RESERVED **Case No: 2600403/2017**

EMPLOYMENT TRIBUNALS

Claimant:	Mr. A Teague	
Respondent:	Her Majesty's Revenue & Customs	
Heard at:	Nottingham	
On:	**February 2019**:	4th & 5th – (Reading in days)
	February 2019:	6th, 7th, 8th, 12th, 13th & 15th
	March 2019:	19th, 20th, 21st & 22nd
	May 2019:	20th, 21st, 22nd, 23rd & 24th
	June 2019:	14th, 17th, 18th & 21st
	July 2019:	15th & 16th
	September 2019:	12th, 13th, 18th, 19th, 20th & 25th
	October 2019:	8th
	October 2019:	21st & 22nd (In Chambers)

Before: Employment Judge Heap

Members: Mr. J Akhtar
Mr. J Hill

Representation
Claimant: In person
Respondent: Mr. E Beever - Counsel

RESERVED JUDGMENT

1. The complaint of unfair dismissal fails and is dismissed.

2. All complaints of direct disability discrimination fail and are dismissed.

3. All complaints of victimisation fail and are dismissed.

RESERVED REASONS

BACKGROUND & THE ISSUES

1. This is a claim brought by Mr. Adrian Teague (hereinafter referred to as "The Claimant") against his now former employer, Her Majesty's Revenue and Customs (hereinafter referred to as "The Respondent"). The complaint is one of direct discrimination relying on the protected characteristic of disability contrary to Section 13 Equality Act 2010 ("EqA 2010"); victimisation contrary to Section 27 EqA 2010 and of unfair dismissal contrary to section 94 Employment Rights Act 1996 ("ERA 1996").

2. We first commenced our dealings with this claim as long ago as 4th February 2019. At that stage, the hearing was listed for some 10 days duration. Various issues arose at the outset and it rapidly became clear that that time estimate would not be sufficient to deal with all of the issues involved in the claim. Not least, difficulties had arisen in that the Claimant had not produced a witness statement and had also not read any of the documents contained in the voluminous hearing bundles. We deal with those matters further below.

3. By the time that the matter came before us, in addition to the unfair dismissal complaint, the claim comprised 15 separate acts of victimisation and some 14 acts of direct discrimination. All of the direct discrimination complaints relied on the protected characteristic of disability and by that stage the Respondent had conceded that the Claimant was at all material times a disabled person within the meaning of Section 6 Equality Act 2010. Some of those complaints, or at least part of them, have been withdrawn by the Claimant during the course of the hearing or have otherwise been the subject of an application to amend the claim which altered the landscape of one of the allegations. We do not deal with those matters in detail here as they are already recorded within earlier Orders to which we have referred below.

4. Schedule Two to this Judgment sets out the complaints advanced as they were at the close of the evidence and submissions.

5. During the course of the hearing and so as to fully understand his case and assist him in ensuring that all relevant matters were put to the Respondent's witnesses in cross examination, we asked the Claimant to set out in schedule form details of the facts and matters upon which he relied in respect of the complaints of victimisation and direct discrimination. Those matters are also set out at Schedule Two to this Judgment and we shall come back to them within the course of this decision.

6. The first two days of hearing time were used for the Tribunal to read into the substantial number of witness statements and relevant documents within the hearing bundle. During the course of that reading in time and so as to seek to assist the parties (but particularly the Claimant given that he appeared as a litigant in person) we prepared a draft list of the issues that the Tribunal would

need to determine in relation to the claims. Again, we do not rehearse the content here as a copy of that list of issues is appended to this Reserved Judgment at Schedule One. The content of the list of issues was discussed with the parties and with particular reference to the protected acts upon which the Claimant appeared to rely for the purposes of the victimisation complaints. The list of issues had taken those alleged protected acts which appeared to be expressly referenced in the Claim Form itself but we gave the Claimant the opportunity to consider those matters, and the list of issues generally, further.

