a disadvantage; he was to be treated as anyone else who made a request that their complaint or request for legal assistance be put to the Executive Committee.

610. Even if there had been a determination to subject the claimant to a detriment, the claimant would not have satisfied us that one or more of the reasons for this was because of conduct within s.65(2)(c) relied on for this incident.

611. We conclude that this complaint is not well founded. The complaint is presented in time.

Complaints in the Scott Schedule for the Amendments

Amendment number 1

612. The conduct set out in the Scott Schedule for Amendments which the claimant alleges to be unjustifiable discipline is Unite adopting a procedure in assessing the claimant's various claims which departed from the respondent's standard procedure. The claimant gives dates of 16 January 2018 onwards and names Ms Cunningham, Mr Gillam, Mr Lemon and Mr McCluskey as the individuals involved.

613. There is more detail as to the amendment on page 78 of the bundle. This complaint is in large part the same as incident 18. In so far as it is the same, the complaint is not well founded for the reasons given in relation to incident 18.

614. The only additional part in the amendment is an allegation that Unite pressurised the claimant into "dropping" his internal complaints before it would authorise the claimant's civil claims against his former employer. We conclude that the claimant has not proved the facts that he is relying on for this element of the complaint. The correspondence does not bear the interpretation that the claimant was being pressurised to drop his internal complaints as a condition of being given legal assistance for his civil claims. When the claimant was asked about this in cross examination, he referred to being informed that his internal complaint had been dealt with and that the offer of assistance was non-negotiable. It appears he may have been referring to Mr Gillam's letter of 15 August 2018 (580). However, this letter does not state, or imply, that the claimant will not be given legal assistance unless he drops internal complaints. Mr Gillam, responding to various letters, was simply informing the claimant that Unite's view was that the internal complaints had been dealt with. There was no linking of this to the application for legal assistance.

615. The claimant relies on conduct numbers 1 to 14 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 14 fall within section 65(2)(c) of the 1992 Act.

616. We conclude the complaint is not well founded on its merits. To the extent it relates to matters from 9 March 2018 onwards (or the acts are parts of a continuing act of discrimination ending with one in this period) the complaint is brought in time.

Amendment number 9

617. The conduct which the claimant alleges to be unjustifiable discipline is Mr McCluskey failing to operate the respondent's own procedures/mechanisms in referring matters to the NEC when requested by a member. The claimant relies on dates from 16 January 2018 onwards and names Mr McCluskey as the person responsible.

618. This appears to be the same complaint as that in relation to incidents 8 and 9.

619. The claimant relies on conduct numbers 1 to 17 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 17 fall within section 65(2)(c) of the 1992 Act.

620. We conclude that the complaint is not well founded for the same reasons as given in relation to incidents 8 and 9.

Amendment number 10

621. The conduct which the claimant alleges to be unjustifiable discipline is Unite instructing the same panel solicitor to advise the union on the claimant's complaints against the union and advise both parties on the claimant's legal claims against the RMT, creating a conflict situation.

622. The claimant relies on conduct numbers 1 to 16 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 16 fall within section 65(2)(c) of the 1992 Act.

623. We have found that Unite did not instruct Slater and Gordon to advise it on the claimant's claims against the respondents. The claimant has not proved the facts on which he relies and we conclude, for this reason, that the complaint is not well founded. The complaint was presented in time.

Amendment number 14

624. The conduct which the claimant alleges to be unjustifiable discipline is Mr Gillam advising Unite and Mr McCluskey not to correspond with the claimant, therefore depriving the claimant of a response, a referral to the NEC and legal assistance. The claimant relies on dates from 16 January 2018 onwards.

625. The claimant relies on conduct numbers 1 to 17 as being the reason for the alleged unjustified discipline. We have concluded that conduct numbers 3, and 5 to 17 fall within section 65(2)(c) of the 1992 Act.

626. We conclude that there was no determination to subject the claimant to a detriment. Mr Gillam was giving advice, he was not making a decision that Unite and Mr McCluskey should not correspond with the claimant. For this reason, we conclude that the complaint is not well founded.

627. Had we concluded that Mr Gillam's advice was a determination, the complaint would have still failed because the claimant would have failed to persuade us, on a balance of probabilities, that one or more of the reasons for Mr Gillam's advice, was because of one or more of the section 65(2)(c) conduct reasons relied on for this complaint. It is clear from what Mr Gillam writes that his advice is the result of experience that, if a letter is sent to the claimant, he responds with a further complaint.

628. We conclude that the complaint is not well founded.

629. To the extent this complaint relates to matters from 9 March 2018 onwards (or the acts are parts of a continuing act of discrimination ending with one in this period) the complaint is brought in time.

Complaints under the Equality Act 2010

Victimisation

630. In relation to complaints of victimisation, the issues we need to consider are as follows:

630.1. Did the respondent subject the claimant to a detriment (the detriment being as identified by the claimant in the Scott Schedules)?

630.2. Did the claimant do one or more protected acts by the acts identified in the Scott Schedules?

630.3. If the respondent subjected the claimant to a detriment, was this because the claimant had done a protected act (the claimant did not argue that any detrimental treatment was because the respondent believed he had done, or might do a protected act, rather than being because he had done a protected act)?

631. In applying the provisions relating to the burden of proof, we consider whether the claimant has proved facts from which we could conclude that there was victimisation contrary to section 27 EqA. If the claimant satisfies this initial burden, we consider whether the respondent has shown that it did not do an unlawful act. It is permissible to go straight to the reason why the respondent subjected the claimant to a detriment, in deciding whether there was victimisation, if this would lead to a conclusion that the complaint was not well founded, whether or not the claimant satisfied the initial burden of proof.

Protected acts

632. Before we look at the individual acts alleged to constitute victimisation under the Equality Act 2010, we consider whether the matters relied upon as protected acts fall within the definition of protected acts in section 27(2) EqA. The claimant relies on 19 matters listed in the Scott Schedules as protected acts, numbered 1 to 17 and 19-20 (there is no number 18 relating to the victimisation claims). We use the numbers in the Scott Schedule to identify these acts.

633. The majority of the acts relied upon are the same as for the conduct of the same number for the purposes of the 1992 Act claim.

634. At the hearing it was also agreed that, although not specified as protected acts in the Scott Schedules, the claimant presenting his claim in the employment tribunal against the respondents on 6 August 2018 was a protected act and could also be relied on in these claims as a protected act. The claimant relies on this protected act, in addition to the protected acts identified in the Scott Schedules, in relation to incidents after the respondent received notice of the claim, which the claimant suggested was about a month after the claim was presented.

635. The Scott Schedule for the Amendments sets out the protected acts numbers 1 to 4 in full, but refers to numbers up to 17. The numbers 1 – 4 correspond to the numbers of the alleged protected acts in the Scott Schedule, so we consider that the claimant was intending to refer in the Scott Schedule for the Amendments to the same alleged protected acts numbered 1 to 17 as in the Scott Schedule.

636. In relation to each of the acts, the claimant asserts that they are protected acts because they contain allegations of a breach of the Equality Act 2010. An act will be a protected act if it contains such an allegation.

Act 1

637. The claimant relies on his email of 9 August 2016 (270). We referred to this email in paragraph 54. The claimant refers in the Scott Schedule to him stating as a result of his disability he did not like the suggestion his judgment was affected which he asserts was a breach of the Equality Act 2010. In his letter, the claimant took particular offence at the suggestion from Ms Charlett that he should say that his judgment at the time had been affected. He considered this to be advice that he should say something that was untrue, since he believed in the truth of his allegations. We conclude that the email cannot reasonably be understood as making an allegation of disability discrimination or any other breach of the EqA. We conclude that this was not a protected act.

Act 2

638. The claimant relies on his email of 11 August 2016 (273), to which we referred in paragraph 60. The claimant refers in the Scott Schedule to him stating as a result of his disability he did not like the suggestion his judgment was affected which he asserts was a breach of the Equality Act 2010. The email asserts that Ms Charlett

advised him to withdraw some of his complaints, stating that his judgment was affected by his grievance being denied. We conclude that the email cannot reasonably be understood as making an allegation of disability discrimination, or any other breach of the EqA. We conclude that this was not a protected act.

Act 3

639. The claimant relies on his email of 9 September 2016 (300), to which we referred in paragraph 72. The claimant refers to a complaint which includes an allegation of a failure to make a reasonable adjustment on the grounds of the claimant's disability, which he asserts is a breach of the Equality Act 2010. The claimant alleges in this email that Mr Passfield failed to make a reasonable adjustment. This is an allegation of disability discrimination. We conclude that this was a protected act.

Act 4

640. The claimant relies on his email of 9 October 2017 (331) to which we referred in paragraph 95. The claimant refers to him stating as a result of his disability he did not like the suggestion his judgment was affected and asserts that he makes an allegation of a failure to make a reasonable adjustment and that he was alleging a breach of the EqA. The email does not refer expressly to the suggestion that he should say his judgment had been affected, although it states that Ms Charlett's advice to withdraw allegations caused him, a disabled individual, further anxiety. We do not consider this can reasonably be understood as making an allegation of a breach of the EqA. Although he mentions that he has a complaint about Mr Passfield, amongst others, he does not state what this is, writing that he will particularise his complaints when he is feeling better. We conclude that the email cannot reasonably be understood as making an allegation of a failure to make reasonable adjustments and, therefore, a breach of the EqA. We, therefore, conclude that this email, in relation to the part identified by the claimant in the Scott Schedule, is not a protected act.

641. The email does, however, contain a reference to the claimant having raised a grievance against the RMT including allegations that senior officers of the RMT had discriminated against black members of the RMT. We conclude that the part of the email which refers to this allegation is a protected act. Although the claimant did not identify this part of the email as being a protected act in his Scott Schedule, since he makes a reference in incident 20 to victimisation being because of discrimination he raised against the RMT, we take the view that we should consider whether this protected act was a reason for any of the treatment alleged to be victimisation.

Act 5

642. Number 5 is the claimant's email of 16 January 2018 (355). The claimant asserts in the Scott Schedule that he was, in this email, raising a complaint of victimisation for bringing claims against senior officials of the RMT.

643. The claimant asked a question in the email about whether an offer of assistance was not being made because he would be suing a sister union. He does not expressly allege that the complaints to be made about the sister union were of unlawful discrimination under the Equality Act 2010 or say anything which could reasonably be understood as making such an allegation. We conclude that the claimant was not making an allegation of victimisation under the Equality Act 2010 by raising the question about whether he was not being offered assistance because of suing a sister union. We conclude, therefore, that this email was not a protected act.

Act 6

644. Number 6 is the claimant's email of 2 February 2018 (365). The email includes complaints of failure to make reasonable adjustments and other, unspecified, types of disability discrimination by Mr Passfield. There is also an allegation that Mr Passfield may have been motivated by the claimant's complaints in 2016 (which included an allegation of failure to make reasonable adjustments) which is an allegation of victimisation under the Equality Act 2010. We conclude that this allegation was a protected act for these reasons.

645. We do not consider that the email makes an allegation that the claimant was being victimised by any of the respondents because he was making complaints of discrimination under the Equality Act 2010 against the RMT; the allegation is rather than the refusal of assistance may have been because people at Unite know relevant people at the RMT which is an allegation of a different nature.

Act 7

646. This is the claimant's letter of 19 February 2018 (382) sent to Mr McCluskey, complaining about Mr Passfield, Mr Kavanagh and Ms Marcus. This included allegations of failure to make reasonable adjustments. We conclude that the making of these allegations is a protected act.

647. We do not consider that the email makes an allegation that the claimant was being victimised by any of the respondents because he was making complaints of discrimination under the Equality Act 2010 against the RMT.

Act 8

648. This is the claimant's email of 10 March 2018 (403) to Jennie Formby. This refers to allegations that senior officers of Unite discriminated against the claimant contrary to the Equality Act 2010. The claimant alleges that the way Ms Formby investigated his complaints had been dictated by the serious issues he raised, including a breach of the Equality Act, which we consider can reasonably be understood as an allegation of victimisation. The claimant makes an allegation that the manner of Ms Formby's investigation and conclusion could be deemed to be discriminatory. We conclude that the making of these allegations is a protected act.

649. The email does not, contrary to what is written in the Scott Schedule, raise a complaint of victimisation for bringing claims against senior officials of the RMT.

Act 9

650. This is the claimant's letter dated 9 May 2018 (422) to Mr McCluskey. The letter includes allegations of disability discrimination in relation to Ms Formby's outcome and reference to an earlier complaint of failure to make reasonable adjustments. We conclude that these are protected acts.

651. Although the email includes a reference to disability discrimination by way of victimisation, because of complaints made against the RMT, we conclude that the email cannot reasonably be understood as alleging that the "victimisation" is because he made complaints of discrimination under the Equality Act 2010 against the RMT. The previous letters to which the claimant refers, of 2 and 19 February 2018, do not, as we have concluded in relation to acts 6 and 7, contain allegations that the claimant was being victimised by any of the respondents because he was making complaints of discrimination under the Equality Act 2010 against the RMT. We conclude that the reference to treatment being because of complaints made against the RMT is not a protected act.

Act 10

652. This is the claimant's letter dated 29 May 2018 to Mr McCluskey (letter begins at page 442 but the claimant refers to pages 449 and 450 of that letter). We conclude that this can be understood as making a complaint of a failure to make a reasonable adjustment in relation to alternative representation. We conclude that this was a protected act.

653. The making of a request that a reasonable adjustment be made to refer his request for legal assistance to the Executive Council is not an allegation that there has been a breach of the EqA and is not a protected act.

Act 11

654. This is the claimant's letter dated 5 June 2018 to Mr McCluskey (beginning 456, relying on 456, 457 and 461). The claimant alleges victimisation and a failure to make reasonable adjustments. We conclude that this was a protected act.

655. The making of a request that a reasonable adjustment be made to refer his request for legal assistance to the Executive Council is not an allegation that there has been a breach of the EqA and is not a protected act.

Act 12

656. This is the claimant's letter dated 15 June 2018 to Mr McCluskey (beginning 474, relying on 474 and 475). This refers back to the allegation of victimisation in the claimant's letter of 5 June 2018. We conclude that this was a protected act.

Act 13

657. This is the claimant's letter dated 22 June 2018 to Mr McCluskey (487). This includes allegations that officers/employees of Unite had discriminated against him contrary to the Equality Act 2010. We conclude that this is a protected act.

Act 14

658. This is the claimant's letter dated 2 July 2018 to Mr McCluskey (499). This includes reference back to complaints of discrimination previously made against Mr Passfield and includes complaints of discrimination against Ms Formby and Ms Cartmail. We conclude that this is a protected act.

Act 15

659. This is the claimant's letter dated 11 July 2018 to Mr Gillam (516). Although the letter is dated 11 July, as previously noted, the date seems to be incorrect since it refers to enclosures dated 13 July. The letter includes reference to complaints of discrimination against officers/employees of Unite. We conclude that this is a protected act.

Act 16

660. This is the claimant's letter dated 13 July 2018 to Mr McCluskey (520). This includes allegations of victimisation because of raising allegations of race discrimination against the General Secretary of the RMT; and failure to make reasonable adjustments. It also contains an allegation of disability discrimination against Mr Vohra of Slater and Gordon. We conclude that all these allegations constitute a protected act.

Act 17

661. This is the claimant's letter of 2 August 2018 to Mr McCluskey (557). This includes allegations of discrimination against Ms Formby and Ms Cartmail. We conclude that this is a protected act.

[There is no act 18 for the complaints of victimisation].

Act 19

662. This is the claimant's letter of 9 November 2018 to Mr McCluskey (612). It contains allegations of disability discrimination and victimisation against Slater and Gordon. We conclude that these allegations constitute a protected act.