7. This had the result of the Claimant adding substantially more protected acts than appeared to initially engage in regard to the narrative in the Claim Form. We allowed a substantial number of other protected acts to be added and relied upon, although we would observe that those additions appeared to be largely taken from the Claimant's general perusal of documents within the hearing bundle rather than by specific reference to any particular mechanism of identifying acts which he says caused him to suffer detriment. We will come to that further in due course.

8. However, whilst we permitted the Claimant to revisit the list of issues on a number of different occasions, a point came when it was necessary to draw a line in the sand given that he was still seeking to add more protected acts based on his further consideration of the documents in the hearing bundle whilst already in the midst of cross-examining witnesses for the Respondent on complaints that included victimisation.

9. By the time that we drew that line in the sand the Claimant had added a further 23 protected acts over and above those which he expressly referred to in his Claim Form, bringing the total number relied on to some 35. We acknowledge the Claimant's dissatisfaction with our decision to refuse him the opportunity to add further protected acts but we are satisfied, as recorded within the relevant set of Orders dealing with that matter, that the Claimant had had more than sufficient opportunity to consider the list of issues and provide any further necessary detail.

10. Mr. Beever helpfully distilled those protected acts into tabular form within his closing submissions and set out that the Respondent conceded that 13 of them constituted protected acts for the purposes of Section 27 EqA 2010. The Respondent contended that the content of the remainder could not properly constitute protected acts.

THE CLAIMANT'S POSITION

11. The Claimant contends that during the latter stages of his employment with the Respondent he was subjected to direct discrimination on the basis of his disability, namely depression, and that that culminated in his dismissal for alleged capability grounds. As we have already identified above, the Claimant suffers from depression. He contends that he was treated less favourably than other staff were or would have been treated and that the reason for that difference in treatment is because of his disability. The Claimant relies, save as for one allegation of direct discrimination, on hypothetical comparators.

12. The Claimant advances an overarching case that everyone in the Respondent organisation, or at least those who dealt with him, were inherently prejudiced, either consciously or unconsciously, towards him on the grounds of his disability and in short terms, he therefore contends that any adverse treatment received was on the grounds of that particular prejudice and a negative perception of him because of his disability.

13. Alternatively, the Claimant contends that as a result of what he refers to as him having "appropriately challenged" discriminatory behaviour towards him and/or a discriminatory culture, the Respondent, or at least certain staff within the Respondent organisation, were prejudiced against him and their actions of which he complains amounted to victimisation.

14. The Claimant also contends, as can be seen from the narrative which is included at Schedule Two, that there is an overarching culture of bullying, harassment and discrimination within the Respondent organisation and that any attempts to challenge that is met with hostility and action to prevent him from raising further "legitimate protected acts".

15. Against that background, the Claimant contends that the Respondent ultimately sought to remove him from employment, either because of his disability or otherwise because he had done a protected act or acts and challenged the aforementioned culture.

16. He further contends that his dismissal was unfair in that there was no potentially fair reason to dismiss him and that the Respondent did not act fairly and reasonably in treating capability (that being the reason advanced) as a sufficient reason for dismissal.

17. The Claimant also contends that the reason for dismissal has changed and relies in relation to this matter on the content of an Order of Employment Judge Ahmed made at a Preliminary hearing to which we refer further below. The Claimant further contends that the dismissal process was procedurally deficient and, particularly, that the Respondent failed to follow their own Attendance Management Policy.

THE RESPONDENT'S POSITION

18. The Respondent contends entirely to the contrary. It is not accepted by the Respondent in respect of many of the communications upon which he relies that the Claimant had done a protected act. Insofar as there were concessions that the Claimant had done a protected act and/or where the Tribunal might otherwise find that to be the case, the position of the Respondent was that the treatment complained of by the Claimant either did not amount to detriment or the treatment complained of was not materially influenced by any of the protected acts relied upon.

19. Insofar as the Claimant's complaints of direct disability discrimination are concerned, the Respondent's position is that disability was not a factor in any of the treatment of which the Claimant ultimately complains.