663. The making of a request that a reasonable adjustment be made to refer his request to the Executive Council is not an allegation that there has been a breach of the EqA and is not a protected act.

Act 20

664. This is the claimant's letter dated 3 December 2018 to Mr McCluskey (622). It refers back to earlier correspondence and refers to an allegation of disability discrimination by panel solicitors. We conclude that this allegation constitutes a protected act.

665. The making of a request for an adjustment is not an allegation that there has been a breach of the EqA and is not a protected act.

Claim to the employment tribunal

666. The claimant presented his first claim (case number 2205756/2018) on 6 August 2018. This included complaints of breaches of the Equality Act 2010. This was a protected act.

The incidents alleged to be victimisation

Incident 19 as amended by amendment 2

667. The claimant relies on acts 1 to 4 as protected acts. We have concluded that, of these acts, only acts 3 and 4 were protected acts i.e. the claimant's email of 9 September 2016 (300) which alleges that Mr Passfield failed to make a reasonable adjustment and the email of 9 October 2017 (331) insofar as it referred to an allegation that senior officers of the RMT had discriminated against black members of the RMT.

668. The victimisation alleged is that the respondent refused or failed to support the claimant's legal complaints. The claimant relies on acts or omissions on 15 January 2018 for this complaint and names Nicky Marcus and Vincent Passfield as the individuals involved.

669. The date of 15 January 2018 relates to Mr Passfield's letter to the claimant of that date (352), passing on advice Mr Passfield was given by Nicky Marcus, that the claimant's claims did not have reasonable prospects of success and advising the claimant that Unite would not support his legal claims for that reason (see paragraphs 120 to 125).

670. We conclude that the claimant was subjected to a detriment by not being granted legal assistance at this stage. We need, next, to address the issue of causation. Was the reason the claimant was refused legal assistance because he had done one or more of the protected acts?

671. The initial burden of proof is on the claimant to prove facts from which we could conclude that this was victimisation.

672. The claimant argued, in the alternative, that he was refused legal assistance because he had made allegations of discrimination against Mr Passfield or that it was because he had brought complaints against senior figures of the RMT.

673. In support of his argument that he was refused legal assistance because he had made allegations of discrimination against Mr Passfield, the claimant pointed out that Mr Passfield was aware of the complaint of 10 October 2017. Mr Passfield had Mr Nixon's report, which was favourable to his claims, and submitted that Mr Passfield, with his industrial experience and legal knowledge, must have been aware that his complaints had reasonable prospects of success.

674. We conclude that these matters referred to do not prove facts from which we could conclude that the reason legal assistance was refused at this point was because the claimant had, on 9 September 2016, made an allegation that Mr Passfield failed to make a reasonable adjustment by not providing him with alternative representation to Ms Charlett. It is not sufficient to point to a refusal of legal assistance and that Mr Passfield knew of the allegation that he had failed to make reasonable adjustments, for the burden of proof to pass. We found that Mr Passfield relied on the advice of Ms Marcus in writing his letter. He did not form an independent assessment of the merits. It was not the practice of Unite to offer legal assistance with claims considered to have no reasonable prospect of success. Nicky Marcus had originally advised, on 5 September 2016, prior to the protected acts relied upon, that the claimant's claims had no reasonable prospects of success. Her later advice, conveyed in Mr Passfield's letter of 15 January 2018, was a continuation of a view she had formed before the protected acts.

675. In the alternative, if the burden of proof had passed to the respondent, we would have concluded that the respondent has satisfied us that the advice was given, not because of the protected acts, but because this was the genuinely held view of Nicky Marcus on the merits of the case. Her advice, conveyed in Mr Passfield's letter of 15 January 2018, was a continuation of a view she had formed before the protected acts, expressed in the email of 5 September 2016. Mr Passfield was relying on this advice. We conclude that the reason assistance was not offered was because Ms Marcus and Mr Passfield, relying on the advice of Ms Marcus, believed the claimant's claims had no reasonable prospect of success and it was not the practice of Unite to provide legal assistance to cases not considered to have a reasonable prospect of success.

676. In support of his argument that he was refused assistance because he had brought complaints against senior figures of the RMT, the claimant relied on the following documents from which he invited us to draw inferences of victimisation. He referred to Nicky Marcus's email to Mr Granfield on 6 September 2016 (SB138) (see paragraph 70). In this email she wrote

> "Unfortunately, he's one of those guys who has objected to everyone he comes into contact with…. both hearing managers (he didn't believe they would look at his case objectively); the GS… he tells Mick Cash that he doesn't trust him and tries to lodge a case against him for refusing to meet with him; all his managers; Nicole whose advice he objected to and now me. I've been trying to give him the benefit of the doubt because I do believe he has mental health issues but we really can't support him any further."

677. The claimant referred to Mr Passfield writing to Mr Granfield on 28 November 2017 that the claimant was "raising untold allegations against senior Officials up to GS level" (65) (see paragraph 107). The claimant also relied on the comment from Mr Passfield in an email to Mr Beckett of 5 December 2017 (755) (see paragraph 114) that "This has become a bit of an 'hot potato' for various reasons, not least that it is a sister TU and that their representation for the RMT comes from Thompsons."

678. The claimant also relied on his own experience as a panel solicitor (see paragraph 44).

679. We conclude that these matters referred to do not prove facts from which we could conclude that the reason legal assistance was refused at this point was because the claimant had made allegations of race discrimination against persons at the RMT. Ms Marcus' comments are not confined to complaints about the RMT; she is referring to the claimant objecting to the advice of Ms Charlett and complaining about her. The reference to complaining about people at the RMT is not specifically about the claimant alleging race discrimination by the RMT. The "hot potato" comment from Mr Passfield could possibly raise an inference of dealing with a complaint against a sister trade union differently to a complaint against any other employer but does not raise any inference that this is because the claimant was making any allegations of breaches of the Equality Act by the RMT. Neither do Mr Passfield's other comments raise any such inference.

680. If the burden of proof had passed, we would have concluded that the reason for refusing assistance was not because the claimant had made allegations that senior officers of the RMT had discriminated against black members of the RMT. We conclude that the reason assistance was not offered was because Ms Marcus and Mr Passfield, relying on the advice of Ms Marcus, believed the claimant's claims had no reasonable prospect of success and it was not the practice of Unite to provide legal assistance to cases not considered to have a reasonable prospect of success.

681. We conclude that this complaint of victimisation is not well founded on its merits. We will return to the issue of whether the tribunal has jurisdiction to consider the complaint, having regard to the relevant time limit.

Incident 20 as amended by Amendment 2

682. The victimisation alleged is the same as that for incident 19, that Unite failed to support his legal complaint but the claimant has added, in incident 20, that this was because of discrimination he raised against the RMT. The additional part relates to the alleged reason for failing to support his legal complaints, rather than the treatment itself. The date of the treatment, 15 January 2018, and the individuals involved are the same as for incident 19.

683. The only acts of those identified by the claimant which we found to be protected acts were acts 3 and 4, to the extent explained above. As explained in relation to act 4, the claimant had not identified in the Scott Schedule the part of the email of 9 October 2017, in which he made an allegation that senior officers of the RMT had discriminated against black members of the RMT as being the protected

act. However, since he makes a reference in incident 20 to victimisation being because of discrimination he raised against the RMT, we take the view that we should consider whether this protected act was a reason for any of the treatment alleged to be victimisation.

684. The claimant made the same submissions in relation to this allegation as in relation to incident 19.

685. Since this allegation is the same in relation to the treatment alleged to be victimisation and the protected act as incident 19, we conclude that this complaint is not well founded, on the merits, for the same reasons we gave in relation to incident 19. We will return to the issue of whether the tribunal has jurisdiction to consider the complaint, having regard to the relevant time limit.

Incident 21 as amended by Amendment 3

686. The claimant relies on acts 1 to 7 as protected acts. We have concluded that, of these acts, acts 3, 4, 6 and 7 were protected acts to the extent explained above.

687. The alleged victimisation is Jennie Formby not investigating allegations of discrimination. The date given is 10 March 2018, the date of her outcome letter (see paragraphs 197 to 201).

688. The claimant, in his submissions, relied on Jennie Formby not interviewing the claimant but interviewing Mr Passfield. He described Jennie Formby's allegation that he had failed to particularise his complaints as "nonsensical". He submitted that the tribunal should uphold his complaint since Jennie Formby had failed to give evidence.

689. Ms Formby did not interview the claimant. We found that it would have been very unusual to interview a complainant personally (see paragraph 191). Ms Formby had a brief telephone conversation with Mr Passfield. (See paragraph 195).

690. We conclude that the claimant was subjected to a detriment in that his specific complaints were not properly addressed.

691. The initial burden of proof is on the claimant to prove facts from which we could conclude there was victimisation i.e. that the reason, or one of the reasons, for Jennie Formby not investigating allegations of discrimination was because of one or more of the protected acts relied upon for this complaint. We conclude that the claimant has not proved such facts. The failure to interview the claimant does not provide us with any assistance, since we found it would be very unusual to do so and it was a brief telephone conversation with Mr Passfield rather than what we would consider to be an interview. As noted above, the claimant has not persuaded us that Jennie Formby's expressed view that he had not particularised complaints about poor treatment by Unite was not a genuinely held view. This was the first complaint Jennie Formby had dealt with. We have no evidence that she subsequently dealt with any other complaints and, therefore, how she did so where there was no protected act by the complainant. The only evidence that could suggest that Jennie

Formby might have dealt with another complaint in more detail is the evidence of Gail Cartmail that she considers Jennie Formby to be very thorough. However, even if Jennie Formby is very thorough in the way she considers things, that does not necessarily mean that she would express her conclusions in a detailed way.

692. Since the claimant has not proved facts from which we could conclude that there was victimisation, we conclude that the complaint is not well founded. This complaint was presented in time.

693. Had the burden passed to the respondent to satisfy us that the protected acts were not a material factor in Jennie Formby's actions, given Ms Formby did not give evidence, and no other witness was able to explain why she acted as she did, the respondent would not have satisfied us that there was no victimisation.

Incident 22 as amended by Amendment 4

694. The claimant relies on acts 1 to 12 as protected acts. We have concluded that, of these acts, acts 3, 4, and 6 to 12 were protected acts to the extent explained above.

695. The alleged victimisation is Gail Cartmail failing to investigate the claimant's allegations of disability discrimination against specific officers and employees and stating that the claimant raised "broad" allegations and, as added by amendment, that Ms Cartmail described her decision as an adjudication, therefore not allowing the claimant an appeal. We deal with Gail Cartmail's decision making in paragraphs 300 to 310.

696. The claimant relied in submissions on evidence from Mr Granfield that a complaint about the conduct of senior officers should be investigated and that it was not.

697. Mr Granfield gave evidence that, if there was an allegation that an official had not provided services on discriminatory grounds, that would be investigated as an allegation of misconduct (see paragraph 36).

698. The claimant submitted that Ms Cartmail had given an adjudication about Ms Formby but he was entitled to an appeal.

699. The claimant submitted that there was no evidence the outcome was a joint outcome between Ms Cartmail or approved by Mr Woodhouse. We found that Mr Woodhouse had been involved (see paragraph 301).

700. The claimant submitted that Ms Cartmail had failed to explain her reasoning and incorrectly accused him of not particularising his complaints.

701. We conclude that the claimant was subjected to a detriment by Ms Cartmail's actions in that he did not have a right of appeal in respect of her conclusions about Ms Formby.

702. The initial burden of proof is on the claimant to prove facts from which we could conclude there was victimisation i.e. that the reason, or one of the reasons, for Ms Cartmail acting as she did was because of one or more of the protected acts relied upon for this complaint.

703. Gail Cartmail does not explain her reasoning in the detailed way that one might expect from a lawyer but Ms Cartmail is not a lawyer and the members' complaints process does not lay down any particular form of response.

704. We formed the view, based on Ms Cartmail's letter and her evidence to us, that she was making an honest attempt to deal with the complaints which she understood the claimant to be making. In relation to her "adjudication" on matters the claimant had raised for the first time in his appeal, notably a complaint of discrimination by Jennie Formby in dealing with his complaint, we agree with the claimant that there should have been a two stage process, if he had made a complaint about Jennie Formby under the members' complaints procedure. The claimant may have felt that he had done this, but we conclude that Gail Cartmail did not recognise it to be as such. She viewed the complaint as a way of complaining about the decision taken by Jennie Formby, rather than a fresh complaint, writing: "It appears to be the case that you are unhappy with the decisions, so wish to complain about the decision maker, as a means of seeking a review of the decision."

705. In relation to other complaints, where the claimant says that Gail Cartmail should not have made an adjudication because she was dealing with the complaints for the first time because Jennie Formby had failed to deal with the complaint, we do not agree that there should have been a further stage. The complaint was before Jennie Formby; her failure to deal with it was a ground of appeal, rather than meaning that a new two stage process should be started.

706. Mr Granfield had informed Ms Cartmail and Mr Woodhouse that their decision would be "an adjudication and final response" (see paragraph 281).

707. We conclude that the claimant has not proved facts from which we could conclude that one or more of the protected acts was a material reason for Gail Cartmail acting as she did.

708. We conclude, since the initial burden of proof has not passed, that the complaint is not well founded. The complaint was presented in time.

709. If the burden of proof had passed to the respondent, we would have been satisfied from Gail Cartmail's evidence and her outcome letter that her acts were not victimisation. We were satisfied that she made an honest attempt to deal with the claimant's complaints as she understood them. There is no evidence the claimant has pointed to which causes us to conclude, on a balance of probabilities, that Gail Cartmail's motivation for acting as she did, conscious or unconscious, was the protected acts.

Incident 23 as amended by amendment 5

710. The claimant relies on acts 1 to 17 as protected acts. We have concluded that, of these acts, acts 3, 4, and 6 to 17 were protected acts to the extent explained above.

711. The alleged victimisation is Unite and Mr McCluskey refusing to refer the claimant's appeal for legal support to the NEC. The dates relied upon are various including 3 August 2018.

712. The claimant referred to the union rules about the powers of the Executive Committee to grant legal assistance. We set these out in paragraph 30.

713. We conclude that the claimant has not proved facts from which we could conclude that this was an act of victimisation. There was no evidence that any individual request for legal assistance had ever been considered by the Executive Council itself.

714. There was no process by which individual requests for legal support were determined by the Executive Council itself. The Council delegated the process of determining requests for legal assistance to the legal department. Individuals do not make appeals to the Executive Council in practice.

715. If the burden of proof had passed to the respondent, we would have concluded that the respondent had shown that it had not committed an act of victimisation by not referring the claimant's appeal for legal support to the NEC. The respondents acted in accordance with their normal process, which was that requests for legal assistance were dealt with by the legal department.

716. We conclude that this complaint of victimisation is not well founded. This complaint was presented in time.

Incident 33

717. The claimant relies on acts 1 to 4 as protected acts. We have concluded that, of these acts, only acts 3 and 4 were protected acts i.e. the claimant's email of 9 September 2016 (300) which alleges that Mr Passfield failed to make a reasonable adjustment and the email of 9 October 2017 (331) insofar as it referred to an allegation that senior officers of the RMT had discriminated against black members of the RMT.

718. The alleged victimisation is Mr Passfield/Unite stating that they would not support the claimant's employment tribunal claims and that this decision was final. The date relied upon is 15 January 2018. The individuals involved are named as Mr Passfield and Ms Marcus.