20. With regard to the unfair dismissal claim, the Respondent's position was that the Claimant's dismissal was by reason of capability under the Respondent's Attendance Management Policy and that having regard to all the circumstances of the case they acted fairly and reasonably in treating that as a sufficient reason to dismiss.

21. The foregoing is a very broad summary of the respective positions of the Claimant and Respondent but the parties should be assured that we have paid careful attention to both the evidence and to their written and oral submissions, even when those are not rehearsed in detail here.

THE HEARING, WITNESSES AND CREDIBILITY

22. We should observe that although this hearing has occupied 32 days of Tribunal time, those have not been continuous and we have sat in blocks, or tranches, of hearing time. Whilst that is not necessarily always a desirable course, it has been one that has been necessary in these circumstances to take into account both the availability of the Tribunal and Counsel for the Respondent, but also to provide the Claimant with time to undertake additional preparation and to have some respite from the proceedings.

23. We have dealt with a considerable number of interlocutory matters during the course of those tranches of hearing dates. That included, of course, how to proceed given the lack of a witness statement for the Claimant. It became our practice, in order to assist both ourselves and the parties, to record each and every one of those matters within Orders sent to them shortly after the conclusion of that particular tranche of hearing dates. The Employment Judge has also held telephone Preliminary hearings between a number of the tranches of hearing dates to ensure that time was not lost within the hearing itself dealing with interlocutory matters. We have produced no less than nine different sets of Orders in that regard in respect of decisions either made at the hearing or during telephone Preliminary hearings for case management. For those reasons, we do not, as would be the normal course, deal with those particular interlocutory matters here and instead the reader is referred to the various case management Orders set out below which took place during the course of the hearing and also at telephone Preliminary hearings. Those case management Orders were as follows:

    a. Orders made at a hearing on 6th February and 13th February 2019;

    b. Orders made at a telephone Preliminary hearing on 12th March 2019;

    c. Orders made at a hearing on 19th and 20th February 2019;

    d. Orders made at a telephone Preliminary hearing on 29th April 2019;

    e. Orders made at a hearing between 20th May and 24th May 2019;

    f. Orders made at a telephone Preliminary hearing on 23rd September 2019;

g. Orders made at a hearing on 14th, 17th, 18th and 21st June 2019;

h. Orders made at a hearing on 15th and 16th July 2019;

i. Orders made at a telephone Preliminary hearing on 23rd September 2019.

24. Prior to our beginning to deal with the hearing of the claim, the matter had also been the subject of previous Preliminary hearings for case management. The first of those was a hearing on 6th July 2017 (see pages 27 to 30 of the hearing bundle) before Employment Judge Clark. There was thereafter an attended Preliminary hearing before Employment Judge Hutchinson on 14th February 2018 (see pages 38 to 48 of the hearing bundle) and that Preliminary hearing resumed before Employment Judge Hutchinson on 25th April 2018 (see pages 87 to 91 of the hearing bundle).

25. During the course of that latter hearing, the Claimant withdrew a number of complaints when Employment Judge Hutchinson had notified his intention to make Deposit Orders in respect of them. At the same Preliminary hearing, a number of other complaints were struck out by the same Employment Judge under the provisions of Rule 37 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("The Regulations") as having no reasonable prospect of success.

26. The Claimant has sought to revisit those matters during the course of the hearings before us and our decisions in relation to those matters are recorded in the Orders to which we referred above. In short, we cannot and have not revisited those earlier decisions taken by a different Employment Judge or the Claimant's unequivocal withdrawal of complaints.

27. A further Preliminary hearing took place before Employment Judge Ahmed on 16th October 2018. At that point, matters in relation to witness statements, disclosure of documentation and amendment applications were dealt with. We do not deal with all of those matters here as they are more than adequately set out in the Orders sent to the parties by Employment Judge Ahmed after that particular Preliminary hearing.

28. However, we would observe that an unusual feature of the case has been that the Claimant has not produced a witness statement. The Claimant tells us that he is unable to do that and relies on a report from a Dr. White, which we have considered extensively during the course of these proceedings and which set out that the Claimant's disability (namely mental health issues) rendered it difficult for him to adequately prepare for the hearing, including reading the documents contained within the hearing bundle. The Claimant told us that he did not understand how to prepare a witness statement and thus by the time that the matter came before us for the first time, we became aware that no such statement had been produced. Various options were explored and which are recorded within the first set of case management Orders to which we have referred above.

29. The Claimant told us that he was not in a position to produce a witness statement, even with an adjournment to assist him. Neither party wished to abandon the hearing and for it to be relisted after production of a witness statement and, in all events, the Claimant's position was that he was not in a position to prepare one within any realistic timeframe. We proceeded as best we could and, with the agreement of both parties, determined that we would hear from the Respondent's witnesses first and for both Mr. Beever and the Tribunal to keep a careful record of the Claimant's cross examination so as to seek to understand what his evidence was to be in respect of his claim.

30. Whilst we recognise that this has been far from ideal for everyone concerned, there was in reality little other option but to proceed in this way if the claim was to be heard at all and taking into account the wishes of both the Claimant and Respondent not to postpone the hearing.

31. We should observe here that we have made a number of adjustments for the Claimant to seek to assist him in the course of the hearing. Those have included giving the Claimant breaks when required; where possible not requiring him to work on preparation of the case in the evening; adjourning the hearing when the Claimant did not feel well enough to continue; adjourning the hearing to allow the Claimant time to read relevant witness statements and documents given that we discovered at the outset that he had only read part of one of the 17 witness statement adduced by the Respondent before he had found himself unable to carry on and also that he had not been able to read the hearing bundle either; copying the hearing bundles for the Claimant– which at that stage ran to some 2007 pages – so that he did not have to transport them on the train; putting questions for the Claimant where he experienced difficulty in doing so or had not covered an important area in cross examination; and ending the hearing at no later than 4.50 p.m. each day so that he was able to catch a certain train and therefore not arrive home too late in the evening.

32. There was a gap between the close of evidence and the day which we allocated for submissions. That allowed both parties with a reasonable opportunity to prepare for those final submissions. The Claimant had made it clear earlier in the hearing that he was not in a position to prepare written submissions but Mr. Beever, who represented the Respondent, provided his written submissions to the Claimant ahead of the resumed hearing to allow the Claimant an opportunity to consider them and to formulate his own responses in reply.

33. As it was, the Claimant did in fact produce written submissions, albeit handwritten submissions, but that was not a matter which the Tribunal was aware of until after the close of the hearing when the Claimant subsequently wrote to the Tribunal indicating that he had had insufficient time to make submissions (albeit we had allocated half a day each for the parties and that is what they received) and that he had not been given the opportunity to hand in his notes.

34. As the Tribunal had not been aware that the Claimant had notes to hand in because he had not told us, we had not asked for them. The Claimant was given the opportunity thereafter to send in his notes in relation to this matter and we confirm that we have considered those as part of our deliberations. Those deliberations took place on 21st and 22nd October 2019. The Respondent was given the opportunity to reply to the Claimant's handwritten notes but did not do so, relying it seems on the submissions already made orally and in writing by Mr. Beever.

35. We should perhaps observe that during the course of this hearing, both we and the Tribunal system generally have been the subject of some degree of criticism from the Claimant. That has most notably been the case in times when we have made interlocutory decisions with which the Claimant disagreed although at those points we have made him aware of his right of appeal to the Employment Appeal Tribunal against those decisions. At times the Claimant has opined that he does not believe that he has or will receive a fair hearing. We have dealt with those criticisms on each of the occasions that they have arisen and whilst it is disappointing, given the level of accommodation afforded by the Tribunal to the Claimant, that he did not believe that he had been treated fairly, that is a matter that we have put firmly from our minds when considering the merits of the claims that he has advanced.