719. This is the same treatment as relied upon for incident 1 (an unjustifiable discipline claim). The conduct relied upon is Mr Passfield's letter of 15 January 2018 (352) in which he relayed advice from Nicky Marcus that the claimant's claims had

no reasonable prospect of success and informed him that legal representation would not be provided because of this assessment (paragraph 120).

720. The claimant says that Mr Passfield should have known that the claimant's claims had merit. However, we have found that Mr Passfield relied on the advice of the legal officer, Nicky Marcus (paragraph 121). We conclude that legal representation was refused at that time because, rightly or wrongly, Nicky Marcus formed the view that the claimant's claims did not have a reasonable prospect of success.

721. We conclude that the claimant has not proved, on a balance of probabilities, that Nicky Marcus formed the view that the claims did not have a reasonable prospect of success because of the allegation against Mr Passfield, nor that Mr Passfield adopted her view of the merits because of the allegation. We conclude that the claimant has not proved facts from which we could conclude that stating that Unite would not support the claimant's employment tribunal claims and that this decision was final was victimisation. We conclude, therefore, that, if the Tribunal has jurisdiction to consider the complaint, it fails on the merits.

722. The allegation is about conduct on 15 January 2018. The complaint is out of time unless it forms part of a continuing act of discrimination. We return to the time limit issue later in our conclusions.

Incident 34

723. The claimant relies on acts 1 to 6 as protected acts. We have concluded that, of those acts, acts 3-4 and 6 were protected acts.

724. The alleged victimisation is Unite wishing to use the incorrect procedure to investigate the claimant's complaints against Unite's staff/officers. The claimant relies on 14 February 2018 as the relevant date and Ms Cunningham as the person involved.

725. This is the same treatment as relied on for incident 2 (a complaint of unjustifiable discipline). This is Alys Cunningham allegedly adopting the wrong complaints procedure. The claimant asserts that this was subjecting him to a detriment. We deal with relevant events in paragraphs 165 to 168.

726. The claimant submitted that Ms Cunningham used the wrong procedure when she stated that Unite would use its usual procedures for legal service review to address the claimant's complaints (380); the claimant submitted this would mean that serious allegations against officials were not investigated.

727. We conclude that the majority of matters referred to Ms Cunningham were about the advice given to the claimant about his complaints and these were rightly dealt with under a legal services review. However, the claimant had also made a complaint about Mr Passfield failing to make a reasonable adjustment. This was a matter which would not be the subject of a legal services review. This was a matter

which would have been appropriately dealt with under the Members' complaints procedure.

728. We conclude that the claimant was subjected to a detriment by not having this complaint identified and dealt with under the appropriate procedure.

729. We accepted the evidence of Alys Cunningham that she viewed the claimant as a lawyer using tools to achieve the outcome which he wanted of getting legal representation. Her denial, on behalf of Unite, of unlawful discrimination by those at Unite was a lawyer's response to a letter she knew to have been written by a lawyer, albeit to get assistance as a member. (See paragraphs 167 to 168). She considered that the real issue was that the claimant wanted legal assistance. She considered the correct way to address his real concerns was to undertake a legal services review.

730. We conclude that the claimant has not satisfied the initial burden of proof on him. He has not proved facts from which we could conclude there was victimisation. Alternatively, the respondent has satisfied us that the reason Ms Cunningham acted as she did was not because of one or more of the protected acts. She acted as she did because she was seeking to address what she considered to be the claimant's real concerns i.e. to get legal representation and she considered the claimant to be using the tools of a lawyer to achieve the outcome he wanted. We found no evidence that there was anything untoward in Ms Cunningham's motives, conscious or unconscious, for acting as she did.

731. We conclude that this complaint is not well founded on the merits.

732. We will consider later the issue of jurisdiction, having regard to time limits.

Incident 35

733. The claimant relies on acts 1 to 4 as protected acts. Of these, we concluded that acts 3 and 4 were protected acts.

734. The alleged victimisation is Unite not providing the claimant with a fair and impartial investigation into his complaints of discrimination; denying the allegations without any investigation. The claimant relies on 16 January 2018 and 14 February 2018 as the relevant dates and names Ms Cunningham as the person involved.

735. The treatment relied upon is the same as for incident 3 (an allegation of unjustifiable discipline). In relation to Ms Cunningham's letter of 16 January 2018 (360), we concluded in paragraph 490 that Ms Cunningham had not reached a decision that there was no discrimination by Unite's staff. We considered her comments to be more an indication of a view that the claimant's allegations were not the result of a serious considered view (in accordance with Ms Cunningham's view that the claimant was using such allegations as a tool to get what he wanted i.e. legal assistance), rather than a decision on the merits of the allegations.

736. In relation to the letter of 14 February 2018 we considered (see paragraph 491) that Ms Cunningham's denial, on behalf of Unite, of unlawful discrimination by those at Unite was a lawyer's response to a letter she knew to have been written by a lawyer, albeit to get assistance as a member. (See paragraphs 167 to 168). She considered that the real issue was that the claimant wanted legal assistance. She considered the correct way to address his real concerns was to undertake a legal services review.

737. As we concluded in paragraph 493, Ms Cunningham sought to address what she considered to be the real issue, which was that the claimant wanted legal assistance. She considered the correct way to address his real concerns was to undertake a legal services review. She viewed the claimant's allegations as a lawyer's means to achieve his desired goal.

738. For the same reasons as in relation to incident 34, we conclude that the complaint is not well founded on the merits.

739. We will consider later the issue of jurisdiction, having regard to time limits.

Incident 36

740. The claimant relies on acts 1 to 7 as protected acts. Of these, we have concluded that acts 3, 4, 6 and 7 are protected acts.

741. The alleged victimisation is Jennie Formby failing to provide a fair and impartial complaint into the claimant's allegations of disability discrimination. The relevant date is 10 March 2018, the date of Ms Formby's outcome letter.

742. The claimant made the same submissions as in relation to incident 21.

743. For the same reasons as in relation to incident 21, we conclude that this complaint is not well founded.

Incident 37

744. The claimant relies on acts 1 to 11 as protected acts. Of these acts, we concluded that acts 3, 4, and 6-11 were protected acts.

745. The alleged victimisation is the respondents failing to utilise their own professional and industrial experience in deciding whether or not Counsel's advice should be followed. The relevant date is 5 June 2018. The individuals involved are named as Mr Gillam and Mr McCluskey.

746. The claimant relied on his own knowledge that General Secretaries get involved in decisions about legal assistance. The claimant had experience of one General Secretary (not Mr McCluskey) intervening personally to secure legal assistance for a member (see paragraph 44). There was no evidence that Mr McCluskey has ever intervened in a decision about legal assistance and this would run contrary to the

delegation to the legal department, by the Executive Committee, of decisions about the granting of legal assistance.

747. It was standard practice to require members who applied for legal assistance from Unite to follow the advice of panel solicitors and Counsel. Even if it had been the case in the past, which the claimant believed to be the case from his own experience, that claimants were supported to pursue whatever claims they wished to, regardless of the merits of those claims, this was not the case at the time Mr Gillam was dealing with the claimant's request for legal assistance. The evidence of Mr Gillam as to the current practice is entirely in line with what we would expect. Unite does not have unlimited funds which would allow it to support complaints regardless of merit. In any event, in our judicial experience, it does not advantage claimants to bring many complaints which are of little merit; it is much better to focus on those complaints which have a reasonable prospect of success.

748. The claimant has not satisfied us that he was subjected to a detriment by the decision whether to grant legal assistance for claims being dependent on Counsel's advice rather than being decided by Mr Gillam and/or Mr McCluskey making their own assessment. Standard practice was followed. We conclude that the claimant was not put at a disadvantage in this respect.

749. Even if the claimant had been subjected to a detriment, the claimant has not proved facts from which we could conclude that the reason Counsel's advice was relied on, rather than Mr Gillam and/or Mr McCluskey making their own assessment, was because the claimant had done one or more of the protected acts relied upon. Alternatively, the respondents have proved that this was not victimisation. The claimant was treated in accordance with standard practice. What the claimant suggests should be done would have been entirely outside normal procedure.

750. We conclude that the complaint is not well founded. The complaint was presented in time.

Incident 38

751. The claimant relies on acts 1 to 14 as protected acts. We concluded that, of these acts, acts 3, 4 and 6-14 are protected acts.

752. The alleged victimisation is that the respondents failed to refer the claimant's request for legal assistance to the NEC under the Rule Book. The relevant dates are various, including 3 August 2018. Mr McCluskey is named as the individual involved.

753. This appears to us to be the same complaint as for incident 23, although not relying on as many protected acts.

754. For the reasons given in relation to incident 23, we conclude that this complaint of victimisation is not well founded. This complaint was presented in time.

Incident 39

755. The claimant relies on acts 1 to 13 as protected acts. We concluded that, of these acts, acts 3, 4 and 6-13 are protected acts.

756. The alleged victimisation is that Unite and Ms Cartmail failed to provide the claimant with a fair and impartial investigation into his complaints of disability discrimination by failing to deal with the claimant's specific allegations of disability discrimination against Mr Passfield and other employees/officials. The relevant date is 22 June 2018 and the individual involved is named as Ms Cartmail.

757. The claimant made the same submissions as in relation to incident 22.

758. For the same reasons as in relation to incident 22, we conclude that this complaint is not well founded.

759. The complaint was presented in time.

Incident 40

760. The claimant relies on acts 1 to 12 as protected acts. We concluded that, of these acts, acts 3 to 4 and 6 to 12 were protected acts.

761. The alleged victimisation is Unite and Ms Cartmail failing to provide the claimant with a fair and impartial investigation into his complaints of disability discrimination by Ms Cartmail describing her decision of 22 June as an adjudication and therefore the claimant did not have an appeal on matters that had only been investigated once. The date relied on is 22 June 2018, the date of Ms Cartmail's outcome.

762. The claimant made the same submissions as in relation to incident 22.

763. For the same reasons as in relation to incident 22, we conclude this complaint is not well founded.

764. The complaint was presented in time.

Incident 41

765. The claimant relies on acts 1 to 16 as protected acts. We concluded that, of these acts, acts 3 to 4 and 6 to 16 were protected acts.

766. The alleged victimisation is Mr McCluskey failing to take any action when he was informed that the claimant had received a threat from staff regarding the withdrawal of legal services if he did not attend the meeting with individuals who he complained had discriminated against him and the investigation was not complete. The claimant relies on various dates including 27 July 2018. Mr McCluskey is named as the person involved.

767. The claimant submitted, relying on rule 15.4, that Mr McCluskey had the responsibility for managing staff; Mr McCluskey failed to take action. The claimant submitted that the tribunal should uphold his complaint, Mr McCluskey having failed to give evidence.

768. We do not consider the claimant has established that a threat was made to him about the withdrawal of legal services; this is too strong a term for what was a reminder by Mr Gillam of the conditions of legal assistance.

769. We conclude that the claimant was not subjected to a detriment. There is no evidence to suggest the claimant was put at a disadvantage by Mr McCluskey not taking action; there is no evidence that Mr McCluskey personally would take any action when a matter was raised with him relating to an individual. The matter related to the provision of legal services. Matters relating to legal assistance were dealt with by the legal department. As noted in paragraph 44, we do not consider that the invitation by Mr McCluskey at a garden party for the claimant to send him an email about a possible joint approach by Unite and RMT in relation to bus drivers indicates that Mr McCluskey would, in any circumstances, be willing to intervene in an individual application for legal assistance. We conclude that the complaint is not well founded since we conclude that the claimant was not subjected to a detriment.

770. Had we concluded that the claimant was subjected to a detriment, we would have concluded that the claimant had not proved facts from which we could conclude there was victimisation. There is no evidence that Mr McCluskey personally would take any action when a matter was raised with him relating to an individual. We would have concluded that the burden of proof did not pass to the respondent. The complaint would have failed for that reason.

771. If the burden of proof had passed, although Mr McCluskey did not give evidence, we would have been satisfied from other evidence we heard that the General Secretary does not personally deal with matters relating to legal assistance and the respondent would, therefore, have satisfied us that Mr McCluskey not intervening personally was not an act of victimisation. For example, Mr Gillam wrote to the claimant of the need for the General Secretary, in a union of 1.4 million members, to refer correspondence to appropriate officers (see paragraphs 317 and 366).

772. The complaint was presented in time.

Incident 42

773. The claimant relies on acts 1 to 13 as protected acts. We concluded that, of these acts, acts 3 to 4 and 6 to 13 were protected acts.

774. The alleged victimisation is the respondent failing to take any action when informed the panel solicitors had discriminated against him. The claimant relies on various dates including 25 June 2018. Mr Gillam is the individual involved.

775. The claimant submitted that Mr Gillam and Mr McCluskey failed to protect the claimant, despite their duty of care. He referred to rule 2.1.6 (889). He submitted that the reason they failed to protect the claimant was because he had raised concerns about the Deputy General Secretary and others.

776. We conclude that the claimant has not proved, on a balance of probabilities, the facts on which he relies. He has not satisfied us that Mr Gillam failed to protect the claimant and did not take any action when the claimant informed him that panel solicitors had discriminated against him. Mr Gillam responded to his concerns. He obtained for the claimant Slater and Gordon's complaints procedure. Once he realised the strength of the claimant's feelings about Mr Vohra, he required that Mr Vohra be taken off the claimant's case. He considered that the complaint could be dealt with by other solicitors at Slater and Gordon, because of the size of the firm, but, after the outcome of the claimant's internal complaint to Slater and Gordon, was willing to consider moving the claimant to other solicitors.

777. The claimant has not satisfied us that he was subjected to a detriment by Mr Gillam's actions.

778. We conclude that the claimant has not proved facts from which we could conclude that Mr Gillam acted as he did because the claimant had done the protected acts relied upon.

779. For these reasons, we conclude that the complaint is not well founded.

780. Had the burden of proof passed to the respondent, we would have been satisfied from Mr Gillam's evidence and his letters that he did not act as he did because of victimisation; we are satisfied that he acted as he did because he believed he was acting in accordance with the respondent's practices relating to legal assistance and in the claimant's best interests in having those with best knowledge of the claimant's cases at the meeting to discuss the way forward.

781. The complaint was presented in time.

Incident 43

782. The claimant relies on acts 1 to 13 as protected acts. We concluded that, of these acts, acts 3 to 4 and 6 to 13 were protected acts.

783. The alleged victimisation is the respondent insisting on the threat of withdrawal of legal support that the claimant meet panel solicitors who the claimant alleged had discriminated against him contrary to the Equality Act 2010. The claimant relies on various dates including 25 June 2018. Mr Gillam is the individual involved.

784. The claimant referred to Mr Gillam's letter of 23 July 2018 (see paragraph 342).

785. In this letter, Mr Gillam was reminding the claimant of his obligation to co-operate with the compilation of evidence and other obligations or conditions as a condition of continuing to receive legal assistance and that assistance could be

withdrawn if such co-operation was not given. We consider that it is too strong to describe what Mr Gillam wrote in that letter as a threat.

786. We conclude that reminding the claimant of conditions attaching to his receipt of legal assistance was not subjecting to him to a detriment. However, we accept that requiring him to meet the solicitors in whom he had lost trust, was subjecting him to a detriment, although Mr Gillam did not appreciate the strength of the claimant's feelings until he met with him on 25 July 2018.

787. We conclude that the claimant has not proved facts from which we could conclude that the reason Mr Gillam acted as he did was because of one or more protected acts and, therefore, that there was victimisation. We conclude that this complaint is not well founded.

788. Had the burden of proof passed to the respondent, we would have concluded that the respondent had proved that this was not an act of victimisation. Mr Gillam wished the Slater and Gordon solicitors to be present at the meeting because he considered that they were best placed to assist, having an intimate knowledge of the claimant's case. Mr Gillam did not act as he did because the claimant had done a protected act.