36. During the course of the hearing, we heard evidence from the following witnesses on behalf of the Respondent:

    a) Lynn Coulby – Assistant Director of Wealthy and Mid-sized Business Compliance and the investigating officer and decision maker in respect of the Claimant's third grievance.
    b) Mary Aiston – Director of Counter Avoidance who was the recipient of various communications from the Claimant and who took a decision to apply the Vexatious Complaint Policy to him.
    c) Gary Gatter – a member of the Private Office of Jennie Granger, Director of General Enforcement and Compliance with whom the Claimant sought to communicate.
    d) Monique Deveaux (nee Bruce) – a senior officer Front Line Manager and the Claimant's second appointed Keeping in Touch ("KIT") contact.
    e) Jamie Gracie – a then case worker in the Civil Service HR casework team at the material time.
    f) Dan Goad – HR Director for CEO Group and Chief People Officer within the Respondent who took a decision in relation to the Claimant's entitlement to compensation under the Civil Service Compensation Scheme.
    g) Tom Oatley – a senior officer Front Line Manager who was the decision maker in respect of the Claimant's dismissal.
    h) Sarah-Jayne Williams – Head of HR Casework within the Civil Service HR Team and who was appointed as a Single Point of Contact ("SPOC") in respect of the Claimant.

i) Ian Marshall – Head of Customer Service for Personal Tax who was the final decision maker with regard to the Claimant's appeal against the determination of his employment.
j) Emma Spear – Regional Change Lead for the Cardiff Regional Centre and who dealt with the Claimant's appeal against the outcome of his third grievance as determined by Lynn Coulby.
k) Tim Bowes – Assistant Director of Mid-sized Business Compliance and the Claimant's second-tier line manager.
l) Dan Coughlin – HR Director for Customer Compliance Group within the Respondent who took a decision in relation to putting in place the single point of contact ("SPOC") arrangements.
m) Melanie Clare – HR Business Partner who had an overview of a number of actions involving the Claimant's grievance and attendance management policy issues.
n) Sheldon Whatmough – Member of the HR Case Work Team within the Respondent.

37. We had not originally been due to hear from either Melanie Clare or Sheldon Whatmough but the Claimant indicated his view that there was a need to hear from them and accordingly the Respondent agreed to call both to deal with issues which had arisen from the evidence of other witnesses and from disclosure of documents. We say more about the issue of disclosure later. Copies of witness statements were served for both Ms. Clare and Mr. Whatmough during a break in the hearing tranches and time scheduled for the Claimant to prepare his cross-examination of those additional witnesses.

38. We were also furnished with witness statements by the Respondent from a Mr. Steve Billington and Ms. Samantha Edwards. Neither were called by the Respondent on the basis that the evidence which they were to give was no longer relevant given the withdrawal by the Claimant of complaints relating to pension contributions. As recorded in a previous case management Order, we determined that we did not need to hear from them but nor would we be able to place any weight upon their witness statements as a result. However, it was not necessary for us to do so in all events given the withdrawal of the particular allegations to which their evidence was ultimately relevant.

39. On behalf of the Claimant, we heard from the Claimant himself, albeit we did not of course have a witness statement setting out his evidence in chief and his evidence simply proceeded straight into cross examination.

40. We also heard on behalf of the Claimant from Mr. Mike Rhodes, a former Manager within the Respondent organisation who had been appointed prior to Mr. Ian Marshall to deal with the Claimant's appeal against dismissal. Mr. Rhodes was called under the terms of a Witness Order as applied for by the Claimant and we express to him again our gratitude for his agreement to attend at the Tribunal, which would have come entirely out of the blue after he had left the Respondent and a significant period after he ceased to have any involvement with the appeal. We are also obliged to him for his helpful

preparatory step of setting out a written note of the evidence that he would be able to give to the Tribunal.

41. We should also perhaps observe here that whilst the Claimant has impressed upon us on a number of occasions his inability to prepare for the hearings and for cross-examination on account of his disability, we nevertheless considered that he was afforded every opportunity to enable him to present his case and, on the whole, he was able to put the points that he wished to put in cross-examination or, where some points had been omitted, those were put by the Judge on his behalf.