789. The complaint was presented in time.

Incident 44

790. The claimant relies on acts 1 to 13 as protected acts. We concluded that, of these acts, acts 3 to 4 and 6 to 13 were protected acts.

791. The alleged victimisation is Mr McCluskey failing to take any action when the claimant complained that he was not receiving a fair/impartial hearing into his internal complaints of disability discrimination. The claimant relies on various dates including 2 July 2018.

792. The claimant submitted that Mr McCluskey failed in his duty to protect a member and did not oppose prejudice, referring to rule 2.1.6 (889). The claimant submitted that, as Mr McCluskey failed to provide any evidence, the complaint should be upheld.

793. We conclude that the claimant was not subjected to a detriment. There is no evidence which persuades us that Mr McCluskey would have dealt personally with any complaints made to him by any individual member. The correspondence we have seen suggests that his office deals with correspondence addressed to him, passing it on, as appropriate, to Mr Granfield, when it appears to be a complaint which should be dealt with under the members' complaints procedure, and to the legal department when it relates to an application for legal assistance. We conclude that the claimant was not put at any disadvantage, being treated in the same way that anyone else writing directly to Mr McCluskey about a similar matter would have been treated.

794. We conclude that the claimant has not proved facts from which we could conclude that Mr McCluskey failing to take action was because of one or more of the protected acts and, therefore, that there was victimisation. We conclude that the complaint is not well founded.

795. If we had concluded that the burden of proof passed to the respondent, we would have concluded that the respondents had proved that this was not victimisation. The evidence was that the General Secretary does not intervene personally in such matters. For example, Mr Gillam wrote to the claimant of the need for the General Secretary, in a union of 1.4 million members, to refer correspondence to appropriate officers (see paragraphs 317 and 366).

796. This complaint was presented in time.

Incident 45

797. The claimant relies on acts 1 to 17 as protected acts. We concluded that, of these acts, acts 3 to 4 and 6 to 17 were protected acts.

798. The alleged victimisation is that Unite's staff/officials failed to utilise its duty of care to determine whether or not panel solicitors were providing the claimant with an adequate service in assessing the merits of his employment and civil claims against his former employer. The claimant relies on various dates including 2 and 6 August 2018. He names Mr McCluskey and Mr Gillam as persons involved.

799. The claimant made the same submissions as in relation to incident 23, referring to a refusal to refer the claimant's request for legal assistance to the Executive Committee, although the complaint set out for incident 45 does not refer to a request to be considered by the Executive Committee. The complaint relates rather to the same matters which was the subject of incident 29, about which the claimant made no specific submissions.

800. The claimant wrote to Mr McCluskey on 2 August 2018 (557) (see paragraphs 351 to 352). He wrote again to Mr McCluskey on 6 August 2018 (571) (see paragraph 361).

801. Mr Gillam took the view that the complaint was a matter for Slater and Gordon to deal with initially. He obtained their complaints procedure for the claimant. From 25 July 2018, different solicitors at Slater and Gordon to those the claimant had complained about were acting for the claimant. The letters of 2 and 6 August 2018 were sent during the period when Slater and Gordon were investigating the claimant's complaints internally. The outcome to this internal investigation was sent to the claimant on 12 October 2018 (594). Mr Gillam informed the claimant on 12 October 2018 (606) that who the claimant's panel solicitor was going forward would be dealt with in due course. Mr Gillam was, at the time, waiting to hear whether the claimant was going ahead with a settlement of the claim he had presented against the respondents in August, and, if the claimant did not, Mr Gillam was to draft a response to that claim which was due on 15 October 2018. The claimant terminated his retainer with Slater and Gordon on 24 October 2018.

802. The matter of the legal assistance being provided to the claimant via panel solicitors and the claimant's concerns about this were being dealt with by Mr Gillam. All matters to do with legal assistance were delegated to the legal department. There is no evidence that Mr McCluskey was taking any decisions in relation to matters raised by the claimant.

803. We conclude that the claimant has not proved facts from which we could conclude that there was victimisation. He has not proved facts from which we could conclude that he was subjected to a detriment, in the sense of being put at a disadvantage, by these acts of the respondents, or that the reason that Mr Gillam and Mr McCluskey acted as they did was because the claimant had done a protected act. We conclude that the complaint is not well founded.

804. If the burden of proof had passed, we would have concluded that the respondent had proved that this was not victimisation.

805. This complaint was presented in time.

Incident 46

806. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

807. The alleged victimisation is that Unite and Mr McCluskey failed to provide alternative representation when the claimant informed them that he could not be represented by panel solicitors who had discriminated against him. The claimant relies on various dates including 12 October 2018, 9 November 2018 and 3 December 2018. He names Mr McCluskey and Mr Gillam as the individuals involved.

808. The claimant submitted that Mr McCluskey and Unite were in breach of their duty of care to a member and of rule 2.1.6. He submitted that they should have referred him to other panel solicitors but failed to do so because of protected acts.

809. The dates specifically referred to by the claimant relate to a period before and after the claimant unilaterally terminated the retainer with Slater and Gordon and, therefore, brought the legal assistance which had been granted to an end.

810. The claimant wrote to Mr Gillam and Mr McCluskey on 12 October 2018 (606), including an allegation that panel solicitors referred to him as "paranoid" and requesting that he be referred to other solicitors and his complaints relating to panel solicitors be referred to the Head of Legal Services and the NEC. Mr Gillam replied the same day (see paragraph 377). Mr Gillam was recognising the claimant's request to be moved to other solicitors but explaining that it could not be done in the timescale requested. He wrote that who the claimant's panel solicitor was going forward would be dealt with in due course.

811. Prior to the termination of the retainer, Mr Gillam had not yet reached a decision on whether Slater and Gordon should continue to represent the claimant (different

individuals to those the claimant had complained about having already been allocated to his case) or whether alternative panel solicitors should be appointed.

812. There is no evidence to suggest that another member who unilaterally terminated a retainer with solicitors appointed to act for them, with legal assistance from Unite, would have been offered further legal assistance with different solicitors.

813. We conclude that the claimant has not proved facts from which we could conclude that there was victimisation. He has not proved facts from which we could conclude that he was subjected to a detriment in the sense of being put at a disadvantage; there is no evidence to suggest anyone else in the same position would have been given alternative representation before or after the unilateral termination of the retainer. The claimant has not proved facts from which we could conclude that the reason the respondent did not provide alternative representation was because of a protected act. We conclude that the complaint is not well founded.

814. If the burden of proof had passed to the respondent, we would have concluded that the respondent had proved that this was not victimisation. Mr Gillam had not yet reached a decision about whether or not Slater and Gordon should continue to represent the claimant when the claimant unilaterally terminated the retainer. We accepted the evidence of Mr Gillam that Unite would have continued to assist the claimant's cases to a conclusion had he not rejected the legal assistance by terminating the relationship with Slater and Gordon before Unite had an opportunity to consider whether that relationship could continue (see paragraph 384). The respondent has satisfied us that the reason legal assistance was not provided after 24 October 2018 was because the claimant had unilaterally terminated the retainer.

815. The complaint was presented in time.

Incident 47

816. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

817. The alleged victimisation is Mr McCluskey failing to refer the claimant's internal complaints regarding being discriminated against by the respondent to the NEC. The claimant relies on various dates including 12 October 2018 9 November 2018 and 3 December 2018.

818. There was no process in practice for individuals to make complaints to the Executive Council. There was a Members' complaints procedure which was used for complaints. We found that this process had been adopted by Unite. There was a reporting mechanism, with quarterly reports about members' complaints being made to the Executive Council. (See paragraphs 33 to 42).

819. We conclude that the claimant has not proved facts from which we could conclude that there was victimisation. The claimant has not proved facts from which we could conclude he was subjected to a detriment in the sense of being put at a disadvantage; he was treated like anyone else in not having his individual complaints

put to the Executive Council. He has not proved facts from which we could conclude that the reason his complaints were not referred to the Executive Council was because he had done protected acts; his complaints were not referred to the Executive Council because the Executive Council did not, in practice, deal with individual members' complaints. We conclude that the complaint is not well founded.

820. If the burden of proof had passed to the respondent, we would have concluded that the respondent had proved that it was not victimisation. The respondent's witnesses satisfied us that it was not the practice for individual members' complaints to be considered by the Executive Council.

821. The complaint was presented in time.

Incident 48

822. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

823. The alleged victimisation is Mr McCluskey refusing or failing to refer his complaint of disability discrimination to the NEC for legal assistance. The claimant relies on various dates including 12 October 2018, 9 November 2018 and 3 December 2018.

824. We have found that dealing with applications for legal assistance is delegated to Unite's legal department. The Executive Council does not deal with requests from individual members seeking legal assistance in practice. (See paragraph 34).

825. We conclude that the claimant has not proved facts from which we could conclude there was victimisation. He has not proved facts from which we could conclude he was subjected to a detriment in the sense of being put at a disadvantage; no application for legal assistance from a member would have been put to the Executive Council. The claimant has not proved facts from which we could conclude that the reason his request was not put to the Executive Council was because he had done a protected act; it was not put to the Executive Council because such requests were not, as a matter of practice, considered by the Executive Council. We conclude that the complaint is not well founded.

826. If the burden of proof had passed to the respondent, we would have concluded that the respondent had proved that this was not victimisation; the respondent's witnesses satisfied us that the request was not put to the Executive Council because such requests were not, as a matter of practice, considered by the Executive Council.

827. The complaint was presented in time.

Incident 49

828. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

829. The alleged victimisation is Unite and Mr McCluskey failing to provide the claimant with alternative representation when he informed them that he could not be represented by panel solicitors who had discriminated against him. The claimant relies on various dates including 12 October 2018, 9 November 2018 and 3 December 2018. He names Mr McCluskey and Mr Gillam as the persons involved.

830. This is the same complaint as in incident 46 and, for the reasons given in relation to that incident, we conclude that this complaint is not well founded.

Incident 50

831. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4 and 6 to 17 and 19-20 were protected acts.

832. The alleged victimisation is Mr McCluskey refusing or failing to refer the claimant's complaint that he had been subjected to disability discrimination to the NEC. The claimant relies on various dates including 12 October 2018, 9 November 2018 and 3 December 2018. He names Mr McCluskey and Mr Gillam as the persons involved.

833. This is the same complaint as in incident 48 and, for the reasons given in relation to that incident, we conclude that this complaint is not well founded.

Incident 51

834. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

835. The alleged victimisation is Mr McCluskey refusing or failing to refer his complaint of disability discrimination to the NEC for legal assistance. The claimant relies on various dates including 12 October 2018, 9 November 2018 and 3 December 2018.

836. This is the same complaint as in incident 48 and, for the reasons given in relation to that incident, we conclude that this complaint is not well founded.

Incident 56

837. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

838. The alleged victimisation is Mr McCluskey refusing to refer the claimant's complaint that he had been subjected to disability discrimination to the NEC. The claimant relies on various dates including 12 October 2018, 9 November 2018 and 3 December 2018.

839. This is the same complaint as in incident 48 and, for the reasons given in relation to that incident, we conclude that this complaint is not well founded.

Incident 57

840. This is the same complaint as in incident 48 and, for the reasons given in relation to that incident, we conclude that this complaint is not well founded.

Amendments 2, 3, 4 and 5

841. These amended incidents included in the Scott Schedule and are dealt with above, when dealing with the relevant incident.

Amendment 6a

842. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

843. The alleged victimisation is Mr McCluskey refusing to forward the claimant's requests for legal assistance and his internal complaints against officers and staff of Unite to the NEC. The claimant relies on the date of 16 January 2018. This appears to relate to a request made by the claimant in a letter dated 16 January 2018 to Mr McCluskey (359). We deal with this letter at paragraphs 136 to 142.

844. The claimant wrote that he considered the matter should be referred to the General Secretary and the NEC (National Executive Committee) of Unite to investigate the service he had received and the injury it had caused him.

845. Dealing with applications for legal assistance is delegated to Unite's legal department. Individuals do not make appeals to the Executive Council in practice. There was no procedure for individual complaints to be referred to the Executive Council; these were dealt with under the lay members' complaints procedure.

846. We conclude that the claimant has not proved facts from which we could conclude there was victimisation. He has not proved facts from which we could conclude he was subjected to a detriment in the sense of being put at a disadvantage; no application for legal assistance from a member or internal complaint would have been put to the Executive Council. The claimant has not proved facts from which we could conclude that the reason his request for legal assistance and internal complaints were not put to the Executive Council was because he had done a protected act; they were not put to the Executive Council because such requests and complaints were not, as a matter of practice, considered by the Executive Council. We conclude that the complaint is not well founded.

847. If the burden of proof had passed to the respondent, we would have concluded that the respondent had proved that this was not victimisation; the respondent's witnesses satisfied us that requests for legal assistance and internal complaints were not put to the Executive Council because such requests were not, as a matter of practice, considered by the Executive Council.

848. We will return to the issue of time limits.

Amendment 7

849. The claimant relies on acts 1 to 14 as protected acts. We concluded that, of these acts, acts 3 to 4, and 6 to 14 and 19-20 were protected acts.

850. The alleged victimisation is Unite adopting a procedure in assessing the claimant's various claims which departed from the respondent's standard procedure and subjected the claimant to a number of detriments. The claimant relies on the date of 16 January 2018 and names Ms Cunningham, Mr Gillam, Mr Lemon and Mr McCluskey as individuals involved.

851. The claimant submitted that the individuals concerned were motivated to treat him differently. He referred to Mr Granfield writing on 6 October 2017 that he thought they were being "set up for a claim" (SB139) (see paragraph 91) and describing him on 15 January 2018 as "someone who may be a vexatious litigant" (818) (see paragraph 128). He submitted that he was being described this way because of protected acts in 2016 and 2017.

852. We found in paragraph 129 that it appeared to Mr Granfield, from what he had read, that the claimant alleged discrimination whenever someone disagreed with him.

853. The claimant also relies on Ms Cunningham's letter of 20 February 2018 to Howard Beckett (798) (see paragraph 177).

854. The claimant submitted that the respondents were aware from March 2018 that aspects of his employment tribunal claims had reasonable prospects of success but failed to go on record and that they were aware from May 2018 that his personal injury claims had reasonable prospects of success but failed to instruct panel solicitors.

855. The claimant's view was that all potential claims should be assisted, regardless of merit. The respondent was offering assistance with the claims assessed by counsel and panel solicitors as having reasonable prospects of success. The claimant has not satisfied us that the respondent diverted from their standard procedure in assessing his claims for the purpose of deciding whether to offer legal assistance to pursue them. Indeed, the explanation given by the respondent's witnesses at the time in correspondence and in evidence at this hearing has been consistent and in accordance with what we would expect in relation to the prudent use of members' funds. Mr Gillam explained to the claimant in correspondence that they had a duty not to waste members' money on unmeritorious claims (see, for example, paragraph 318). The claimant relies on his past experience as a panel solicitor, that unions, including Unite, would provide legal assistance for claims, irrespective of merit. Even if that was the case in the past, we have found that it was not the case at the time the claimant's claims were being assessed by Unite. Since the claimant has not proved the facts on which he relies in relation to this complaint, we conclude that the complaint is not well founded.

856. We found that claims being considered for legal assistance were normally assessed by the Regional Officer, with assistance, as necessary, from the Regional Legal Officer. If the advice given was challenged, there would be a legal services review by the legal department. Depending on a number of factors, including resources, this could be outsourced to panel solicitors and, in some cases, counsel. The claimant had challenged the advice of Nicky Marcus. In accordance with normal procedures, the case had gone to the legal department for review. We accepted that, due to workload, this was outsourced. Ms Cunningham's letter to Howard Beckett suggests that a review done outside the union was also considered desirable because of the claimant's suspicions of "union nepotism".

857. If we had concluded the procedure was non-standard, we would have concluded that the claimant was not subjected to a detriment by this procedure; he had the benefit of the firm of solicitors he had requested and counsel advising him. We would also have concluded that the claimant had not proved facts from which we could have found victimisation or, alternatively, that the respondent had satisfied us that the reason they adopted this procedure was not because of protected acts.

858. We, therefore, conclude that this complaint is not well founded on its merits.

859. We will return to the time limit issue.

Amendment 9

860. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

861. The alleged victimisation is Mr McCluskey failing to operate the respondent's own procedures/mechanisms in referring matters to the NEC when requested by a member. The claimant relies on dates of 16 January 2018 onwards.

862. We found that there was no procedure for individual complaints and requests for legal assistance to be considered by the Executive Committee. Requests for legal assistance were delegated to the legal department. There was a members' complaints procedure which was used for complaints about officials and employees.

863. We conclude that the claimant has not proved facts from which we could conclude there was victimisation. He has not proved facts from which we could conclude he was subjected to a detriment in the sense of being put at a disadvantage; no member would have had their requests put to the Executive Council. The claimant has not proved facts from which we could conclude that the reason his requests were not put to the Executive Council was because he had done a protected act; it was not put to the Executive Council because such requests were not, as a matter of practice, considered by the Executive Council. We conclude that the complaint is not well founded.

864. If the burden of proof had passed to the respondent, we would have concluded that the respondent had proved that this was not victimisation; the respondent's

witnesses satisfied us such requests were not, as a matter of practice, considered by the Executive Council.

865. Since the claimant relies on matters up to and including his requests for legal assistance against panel solicitors, at least part of this complaint was presented in time.

Amendment 10

866. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4 and 6 to 17 and 19-20 were protected acts.

867. The alleged victimisation is Unite instructing the same panel solicitor to advise the union on the claimant's complaints against the union and to advise both parties on the claimant's legal claims against the RMT, creating a conflict situation, resulting in the claimant suffering numerous detriments. The claimant relies on dates from 16 January 2018 onwards. The claimant names Ms Cunningham and Mr Gillam as the individuals involved.

868. We found, on a balance of probabilities, that Unite did not instruct Slater and Gordon to advise on the claimant's complaint against the union (paragraph 396). We, therefore, conclude that this complaint is not well founded.

Amendment 11

869. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

870. The alleged victimisation is Mr Gillam associating the claimant's complaints with the claimant's illness in an email dated 5 June 2018, stating the claimant's protected complaints are linked to his disability and consequently considering his protected complaints have no "weight" or substance due to his disability and he was denied a service from the respondent.

871. The claimant relies on dates from 5 June 2018 onwards.

872. The amendment in full is set out at SB114. The complaint relates to an email dated 5 June 2018 sent by Mr Gillam to RK and JF in Mr McCluskey's office (814). We refer to this email in paragraph 260. The way the claimant has expressed this complaint is his interpretation of Mr Gillam's letter, rather than a summary of what was said by Mr Gillam.

873. This email, which was not sent to the claimant, was not seen by him at the time it was sent. The claimant says it was disclosed on 9 December 2019 and read by him on the weekend commencing 25 January 2020. The claimant made his application to amend to include a complaint about this email on 31 January 2020.

874. We conclude that the claimant has not proved facts from which we could conclude that there was victimisation. The claimant has not proved facts from which

we could conclude that he was subjected to a detriment by reason of this email. The claimant gave no evidence on the basis of which we could conclude that he was subjected to such a detriment (see paragraph 393). The claimant has not proved facts from which we could conclude that the reason Mr Gillam wrote as he did was because of a protected act. We, therefore, conclude that the complaint is not well founded.

875. If the burden of proof had passed to the respondent, we would have concluded that the respondent had proved that this was not an act of victimisation. We accepted Mr Gillam's evidence that he wrote as he did because it was his opinion, based on the correspondence they continued to receive from the claimant, that the claimant's main objective was to have his claim supported in the manner he wanted it supported. He was of the view that the claimant, as an employment solicitor, was aware how to build a case (see paragraph 262).

876. The claim was presented in time.

Amendment 13

877. The claimant relies on acts 1 to 17 and 19-20 as protected acts. We concluded that, of these acts, acts 3 to 4, 6 to 17 and 19-20 were protected acts.

878. The alleged victimisation is Mr Gillam associating the claimant's complaints with the claimant's illness in an email dated 13 November 2018, implying the claimant's protected complaints are linked to his disability and consequently considering his protected complaints have no "weight" or substance due to his disability, as a result the claimant was deprived of the service.

879. The amendment in full is set out at SB114-115. It relates to an email from Mr Gillam dated 13 November 2018 to JF in Mr McCluskey's office (816). We refer to this email in paragraph 385. As with amendment 11, the way the claimant has expressed his complaint is his interpretation of Mr Gillam's letter, rather than a summary of what Mr Gillam said.

880. This email was not sent to the claimant at the time. It was disclosed in the course of these proceedings on 9 December 2019. The claimant says he read it on the weekend commencing 25 January 2020. The claimant made his application to amend on 31 January 2020.

881. We conclude that the claimant has not proved facts from which we could conclude that there was victimisation. The claimant has not proved facts from which we could conclude that he was subjected to a detriment by reason of this email. The claimant gave no evidence on the basis of which we could conclude that he was subjected to such a detriment (see paragraph 393). The claimant has not proved facts from which we could conclude that the reason Mr Gillam wrote as he did was because of a protected act. We, therefore, conclude that the complaint is not well founded.

882. If the burden of proof had passed to the respondent, we would have concluded that the respondent had proved that this was not an act of victimisation. We found that Mr Gillam wrote as he did, informing JF that the claimant was not well as a matter of fact and that this was not something intended as being derogatory; the claimant's state of health was something which the claimant referred to in almost every piece of correspondence. He considered that the claimant's state of health was relevant to the amount of correspondence the claimant was sending. (See paragraph 386).

883. The complaint was presented in time.

Failure to make reasonable adjustments

884. We need to consider the following issues:

884.1. Was there a provision, criterion or practice (PCP) as alleged?

884.2. If so, did this put the claimant at a substantial disadvantage in comparison with persons who are not disabled?

884.3. Did the respondent know or could reasonably be expected to know that the claimant had a disability and was likely to be placed at the disadvantage?

884.4. If so, did the respondent take such steps as it was reasonable to have to take to avoid the disadvantage?

Incident 24

885. The claimant has referred to the respondent's procedures and asserted that the respondent should have made an adjustment by directly referring the claimant appeal for legal assistance to the NEC. The claimant refers to various dates including 3 August 2018. He names the individual involved as Mr McCluskey.

886. We conclude that there was a PCP of not referring individuals' requests for legal assistance to the Executive Committee.

887. We conclude that the claimant was not put at a substantial disadvantage in comparison with persons who are not disabled by this PCP. The Executive Committee would not have dealt with a request from the claimant or any other individual, irrespective of whether they had a disability. The Executive Committee delegated to the legal department decisions about legal representation (see paragraph 34). We, therefore, conclude that the duty to make reasonable adjustments did not arise.

888. We conclude that the complaint is not well founded. The complaint was presented in time.

Incident 52

889. It appears that the claimant is relying on an alleged PCP that individuals must obtain a resolution from their branch for requests for legal assistance to be referred to the NEC. We conclude that there was no such PCP. There was no mechanism, by branch resolution or otherwise, for individual requests for legal assistance to be put to the Executive Committee. Decisions on such matters were delegated to the legal department. We conclude that the claimant misunderstood at the time that there was a process by which he could go to the Executive Committee by way of a branch resolution.

890. We conclude that the complaint is not well founded.

Incident 53

891. This also appears to relate to an alleged PCP of requiring a branch resolution for a reference to the NEC. As in relation to incident 52, we conclude that there was no such PCP.

892. We, therefore, conclude that the complaint is not well founded.

Indirect discrimination

893. We need to consider the following issues:

893.1. Was there a provision, criterion or practice (PCP) as alleged?

893.2. If so, did that PCP put persons with whom the claimant shared the characteristic of disability at a particular disadvantage when compared with persons without that characteristic.

893.3. Did the PCP put the claimant at that disadvantage?

893.4. Can the respondent show the PCP to be a proportionate means of achieving a legitimate aim?

Incident 25

894. The claimant does not expressly set out the PCP in the Scott schedule. In submissions, he explained the PCP as being that members had to obtain a collective resolution to address the Executive Council rather than being able to do so directly.

895. The respondent identified the legitimate aim as being to address all correspondence and complaints from a member appropriately.

896. We conclude that there was no such PCP as identified by the claimant. There was no process, by branch resolution or individual petition, for members to address the Executive Committee. There were delegated processes for dealing with requests

for legal assistance and members' complaints (see paragraphs 34 and 42). The complaint is, therefore, not well founded.

897. Although the claimant did not put his case this way, we would have concluded that there was a PCP of not referring requests for legal assistance to the Executive Committee.

898. We would have concluded that the group of disabled people to which the claimant belonged was not put at a substantial disadvantage by this PCP compared to non-disabled people. We would also have concluded that the claimant was not put at a substantial disadvantage in comparison with persons who are not disabled by this PCP. The Executive Committee would not have dealt with such requests, irrespective of whether the person making the request had a disability. The Executive Committee delegated to the legal department decisions about legal representation. We, therefore, conclude that there was no indirect disability discrimination.

899. We conclude that the complaint is not well founded. The complaint was presented in time.

Incident 54

900. The claimant relies on an alleged PCP that individuals must obtain a resolution from their branch for requests for legal assistance to be referred to the NEC. We conclude that there was no such PCP. There was no mechanism, by branch resolution or otherwise, for individual requests for legal assistance to be put to the executive committee. Decisions on such matters were delegated to the legal department. We conclude that the claimant misunderstood at the time that there was a process by which he could go to the Executive Committee by way of a branch resolution.

901. We, therefore, conclude that the complaint is not well founded.

902. The complaint was presented in time.

Incident 55

903. This appears to relate to the same alleged PCP as for incident 54. For the reasons given in relation to that incident, we conclude the complaint is not well founded.

Amendment 6b

904. This appears to relate to the same alleged PCP as for incident 54. For the reasons given in relation to that incident, we conclude the complaint is not well founded.

Direct discrimination

905. We have to consider the following issues:

905.1. Did the respondent not afford the claimant access to a benefit, facility or service or subject the claimant to a detriment or in the way alleged in the Scott Schedules?

905.2. If so, by that treatment, did the respondent treat the claimant less favourably than they treated or would have treated others in the same material circumstances?

905.3. If so, was this less favourable treatment because of the protected characteristic of disability?

Amendment 8

906. The alleged direct discrimination is about Nicky Marcus assessing the claimant's legal claims as having no reasonable prospect of success and, therefore, not offering him legal assistance, on 5 September 2016 and 15 January 2018.

907. We conclude that the claimant was not afforded access to legal assistance at that time and was subjected to a detriment by not being granted legal assistance because of the assessment of merits made by Nicky Marcus. The claimant was later offered legal assistance.

908. The claimant relied in submissions on Nicky Marcus's email to Mr Granfield of 6 September 2016 (SB138) (see paragraph 70) and the advice given on 15 January 2018.

909. We conclude that the claimant has not proved facts from which we could conclude that the assessment done by Ms Marcus was less favourable treatment than would have been given to another person in the same material circumstances or that the assessment was because of the claimant's disability.

910. We conclude that the complaint of direct disability discrimination is not well founded on the merits.

911. We will return to the time limit issue.

Harassment

912. We need to consider the following issues:

912.1. In relation to the conduct alleged in the Scott Schedules, did the respondent engage in unwanted conduct?

912.2. If so, was the conduct related to disability?

912.3. Did it have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? (In considering whether the conduct had such an effect, we must take into account the perception of the claimant, the other circumstances of the case and whether it was reasonable for it to have that effect).

Amendment 11

913. The alleged harassment is Mr Gillam, in an email dated 5 June 2018 (452), stating that the claimant's protected complaints are linked to his disability and consequently considering that his protected complaints have no "weight" or substance due to his disability and denying the claimant a service from the respondent. The amendment in full is set out at SB114. The complaint relates to an email dated 5 June 2018 sent by Mr Gillam to RK and JF in Mr McCluskey's office (814). We refer to this email in paragraph 260.

914. This email, which was not sent to the claimant, was not seen by him at the time it was sent. The claimant says it was disclosed on 9 December 2019 and read by him on the weekend commencing 25 January 2020. The claimant made his application to amend to include a complaint about this email on 31 January 2020. As we noted when dealing with amendment 11 under the heading of victimisation, the way the claimant has expressed this complaint is his interpretation of Mr Gillam's letter, rather than a summary of what was said by Mr Gillam.

915. Part of the email was related to the claimant's disability in that Mr Gillam referred to the claimant not being well.

916. We conclude that the claimant has not proved facts from which we could conclude that Mr Gillam's purpose in writing the email was to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Indeed, at the time of writing, Mr Gillam had no reason to believe the claimant would ever see the email.

917. The claimant gave no evidence to the effect that he felt his dignity was violated by these emails or that they created, in some way, an intimidating, hostile, degrading, humiliating or offensive environment for him (see paragraph 393). In closing submissions, the claimant said that he was humiliated when he received the emails. However, he had not given evidence to this effect. In any event, even if it is the case that the claimant felt humiliated by reading the email, during the course of preparing for these proceedings, this does not mean the email created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. We conclude that the email did not have the requisite effect. We, therefore, conclude that the complaint of harassment is not well founded.

918. The complaint was presented in time.

Amendment 13

919. The alleged harassment is that Mr Gillam associated the claimant's complaints with the claimant illness in an email dated 13 November 2018, implying the claimant's protected complaints were linked to his disability and consequently considering his protected complaints have no "weight" or substance due to his disability, and, as a result the claimant was deprived of the service.

920. The amendment in full is set out at SB114-115. It relates to an email from Mr Gillam dated 13 November 2018 to JF in Mr McCluskey's office (816). We refer to this email in paragraph 385.

921. This email was not sent to the claimant at the time. It was disclosed in the course of these proceedings on 9 December 2019. The claimant says he read it on the weekend commencing 25 January 2020. The claimant made his application to amend on 31 of January 2020.

922. For the same reasons in relation to amendment 11, we conclude that the complaint is not well founded.

923. The complaint was presented in time.

Time limit issues

924. For the reasons given in paragraph 439, we approach the time limit issue on the basis that we only need to consider whether we have jurisdiction in relation to complaints about incidents occurring before 9 March 2018. We have dealt with the merits of the complaints before dealing with the issue of jurisdiction.

925. Complaints relating to matters before 9 March 2018 are out of time. In the case of complaints brought under the Equality Act 2010, earlier acts will be presented in time if they form part of a continuing act, ending with an act in respect of which the complaint was presented in time.

926. In relation to the complaints of unjustifiable discipline under the 1992 Act, the Tribunal only has jurisdiction in relation to complaints presented out of time if it was not reasonably practicable to present them in time and they were presented within a reasonable time thereafter.

927. In relation to the complaints brought under the Equality Act 2010, the Tribunal only has jurisdiction in relation to complaints presented out of time if it is just and equitable to consider them out of time in all the circumstances.

928. We have concluded that none of the complaints would be well founded on their merits. We, therefore, conclude that there is no continuing act of discrimination beginning before 9 March 2018 and carrying on after that date.

929. The claimant relies on his poor mental health as the basis for submitting that it was not reasonable practicable to submit all his complaints of unjustifiable discipline

in time and for submitting that it would be just and equitable to extend time, in respect of complaints brought under the Equality Act 2010.

930. It does appear that the claimant suffered poor mental health to varying degrees during the relevant period. However, we had no medical evidence relating to his ability to present claims in time in respect of matters occurring before 9 March 2018.

931. We note from the correspondence that, during all periods relevant to presenting claims in time, the claimant was writing detailed, often lengthy, letters and often responding very quickly on the same day to correspondence. Despite any issues with his mental health, we conclude the claimant would have been capable of presenting complaints relating to matters occurring before 9 March 2018 to the Tribunal in time.

932. In these circumstances, we conclude that it was reasonably practicable to present the complaints of unjustifiable discipline in time and it would not be just and equitable to extend time to allow out of time complaints under the Equality Act 2010 to proceed.

933. We, therefore, conclude that, in relation to complaints about matters occurring before 9 March 2018, the Tribunal does not have jurisdiction.

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Employment Judge Slater

Date: 1 May 2020

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON
4 May 2020

FOR THE TRIBUNAL OFFICE

APPENDIX 1

Scott Schedule

Incident No	Paragraph in ET1 No 1	Alleged Act of Unlawful Discipline / Discrimination	Date	Cause of Action	Individuals Involved
		Unlawful Discipline contrary to S64 (2)			
1	41 (i)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** 1. The Claimant's email dated the 9th of August 2016 (page 270). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected (breach of the Equality Act 2010 and Rule 2.1.6 2. The Claimant's email dated the 11th of August 2016 (page 273). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected (breach of the Equality Act 2010 and Rule 2.1.6 3. The Claimant's email dated the 9th of September 2016 (page 297) The Claimant raising a complaint, which includes an allegation of a failure to make a reasonable adjustment on the grounds of the Claimant's disability (breach of the Equality Act 2010 and Rule 2.1.6) 4. The Claimant's email dated the 9th of October 2017 (page 331). The Claimant stating as a	15/01/2018	Unlawful Discipline Contrary S64 (2)	Mr Vincent Passfield & Ms Nicky Marcus

		result of his disability he did not like the suggestion his judgment was effected and of a failure to make a reasonable adjustment (breach of the Equality Act 2010 and Rule 2.1.6 **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First Respondent refusing to support the Claimants Employment Tribunal claims as a consequence of the Claimant raising complaints, including that of Disability Discrimination			
2	41 (ii)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to issue 1 to 4 above 5. The Claimant's email dated the 16th of January 2018 (page 355) The Claimant raising a complaint of negligence and victimisation for bringing claims against senior officials of the RMT. 6. The Claimant's letter dated the 2nd of February 2018 (page 365) The Claimant raising a complaint negligence and of victimisation for bringing claims against senior officials of the RMT and making previous complaints regarding disability discrimination. **The Unlawful discipline**	14/02/2018	Unlawful Discipline Contrary S64 (2)	Ms Cunningham

		under S64 (2) (f): The conduct consisting of the First Respondent adopted the wrong complaints procedure after the Claimant raised allegations of disability discrimination, breaches of the Union Rule Book and other Unlawful Action			
3	41 (iii)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 6 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First Respondent without investigation deciding that the Claimant was not subjected to any discrimination and / or the First Respondents staff had not committed the tort of negligence against the Claimant	16/01/2018 & 14/02/2018.	Unlawful Discipline Contrary S64 (2)	Ms Cunningham
4	41 (iv) (a)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 6 above 7. The Claimant's letter dated the 19th of February 2018 (page 382) The Claimant raising a complaint of negligence and victimisation for bringing	10/03/2018	Unlawful Discipline Contrary S64 (2)	Ms Jennie Formby

		claims against senior officials of the RMT and making previous complaints regarding disability discrimination. (Tort of negligence and breach of the Equality Act 2010 and Rule 2.1.6) **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Second Respondent failing to deal with the specific allegations the Claimant raised in his complaint to the First Respondent			
5	41 (iv) (b)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 7 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Second Respondent failing to address in her investigation into the Claimants complaints against specific allegations against specific individual officers / employees of the First Respondent	10/03/2018	Unlawful Discipline Contrary S64 (2)	Ms Jennie Formby
6	41 (iv) (c)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 7 above	10/03/2018	Unlawful Discipline Contrary S64 (2)	Ms Jennie Formby

		The Unlawful discipline under S64 (2) (f): The conduct consisting of the Second Respondent failed to deal / address the Claimants allegations of disability discrimination			
7	41 (v)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 7 above 8. The Claimant's email dated the 10th of March 2018 (page 403) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT, making previous complaints regarding disability discrimination. (breach of the Equality Act 2010 and Rule 2.1.6) 9. The Claimant's letter dated the 22nd of May 2018 (page 422) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT, making previous complaints regarding disability discrimination. (breach of the Equality Act 2010 and Rule 2.1.6 10. The Claimant's letter dated the 29th of May 2018 (page 449 & 450) The Claimant raising a complaint of failure to make a reasonable	05/06/2018 & 04/07/2018	Unlawful Discipline Contrary S64 (2)	Mr Neil Gillam & Mr Leonard McCluskey

		adjustment, the advice of Ms Marcus and requesting a reasonable adjustment and being referred to the EC (breach of the Equality Act 2010 and Rule 2.1.6 11. The Claimant's letter dated the 5th of June 2018 (page 456, 457, 461) The Claimant discussing his complaint of failure to make a reasonable adjustment, victimisation, the advice of Ms Marcus and requesting a reasonable adjustment and being referred to the EC (breach of the Equality Act 2010 and Rule 2.1.6 12. The Claimant's letter dated the 15th of June 2018 (page 474, 475). The Claimant discussing his complaint of disability discrimination, victimisation (breach of the Equality Act 2010 and Rule 2.1.6 13. The Claimant's letter dated the 22nd of June 2018 (page 487) The Claimant discussing his complaint of disability discrimination, victimisation, requesting a reasonable adjustment and referred to the EC and informing the First and Fourth respondent that Slater and Gordon had discriminated against the Claimant by failing to make a reasonable adjustment (breach of the Equality Act 2010 and Rule 2.1.6 14. The Claimant's letter dated the 2nd of July 2018 (page 499) The Claimant			

		discussing his complaints of discrimination, victimisation and particularising his complaints against Ms Cartmail (breach of the Equality Act 2010 and Rule 2.1.6 **The Unlawful discipline under S64 (2) (f):** The conduct consisting of that the First Respondent deliberately failed in its duty of care and insisted Counsels advice should be followed.			
8	41 (vi)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 14 above 15. The Claimant's letter dated the 11th of July 2018 to Mr Gillam (page 516) The Claimant discussing his complaints of discrimination have not been answered, negligence and asserting he had a right to appeal to the EC (breach of the Equality Act 2010 and Rule 2.1.6, 14.9.6) 16. The Claimant's letter dated the 13th of July 2018 to Mr McCluskey (page 520) The Claimant discussing his complaints regarding Union services (including discrimination) informing Mr McCluskey that panel solicitors had referred to him as "paranoid" and Mr Gillam	Various (including 29/05/2018, 05/06/2018, 22/06/2018, 03/08/2018)	Unlawful Discipline Contrary S64 (2)	Mr Lemon, Mr Neil Gillam & Mr Leonard McCluskey

		denying the Claimant a right to appeal to the EC (breach of the Equality Act 2010 and Rule 2.1.6, 14.9.6) 17. The Claimant's letter dated the 2nd of August 2018 to Mr McCluskey (page 557) discussing the poor service in relation to the assessment of his legal claims and being deprived of a legal service contrary to the Rule Book and he was subjected to an unfair and discriminatory investigation into his complaints by Ms Formby and Ms Cartmail. (breach of the Equality Act 2010 and Rule 2.1.6) **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First Respondent refusing an appeal regarding Legal Services to the NEC under the Rule Book.			
9	41 (vi)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 17 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First Respondent refusing to refer the Claimants internal complaints to the NEC.	Various (including 29/05/2018, 05/06/2018, 22/06/2018, 03/08/2018)	Unlawful Discipline Contrary S64 (2)	Mr Neil Gillam & Mr Leonard McCluskey
10	41 (vii)	Did the Respondents subject	05/06/2018	Unlawful Discipline	Mr Neil Gillam

		the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 14 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First Respondent refusing to support certain civil claims	& 05/07/2018.	Contrary S64 (2)	
11	41 (viii) (a)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 12 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Third Respondent subjecting the Claimant to an unfair and not impartial review into his complaints by failing to address all the Claimant's allegations	22/06/2018	Unlawful Discipline Contrary S64 (2)	Ms Gail Cartmail
12	41 (viii) (b)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 12 above	22/06/2018	Unlawful Discipline Contrary to S64 (2)	Ms Gail Cartmail

		The Unlawful discipline under S64 (2) (f): The conduct consisting of the Third Respondent subjecting the Claimant to an unfair and not impartial review into his complaints by not addressing the evidence provided by the Claimant			
13	41 (viii) (c)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 12 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Third Respondent subjecting the Claimant to an unfair and not impartial review and blaming the Claimant for not particularising his complaints	22/06/2018	Unlawful Discipline Contrary to S64 (2)	Ms Gail Cartmail
14	41 (viii) (d)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 12 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Third Respondent subjecting the Claimant to an unfair and not impartial review by failing to explain why she could not uphold any allegation of	22/06/2018	Unlawful Discipline Contrary to S64 (2)	Ms Gail Cartmail

		misconduct against senior officials of the Union.			
15	41 (viii) (e)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 12 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Third Respondent subjecting the Claimant to an unfair and not impartial review by not addressing specific allegations of Disability Discrimination against Mr Passfield and other officials of the Union.	22/06/2018	Unlawful Discipline Contrary to S64 (2)	Ms Gail Cartmail
16	41 (viii) (f)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 12 above **The Unlawful Discipline under S64 (2) (f):** The conducting consisting of the Third Respondent subjecting the Claimant to an unfair and not impartial review by addressing her review as an adjudication and therefore not allowing the Claimant an appeal on decisions / outcomes which were made on the first occasion.	22/06/2018	Unlawful Discipline Contrary to S64 (2)	Ms Gail Cartmail
17	41 (ix)	Did the Respondents subject the Claimant to unjustifiable	Various (including	Unlawful Discipline Contrary to S64 (2)	Mr Leonard McCluskey

		discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 16 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Fourth Respondent, who is responsible for staffing refusing to take any action when the Claimant informed him that the First Respondent staff were subjecting the Claimant to detriments	the 27th of July 2018)		
18	41 (x)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 17 above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First Respondent adopting a procedure in assessing the Claimants various claims which departed from the Respondents standard procedure and subjected the Claimant under a number of detriments.	Various (including 3rd of August 2018)	Unlawful Discipline Contrary to S64 (2)	Ms Cunningham, Mr Neil Gillam, Mr Lemon and Mr McCluskey.
		Discrimination contrary to the Equality Act 2010			
19	16 - 18	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the	15/01/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Nicky Marcus and Mr Vincent Passfield

		Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** 1. The Claimant's email dated the 9th of August 2016 (page 270). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected (breach of the Equality Act 2010 and Rule 2.1.6 2. The Claimant's email dated the 11th of August 2016 (page 273). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected (breach of the Equality Act 2010 and Rule 2.1.6 3. The Claimant's email dated the 9th of September 2016 (page 297) The Claimant raising a complaint, which includes an allegation of a failure to make a reasonable adjustment on the grounds of the Claimant's disability (breach of the Equality Act 2010 and Rule 2.1.6) 4. The Claimant's email dated the 9th of October 2017 (page 331). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected and of a failure to make a reasonable adjustment (breach of the Equality Act 2010 and Rule 2.1.6 **The alleged detriments contrary to S27 (1):**			

		The Victimisation alleged is that the Respondent refused or failed to support the Claimants legal complaints			
20	16 - 18	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors (c) RMT? **The protected act (s) under S27 (2):** The Claimant refers to 1 and 4 above **The alleged detriments contrary to S27 (1):** The Victimisation alleged is that the First Respondent failed to support his legal complaints because of discrimination he raised against the RMT	15/01/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Nicky Marcus and Mr Vincent Passfield
21	42	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 4 above 5. The Claimant's email dated the 16th of January 2018 (page 355) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT. 6. The Claimant's letter dated	10/03/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Jennie Formby

		the 2nd of February 2018 (page 365) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT and making previous complaints regarding disability discrimination. 7. The Claimant's letter dated the 19th of February 2018 (page 382) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT and making previous complaints regarding disability discrimination. **The alleged detriments contrary to S27 (1):** The Victimisation alleged consists of the Second Respondent not investigating allegations of discrimination contrary to the Equality Act 2010			
22	43	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 7 above 8. The Claimant's email dated the 10th of March 2018 (page 403) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT, making previous complaints regarding	22/06/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Gail Cartmail

		disability discrimination. 9. The Claimant's letter dated the 22nd of May 2018 (page 422) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT, making previous complaints regarding disability discrimination. 10. The Claimant's letter dated the 29th of May 2018 (page 449 & 450) The Claimant raising a complaint of failure to make a reasonable adjustment, the advice of Ms Marcus and requesting a reasonable adjustment and being referred to the EC 11. The Claimant's letter dated the 5th of June 2018 (page 456, 457, 461) The Claimant discussing his complaint of failure to make a reasonable adjustment, victimisation, the advice of Ms Marcus and requesting a reasonable adjustment and being referred to the EC 12. The Claimant's letter dated the 15th of June 2018 (page 474, 475). The Claimant discussing his complaint of disability discrimination, victimisation **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the Third Respondent failing to investigate the Claimants allegations of disability			

		discrimination against specific officer and employees and stating that the Claimant raised "broad" allegations			
23	44	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? The Claimant refers to 1 to 12 above 13. The Claimant's letter dated the 22nd of June 2018 (page 487) The Claimant discussing his complaint of disability discrimination, victimisation, requesting a reasonable adjustment and referred to the EC and informing the First and Fourth respondent that Slater and Gordon had discriminated against the Claimant by failing to make a reasonable adjustment 14. The Claimant's letter dated the 2nd of July 2018 (page 499) The Claimant discussing his complaints of discrimination, victimisation and particularising his complaints against Ms Cartmail 15. The Claimant's letter dated the 11th of July 2018 to Mr Gillam (page 516) The Claimant discussing his complaints of discrimination have not been answered, negligence and asserting he had a right to appeal to the EC	Various (including the 3rd of August 2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey

		16. The Claimant's letter dated the 13th of July 2018 to Mr McCluskey (page 520) The Claimant discussing his complaints regarding Union services (including discrimination) informing Mr McCluskey that panel solicitors had referred to him as "paranoid" and Mr Gillam denying the Claimant a right to appeal to the EC 17. The Claimant's letter dated the 2nd of August 2018 to Mr McCluskey (page 557) discussing the poor service in relation to the assessment of his legal claims and being deprived of a legal service contrary to the Rule Book and he was subjected to an unfair and discriminatory investigation into his complaints by Ms Formby and Ms Cartmail. **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the First and Fourth Respondent refusing to refer his appeal for legal support to the NEC			
24	45	Did the Respondents operate a PCP that placed the Claimant at a substantial disadvantage compared to others and failed to make a reasonable adjustment? The discrimination alleged is the First and Fourth Respondent subject the Claimant to discrimination contrary to the Equality Act 2010 by refusing to make adjustments to its own procedures (the PCP) and directly refer the Claimants	Various (including the 3rd of August 2018)	Discrimination Contrary to S57 (6) Equality Act 2010	Mr McCluskey

		appeal for legal assistance to the NEC			
25	45	Did the Respondents discriminate against the Claimant by not affording access to services to the Claimant or any other detriment as a result or consequence of his disability? By failing to refer the Claimants internal complaints, complaints about being discriminated against by panel solicitors or request for legal assistance to the NEC did the First and Fourth Respondent subject the Claimant to disability discrimination.	Various (including the 3rd of August 2018)	Discrimination contrary to S57 (2) (a) & (d)	Mr McCluskey
Incident No	Paragraph in ET1 No 2	Alleged Act of Unlawful Discipline / Discrimination	Date	Cause of Action	Individuals Involved
		Unlawful Discipline Contrary to S64 (2)			
26	21 (i)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 17 above (in box 18) 18. The Claimant's letter to Mr McCluskey dated the 6th of August 2018 informing him that it is reckless and careless for panel solicitors to follow counsel's advice, when counsel had not read all the evidence (the Claimant had previously informed the Respondents of the Friend case and that the Respondent would be liable for the panel solicitors actions (tort of negligence)	12/10/2018	Unlawful Discipline Contrary to S64 (2)	Mr Gillam

		The Unlawful discipline under S64 (2) (f): The conduct consisting of the First Respondent not responding to the Claimants allegations that that he had been subjected to disability discrimination by panel solicitors.			
27	21 (ii) & (iv)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 13 above (in box 18) **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First and Fourth Respondent not responding to or investigating the Claimants complaints of being subjected to an unfair or not impartial investigation into his complaints against the Respondent.	Various including 02/07/2018	Unlawful Discipline Contrary to S64 (2)	Mr McClusky
28	21 (ii) & (iv)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 – 11 (box 18) The Unlawful discipline under S64 (2) (f): The conduct consisting of the First and Fourth Respondent	Various including (29/05/2018)	Unlawful Discipline Contrary to S64 (2)	Mr McClusky

		not responding or investigating the allegations that the First Respondents Legal Team were not assisting the Claimant to have a fair and impartial assessment into his employment and civil claims.			
29	21 (iii)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 18 above (in box 26) **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First and Fourth failing to assist the claimant or deal with allegations that Panel solicitors were providing the Claimant with an inadequate service the as a complaint.	Various including (2 and 6/08/2018)	Unlawful Discipline Contrary to S64 (2)	Mr Gillam and Mr McCluskey
30	21 (v)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 18 above (in box 26) **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First and Fourth Respondent failed to appoint alternative representation when the Claimant stated he could not be represented by panel solicitors who had discriminated against him.	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Unlawful Discipline Contrary to S64 (2)	Mr Gillam and Mr McCluskey

31	21 (vi)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 18 above (in box 26) **The Unlawful discipline under S64 (2) (f):** The conduct consisting informing the Fourth Respondent that he had been subjected to disability discrimination and requested that his complaint be referred to the NEC but the First and Fourth Respondent refused or failed to do so	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Unlawful Discipline Contrary to S64 (2)	Mr McCluskey
32	21 (vi)	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c):** The Claimant refers to 1 to 18 above (in box 26) **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First and Fourth Respondent refusing or failing to put to the NEC the Claimants complaint that he had been subjected to disability discrimination and his request for Legal Assistance under the Rule Book but the Fourth Respondent refused or failed to do so	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Unlawful Discipline Contrary to S64 (2)	Mr McCluskey
		Discrimination contrary to the Equality Act 2010.			

33	12 (i)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to the list in box 19 **The alleged detriments contrary to S27 (1):** The victimisation alleged that Mr Passfield / the First Respondent stated that they would not support the Claimant's employment tribunal claims and this decision was final	15/01/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Mr Passfield and Ms Marcus
34	12 (ii)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 4 above in box 19. 5. The Claimant's email dated the 16th of January 2018 (page 355) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT. 6. The Claimant's letter dated the 2nd of February 2018 (page 365) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT and	14/02/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Cunningham

		making previous complaints regarding disability discrimination. **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the First Respondent wished to utilise the incorrect procedure to investigate the Claimants complaints against the First Respondents staff / officers			
35	12 (iii)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 4 above in box 34. **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the First Respondent not providing the Claimant with a fair and impartial investigation into his complaints of discrimination: the First Respondent denied the allegations without any investigation	16/01/2018 & 14/02/2018.	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Cunningham
36	12 (iv)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 4 above box 34	10/03/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Formby

		5. The Claimant's email dated the 16th of January 2018 (page 355) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT. 6. The Claimant's letter dated the 2nd of February 2018 (page 365) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT and making previous complaints regarding disability discrimination. 7. The Claimant's letter dated the 19th of February 2018 (page 382) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT and making previous complaints regarding disability discrimination. **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the Second Respondent failing to provide a fair and impartial complaint into the Claimants allegations of disability discrimination			
37	12 (v)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 7	05/06/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Mr Gillam and Mr McCluskey

		above in box 36 8. The Claimant's email dated the 10th of March 2018 (page 403). The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT, making previous complaints regarding disability discrimination. (breach of the Equality Act 2010 and Rule 2.1.6) 9. The Claimant's letter dated the 22nd of May 2018 (page 422) The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT, making previous complaints regarding disability discrimination. (breach of the Equality Act 2010 and Rule 2.1.6 10. The Claimant's letter dated the 29th of May 2018 (page 449 & 450). The Claimant raising a complaint of failure to make a reasonable adjustment, the advice of Ms Marcus and requesting a reasonable adjustment and being referred to the EC (breach of the Equality Act 2010 and Rule 2.1.6 11. The Claimant's letter dated the 5th of June 2018 (page 456, 457, 461). The Claimant discussing his complaint of failure to make a reasonable adjustment, victimisation, the advice of Ms Marcus and requesting a reasonable adjustment and being referred to the EC (breach of the Equality			

		Act 2010 and Rule 2.1.6 **The alleged detriments contrary to S27 (1):** The Victimisation alleged consists of the Respondent's failing to utilise their own profession and industrial experience in deciding whether or not Counsels advice should be followed.			
38	12 (vi)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 11 above in box 38 12. The Claimant's letter dated the 15th of June 2018 (page 474, 475). The Claimant discussing his complaint of disability discrimination, victimisation 13. The Claimant's letter dated the 22nd of June 2018 (page 487) The Claimant discussing his complaint of disability discrimination, victimisation, requesting a reasonable adjustment and referred to the EC and informing the First and Fourth respondent that Slater and Gordon had discriminated against the Claimant by failing to make a reasonable adjustment 14. The Claimant's letter dated the 2nd of July 2018	Various (including the 03/08/2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey

		(page 499) The Claimant discussing his complaints of discrimination, victimisation and particularising his complaints against Ms Cartmail. **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the Respondents failing to refer the Claimants request for Legal Assistance to the NEC under the Rule Book.			
39	12 (vii)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 11 above in box 38 12. The Claimant's letter dated the 15th of June 2018 (page 474, 475). The Claimant discussing his complaint of disability discrimination, victimisation 13. The Claimant's letter dated the 22nd of June 2018 (page 487) The Claimant discussing his complaint of disability discrimination, victimisation, requesting a reasonable adjustment and referred to the EC and informing the First and Fourth respondent that Slater and Gordon had discriminated against the Claimant by failing to make a reasonable	22/06/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Cartmail

		adjustment **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the First and Third Respondents failing to provide the Claimant with a fair and impartial investigation into his complaints of disability discrimination by failing to deal with the Claimants specific allegations of disability discrimination against Mr Passfield and other employees / officials			
40	12 (vii)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 11 above in box 38 12. The Claimant's letter dated the 15th of June 2018 (page 474, 475). The Claimant discussing his complaint of disability discrimination, victimisation **The alleged detriments contrary to S27 (1):** The victimisation alleged consists The First and Third Respondents failing to provide the Claimant with a fair and impartial investigation into his complaints of disability discrimination by the Third Respondent describing her decision of the 22nd of June as an adjudication and therefore the Claimant did not have an	22/06/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Cartmail

		appeal on matters that had only been investigated once.			
41	12 (viii)	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 11 above in box 38 12. The Claimant's letter dated the 15th of June 2018 (page 474, 475). The Claimant discussing his complaint of disability discrimination, victimisation 13. The Claimant's letter dated the 22nd of June 2018 (page 487). The Claimant discussing his complaint of disability discrimination, victimisation, requesting a reasonable adjustment and referred to the EC and informing the First and Fourth respondent that Slater and Gordon had discriminated against the Claimant by failing to make a reasonable adjustment 14. The Claimant's letter dated the 2nd of July 2018 (page 499). The Claimant discussing his complaints of discrimination, victimisation and particularising his complaints against Ms Cartmail. 15. The Claimant's letter	Various (including 27th of July 2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey

		dated the 11th of July 2018 to Mr Gillam (page 516) The Claimant discussing his complaints of discrimination have not been answered, negligence and asserting he had a right to appeal to the EC 16. The Claimant's letter dated the 13th of July 2018 to Mr McCluskey (page 520) The Claimant discussing his complaints regarding Union services (including discrimination) informing Mr McCluskey that panel solicitors had referred to him as "paranoid" and Mr Gillam denying the Claimant a right to appeal to the EC **The alleged detriments contrary to S27 (1):** The victimisation alleged is the Fourth Respondent failing to take any action when he informed that the Claimant had received a threat from Legal Staff regarding the withdrawal of Legal Services if he did not attend a meeting with individuals who he complained had discriminated against him and the investigation was not complete.			
42	13	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 13 above in box 41 **The alleged detriments**	Various (including 25/06/2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr Gillam

		contrary to S27 (1): The victimisation alleged consist of the Respondent failing to take any action when informed that panel solicitors had discriminated against him.			
43	13	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 13 above in box 42 **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the Respondent insisting on the threat of withdraw of legal support that the Claimant meet panel solicitors who the Claimant alleged had discriminated against him contrary to the Equality Act 2010.	Various (including 25/06/2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr Gillam
44	14	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to 1 to 13 above in box 42 **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the Fourth	Various (including 2nd of July 2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey

		Respondent failing to take any action when the Claimant complained that he was not receiving a fair / impartial hearing into his internal complaints of disability discrimination.			
45	15	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** 13. The Claimant's letter dated the 22nd of June 2018 (page 487) The Claimant discussing his complaint of disability discrimination, victimisation, requesting a reasonable adjustment and referred to the EC and informing the First and Fourth respondent that Slater and Gordon had discriminated against the Claimant by failing to make a reasonable adjustment 14. The Claimant's letter dated the 2nd of July 2018 (page 499) The Claimant discussing his complaints of discrimination, victimisation and particularising his complaints against Ms Cartmail 15. The Claimant's letter dated the 11th of July 2018 to Mr Gillam (page 516) The Claimant discussing his complaints of discrimination have not been answered, negligence and asserting	Various (including 2nd and 6/08/2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey & Mr Gillam

		he had a right to appeal to the EC 16. The Claimant's letter dated the 13th of July 2018 to Mr McCluskey (page 520) The Claimant discussing his complaints regarding Union services (including discrimination) informing Mr McCluskey that panel solicitors had referred to him as "paranoid" and Mr Gillam denying the Claimant a right to appeal to the EC 17. The Claimant's letter dated the 2nd of August 2018 to Mr McCluskey (page 557) discussing the poor service in relation to the assessment of his legal claims and being deprived of a legal service contrary to the Rule Book and he was subjected to an unfair and discriminatory investigation into his complaints by Ms Formby and Ms Cartmail. **The alleged detriments contrary to S27 (1):** The victimisation alleged consists the First Respondents staff / officials failed to utilise its duty of care to determine whether or not panel solicitors were providing the Claimant with an adequate service in assessing the merits of his employment and civil claims against this former employer after the Claimant had raised allegations of discrimination against the Respondent.			
46	16	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the	Various (including 12/10/2018, 09/11/2018 &	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey & Mr Gillam

		Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to the list in 1 -17 above 19. The Claimant refers to his letter dated the 9th of November 2018 at page 612, where the Claimant informs Mr McCluskey that he was discriminated against by panel solicitors. The Claimant also requests and adjustment and be referred directly to the EC 20. The Claimants letter dated the 3rd of December 2018 at page 622, regarding being discriminated against by panel solicitors and requesting an adjustment **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the Claimant informed the First and Fourth Respondent that he could not be represented by Panel Solicitors who had discriminated against him but they failed to provide alternative representation	03/12/2018)		
47	17	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):**	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey

		The Claimant refers to the list in 1 -17, 19 - 20 above **The alleged detriments contrary to S27 (1):** The victimisation alleged consists of the Fourth Respondent failing to refer the Claimants internal complaints regarding being discriminated by the Respondent to the NEC but the Fourth Respondent refused or failed to do so			
48	17	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to the list in 1 -17, 19 - 20 above **The alleged detriments contrary to S27 (1):** The victimisation alleged is when the Claimant informed the Fourth Respondent that he had been subjected to disability discrimination and requested that his complaint be referred to the NEC for Legal Assistance under the Rule Book but the Fourth Respondent refused or failed to do so	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey
49	16	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under**	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey & Mr Gillam

		S27 (2): The Claimant refers to the list in 1 -17, 19 - 20 above **The alleged detriments contrary to S27 (1):** The victimisation alleged is when the Claimant informed the First and Fourth Respondent that he could not be represented by Panel Solicitors who had discriminated against him but they failed to provide alternative representation as a result of his allegations against the First Respondents staff / officers			
50	17	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a) discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to the list in 1 -17, 19 - 20 above **The alleged detriments contrary to S27 (1):** The victimisation alleged is that when the Claimant informed the Fourth Respondent that he had been subjected to disability discrimination and requested that his complaint be referred to the NEC but the Fourth Respondent refused or failed to do so as a result of his allegations against the First Respondents staff / officers	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey & Mr Gillam
51	17	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations (a)	Various (including 12/10/2018, 09/11/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey

		discrimination contrary to the Equality Act 2010 against (a) the Respondents (b) the Respondents panel solicitors? **The protected act (s) under S27 (2):** The Claimant refers to the list in 1 -17, 19 - 20 above **The alleged detriments contrary to S27 (1):** The victimisation alleged is that when the Claimant informed the Fourth Respondent that he had been subjected to disability discrimination and requested that his complaint be referred to the NEC for Legal Assistance under the Rule Book but the Fourth Respondent refused or failed to do so as a result of his allegations against the First Respondents staff / officers	& 03/12/2018)		
52	18	Did the Respondents operate a PCP that placed the Claimant at a substantial disadvantage compared to others and failed to make a reasonable adjustment? The discrimination alleged is that the Fourth Respondent failed to convey his request to the NEC for legal assistance rather than the Claimant request a resolution from his branch	(various including 2nd of July 2018)	Discrimination Contrary to S57 (6) Equality Act 2010	Mr McCluskey
53	18	Did the Respondents operate a PCP that placed the Claimant at a substantial disadvantage compared to others and failed to make a reasonable adjustment? The discrimination alleged is that the Fourth Respondent failed to convey his complaint regarding disability discrimination by senior	(various including 2nd of July 2018)	Discrimination Contrary to S57 (6) Equality Act 2010	Mr McCluskey

		officials / employees to the NEC to investigate for legal assistance rather than the Claimant request a resolution from his branch			
54	18	Did the Respondents discriminate against the Claimant by not affording access to services to the Claimant or any other detriment as a result or consequence of his disability? The discrimination alleged is that the Fourth Respondent failed to convey his request to the NEC for legal assistance rather than the Claimant request a resolution from his branch	(various including 2nd of July 2018)	Discrimination Contrary to S57 (2) (a) / (d) Equality Act 2010	Mr McCluskey
55	18	Did the Respondents discriminate against the Claimant by not affording access to services to the Claimant or any other detriment as a result or consequence of his disability? The discrimination alleged is that the Fourth Respondent failed to convey his complaint regarding disability discrimination by senior officials / employees to the NEC to investigate for legal assistance rather than the Claimant request a resolution from his branch	(various including 2nd of July 2018)	Discrimination Contrary to S57 (2) (a) / (d) Equality Act 2010	Mr McCluskey
56	19	Did the Respondents discriminate against the Claimant by not affording access to services to the Claimant or any other detriment as a result or consequence of his disability? **The protected act (s) under S27 (2):** The Claimant refers to the list in 1 -17, 19 - 20 above **The alleged detriments**	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Discrimination Contrary to S57 (2) (a) / (d) Equality Act 2010	Mr McCluskey

		contrary to S27 (1): The discrimination alleged is that when the Claimant informed the Fourth Respondent that he had been subjected to disability discrimination and requested that his complaint be referred to the NEC but the Fourth Respondent refused or failed to do so.			
57	19	Did the Respondents discriminate against the Claimant by not affording access to services to the Claimant or any other detriment as a result or consequence of his disability? **The protected act (s) under S27 (2):** The Claimant refers to the list in 1 -17, 19 - 20 above **The alleged detriments contrary to S27 (1):** The discrimination alleged is that when the Claimant informed the Fourth Respondent that he had been subjected to disability discrimination and requested that his complaint be referred to the NEC for Legal Assistance under the Rule Book but the Fourth Respondent refused or failed to do so.	Various (including 12/10/2018, 09/11/2018 & 03/12/2018)	Discrimination Contrary to S57 (2) (a) / (d) Equality Act 2010	Mr McCluskey

APPENDIX 2
Scott Schedule for Amendment

Amendment Number	Alleged Act of Unlawful Discipline / Discrimination	Date	Cause of Action	Individuals Involved
	Unlawful Discipline contrary to S64 (2)			
1	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2)(c)** 1. The Claimant's email dated the 9th of August 2016 (page 270). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected (breach of the Equality Act 2010 and Rule 2.1.6) 2. The Claimant's email dated the 11th of August 2016 (page 273). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected (breach of the Equality Act 2010 and Rule 2.1.6) 3. The Claimant's email dated the 9th of September (page 297). The Claimant raising a complaint, which includes an allegation of a failure to make a reasonable adjustment on the grounds of the Claimant's disability. (breach of the Equality	16/01/2018 onwards	Unlawful Discipline Contrary S64 (2)	Ms Alys Cunningham, Mr Neil Gillam, Mr Lemon and Mr McCluskey

	Act 2010 and Rule 2.1.6) 4. The Claimant's email dated the 9th of October 2017 (page 331). The Claimant stating as a result of his disability he did not like the suggestion his judgement was effected and of a failure to make a reasonable adjustment (breach of the Equality Act 2010 and Rule 2.1.6) 5. The Claimants email dated the 16th of January 2018 (page 355). The Claimant raising a complaint of negligence and victimisation for brining claims against senior officials of the RMT. 6. The Claimant's letter dated the 2nd of February 2018 (page 365). The Claimant raising a complaint negligence and of victimisation against senior officials of the RMT and making previous complaints regarding disability discrimination 7. The Claimant's letter dated the 19th of February 2018 (page 382). The Claimant raising a compliant of negligence and victimisation for bringing claims against senior officials of the RMT and making previous complaints regarding disability discrimination (Tort of negligence and breach of the Equality Act 2010 and Rule 2.1.6)			

	8. The Claimant's email dated the 10th of March 2018 (page 403). The Claimant raising a complaint of victimisation for bringing a complaint of victimisation for bringing claims against senior officials of the RMT, making previous complaints regarding disability discrimination (breach of the Equality Act 2010 and Rule 2.1.6) 9. The Claimant's letter dated the 22nd of May 2018 (page 422). The Claimant raising a complaint of victimisation for bringing claims against senior officials of the RMT, making previous complaints regarding disability discrimination (breach of the Equality Act 2010 and Rule 2.1.6) 10. The Claimant's letter dated the 29th of May 2018 (page 449 & 450). The Claimant raising a complaint of failure to make a reasonable adjustment, the advice of Ms Marcus and requesting a reasonable adjustment and being referred to the EC (breach of the Equality Act 2010 and Rule 2.1.6) 11. The Claimant's letter dated the 5th of June 2018 (page 456, 457, 461). The Claimant discussing his compliant of failure to			

	make a reasonable adjustment, victimisation, Ms Marcus's advice and a reasonable adjustment to be referred to the EC (breach of the Equality Act 2010 and Rule 2.1.6) 12. The Claimant's letter dated the 15th of June 2018 (page 474 – 475). The Claimant discussing his compliant of disability discrimination, victimisation (breach of the Equality Act 2010 and Rule 2.1.6) 13. The Claimant's letter dated the 22nd of June 2018 (page 487) The Claimant discussing his complaint of disability discrimination, victimisation, requesting a reasonable adjustment for a referral to the EC, and informing the First Respondent that panel solicitors had discriminated against the Claimant by failing to make a reasonable adjustment (breach of the Equality Act 2010 and Rule 2.1.6) 14. The Claimant letter dated the 2nd of July 2018 (page 499) The Claimant discussing his complaints of discrimination, victimisation and particularising his complaints against Ms Cartmail (breach of the Equality Act 2010 and Rule 2.1.6)			

	The Unlawful discipline under S64 (2) (f): The conduct consisting of the First Respondent adopting a procedure in assessing the Claimant's various claims which departed from the Respondents standard procedure and subjected the Claimant under a number of detriments			
9	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c)** The Claimant refers to 1 to 14 above 15. The Claimants letter to Mr Gillam (page 516). The Claimant asserting his complaints had not been answered, negligence and that he had a right to appeal to the EC (breach of the Equality Act 2010 and Rule 2.1.6 and 14.9.6) 16. The Claimants letter to Mr McCluskey dated the 13th of July 2018 (at page 520). Raising a complaint about Union services, panel solicitors referring to him as paranoid and Mr Gillam denying the Claimant a right to appeal) 17. The Claimant's letter to the General Secretary dated the 2nd of August 2018 to Mr McCluskey	16/01/2018 onwards	Unlawful Discipline Contrary S64 (2)	Mr McCluskey

	(page 557) in relation to a poor service and a discriminatory investigation into the Claimant's allegations by Ms Formby and Ms Cartmail **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Fourth Respondent failed to operate the Respondents own procedures / mechanisms in referring matters to the NEC when requested by a member.			
10	Did the Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c)** The Claimant refers to 1 to 16 of the list above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the First Respondent instructing the same panel solicitor to advise the Union (Respondent) on the Claimants complaints against the Union and advise both parties on the Claimant's legal claims against the RMT: creating a conflict situation, resulting in the claimant suffering numerous detriments	16/01/2018 onwards	Unlawful Discipline Contrary S64 (2)	Ms Cunningham, Mr Gillam (with delegated authority from Mr McCluskey).
14	Did the Fifth and First Respondents subject the Claimant to unjustifiable discipline as a result of conduct which falls within	16/01/2018 onwards	Unlawful Discipline Contrary S64 (2)	Mr Gillam

	the definition as contained within the meaning of S65 (2) (c)? **The Conduct under S65 (2) (c)** The Claimant refers to 1 to 17 of the list above **The Unlawful discipline under S64 (2) (f):** The conduct consisting of the Fifth Respondent advising the First and Fourth Respondent not to correspond with the Claimant, therefore the Claimant was deprived of a response, a referral to the NEC and legal assistance			
	Disability Discrimination			
2	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations of discrimination contrary to the Equality Act 2010 against (a) The Respondents (b) The RMT? **The protected acts** 1. The Claimant's email dated the 9th of August 2016 (page 270). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected (breach of the Equality Act 2010 and Rule 2.1.6) 2. The Claimant's email dated the 11th of August 2016 (page 273). The Claimant stating as a result of his disability he did not like the suggestion his judgment was effected (breach of the Equality Act 2010	05/09/2016, 12/09/2016 & 15/01/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Mr Passfiled and Ms Nicky Marcus

	and Rule 2.1.6) 3. The Claimant's email dated the 9th of September (page 297). The Claimant raising a complaint, which includes an allegation of a failure to make a reasonable adjustment on the grounds of the Claimant's disability. (breach of the Equality Act 2010 and Rule 2.1.6) 4. The Claimant's email dated the 9th of October 2017 (page 331). The Claimant stating as a result of his disability he did not like the suggestion his judgement was effected and of a failure to make a reasonable adjustment (breach of the Equality Act 2010 and Rule 2.1.6) **The victimisation alleged** The Victimisation alleged is that the First Respondent failed to support his legal claims against the RMT because of the protected concerns he raised			
3	Did the Second and First Respondent subject the Claimant to Victimisation by reasons of the Claimant having raised allegations of discrimination contrary to the Equality Act 2010 against (a) The Respondents officers and staff (Mr Passfiled, Mr Kavangh, Ms Marcus & Ms Cunningham) **The protected acts** The Claimant refers to the list above at 1 – 7	10/03/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Jenny Formby

	The victimisation alleged The Victimisation alleged consists of the Second Respondent providing an unfair and not impartial investigation by failing to investigate allegations of discrimination contrary to the Equality Act 2010			
4	Did the Third and First Respondent subject the Claimant to Victimisation by reasons of the Claimant having raised allegations of discrimination contrary to the Equality Act 2010 against (a) The Respondents officers and staff (Mr Passfiled, Mr Kavangh, Ms Marcus, Ms Cunningham and Ms Formby) **The protected acts** The Claimant refers to the list above at 1 – 12 **The victimisation alleged** The Victimisation alleged consists of the Third Respondent conducted an unfair and not impartial review / investigation failing to address all the allegations, failed to refer to evidence, providing a reasoned outcome regarding the Claimant's complaints against specific officers and employees, stating the Claimant had raised "broad" allegations and her decision was an adjudication.	22nd of June 2018	Discrimination Contrary to S57 (5) Equality Act 2010	Ms Gail Cartmail
5	Did the Fourth and First Respondent subject the Claimant to Victimisation by reasons of the Claimant having raised allegations of discrimination contrary to the Equality Act 2010	16/01/2018 onwards	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey

	against (a) The Respondents officers and staff **The protected acts** The Claimant refers to the list above at 1 – 17 **The victimisation alleged** The Victimisation alleged consists of the Fourth Respondent refusing to forward his Legal requests for assistance and his internal complaints against officer and staff of Unite the Union to the NEC.			
6	Did the Fourth and First Respondent subject the Claimant to Victimisation by reasons of the Claimant having raised allegations of discrimination contrary to the Equality Act 2010 against (a) The Respondents officers and staff (b) the RMT. **The protected acts** The Claimant refers to the list above at 1 – 17 **The victimisation alleged** The Victimisation alleged consists of the Fourth Respondent refusing to forward his Legal requests for assistance and his internal complaints against officer and staff of Unite the Union to the NEC	16/01/2018	Discrimination Contrary to S57 (5) Equality Act 2010	Mr McCluskey
6	Did the Fourth and First Respondents discriminate against the Claimant by not affording access to services to the Claimant or any other detriment as a result or consequence of his disability?	16/01/2018	Discrimination contrary to S57(2)	Mr McCluskey

	The alleged discrimination is that the First Respondent operated a PCP in that the Claimant had to request a collective branch resolution to be referred to the NEC, this placed the Claimant at a substantial disadvantage, because of his disability and the Respondents failed to refer the Claimant directly to the NEC.			
7	Did the Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations of discrimination contrary to the Equality Act 2010 against (a) The Respondents (b) The RMT? **The protected acts** The Claimant refers to the list above at 1 – 14 **The victimisation alleged** The Victimisation alleged consists of the First Respondent adopting a procedure in assessing the Claimant's various claims which departed from the Respondents standard procedure and subjected the Claimant under a number of detriments	16/01/2018	Discrimination contrary to S57 (5)	Ms Alys Cunningham, Mr Neil Gillam, Mr Lemon and Mr McCluskey
8	Did Ms Nicky Marcus (the First Respondent being vicariously liable for her action) discriminate against the Claimant by not affording access to services to the Claimant or any other detriment as a result or consequence of his disability? The alleged discrimination is that Ms Marcus (the First Respondent being vicarious liable) by her assessment	05/09/2016 & 15/01/2018	Discrimination contrary to S57(2)	Ms Nicky Marcus

	of the Claimants legal claims being effected by a discriminatory attitude (consciously or subconsciously) towards the Claimant and his disability.			
9	Did the Fourth Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations of discrimination contrary to the Equality Act 2010 against (a) The Respondents (b) The RMT? **The protected acts** The Claimant refers to the list above at 1 – 17 **The victimisation alleged** The Victimisation alleged consists of the Fourth Respondent failed to operate the Respondents own procedures / mechanisms in referring matters to the NEC when requested by a member.	16/01/2018 (onwards)	Discrimination contrary to S57 (5)	Mr McCluskey
10	Did the Fourth Respondents subject the Claimant to Victimisation by reasons of the Claimant having raised allegations of discrimination contrary to the Equality Act 2010 against (a) The Respondents **The protected acts** The Claimant refers to the list above at 1 – 17 **The victimisation alleged** The Victimisation consisting of the First Respondent instructing the same panel solicitor to advise the Union (Respondent) on the	16/01/2018 (onwards)	Discrimination contrary to S57 (5)	Ms Cunningham, Mr Gillam (with delegated authority from Mr McCluskey).

	Claimants complaints against the Union and advise both parties on the Claimant's legal claims against the RMT: creating a conflict situation, resulting in the claimant suffering numerous detriments			
11	Did the Fourth Respondents subject the Claimant to Harassment and Victimisation by reasons of the Claimant illness (which amounts to a disability) and having raised a number of allegations, including that of discrimination contrary to the Equality Act 2010. **The protected acts** The Claimant refers to the list above at 1 – 17 **The victimisation alleged** The discriminatory treatment (harassment and victimisation) consists of the Fifth Respondent Mr Gillam associating his complaints with the Claimants illness in an email dated 5th of June 2018, stating the Claimants protected complaints are linked to his disability and consequently considering his protected complaints have no "weight" or substance due to his disability and he was denied a service from the Respondent.	05/06/2018 onwards	Discrimination contrary to S57 (3) & (5)	Mr Gillam
13	Did the Fourth Respondents subject the Claimant to Harassment and Victimisation by reasons of the Claimant illness (which amounts to a disability) and having raised	13/11/2018 onwards	Discrimination contrary to S57 (3) & (5)	Mr Gillam

	a number of allegations, including that of discrimination contrary to the Equality Act 2010 **The protected acts** The Claimant refers to the list above at 1 – 17 19. The Claimant refers to his letter dated the 9th of November 2018 at page 612, where the Claimant informs Mr McCluskey that he was discriminated against by panel solicitors. The Claimant informs Mr McCluskey that he was discriminated against by panel solicitors. The Claimant also requests an adjustment and be referred directly to the EC 20. The Claimants letter dated the 3rd of December 2018, at page 622, regarding being discriminated against by panel solicitors and requesting an adjustment. **The victimisation alleged** The discriminatory treatment (harassment and victimisation) consists of the Fifth Respondent Mr Gillam associating his complaints with the Claimants illness in an email dated 13th of November 2018, implying the Claimants protected complaints are linked to his disability and consequently considering his protected complaints have no "weight" or substance due to his disability, as a result the Claimant was deprived of a service			