42. We were also satisfied that he was sufficiently familiar with the bundle and the witness statements to enable him to more than adequately cross-examine the Respondent's witnesses which, in many cases, was forensic in detail and took some considerable period of time. We also took the necessary steps to assist the Claimant insofar as it was permissible for us to do so in order to ensure that he was placed on as equal a footing as possible with the Respondent, who was of course represented by experienced Counsel. That included assisting the Claimant in areas of cross-examination as indicated above where, for example, he had not put a particular point to a witness or in assisting on occasions with formulation of the questions to be put or location of documents. All members of this Tribunal panel have a considerable number of years' experience sitting in this jurisdiction and we have frequently encountered litigants in person in complex discrimination cases. We did not consider the Claimant in this case to fare any differently from other litigants in person and we are satisfied that he was afforded a fair hearing with as much assistance from the Tribunal as we were legitimately able to afford him.

43. We should also perhaps say a word here regarding the assistance which Mr. Beever has provided to us during the course of the hearing. That has included assisting the Claimant in the location of documents; dealing as promptly as possible with continuing disclosure issues; keeping a careful note of cross-examination by the Claimant of the Respondent's witnesses which allowed us all to proceed without the Claimant having produced a witness statement and cross examining the Claimant with an appropriate degree of sensitivity.

44. We should also observe that at the conclusion of the hearing we raised with the parties that there would be a delay before the Tribunal were able to deliberate and reach a decision and thereafter what would clearly be a lengthy decision would need to be typed before the Employment Judge was able to finalise a draft and then submit that to the Tribunal members for comment. As such, we explained that there was likely to be a delay in receiving this Reserved Judgment. As it has transpired, that delay was more protracted than had been envisaged. Following our deliberations and decision taken on 21st and 22nd October 2019 a lengthy Reserved Judgment was dictated which comprised over five hours of dictation. Limited administrative resources meant that that lengthy Judgment could not be prepared in draft form until 23rd December 2019. That coincided with leave that the Employment Judge was taking and she did not return until 6th January 2020. Thereafter, there has been a delay in the Judge being able to fair up a draft for consideration by the

Tribunal members as a result of judicial and other commitments, including sitting on other cases both in and outside this jurisdiction.

45. However, the parties can be assured that the Judge has paid careful regard when fairing up the Judgment to her notes of evidence, notes of deliberations on 21st and 22nd October 2019; the witness statements and the documents adduced in evidence. Whilst the delay is both unfortunate and regrettable, we are satisfied that this has not affected the findings or conclusions reached within this Reserved Judgment and the parties have been kept informed of matters. However, Employment Judge Heap apologises to the parties, and to the Claimant particularly, for that delay and thanks them for their patience in awaiting the same.

46. We make our observations in relation to matters of credibility in respect of each of the witnesses from whom we have heard below. In addition to the witness evidence that we have heard, we have also paid careful reference to the documentation to which we have been taken during the course of the proceedings and also to the oral and written submissions made by the Claimant and by Mr. Beever on behalf of the Respondent.

47. One issue that has invariably informed our findings of fact in respect of the claim which is before us is the matter of credibility. Therefore, we say a word about that matter now.

48. We begin with our assessment of the Claimant. Although we have no doubt whatsoever that the Claimant has a firm and strident belief that he has been discriminated against; victimised and generally treated unfairly with regard to his dismissal and a number of other matters, ultimately, as we shall come to, those are not issues which are rooted in any fact. The Claimant regrettably sees all actions through the prism of his overarching contention that the Respondent is institutionally and negatively predisposed towards those who are disabled and also those who make complaints of discrimination or challenge what he sees as a discriminatory culture.

49. We shall also come to the fact that the Claimant does not deploy any particular facts in the vast majority of cases to support any suggestion that the treatment of which he ultimately complains was motivated by his mental health disability or, otherwise, by reason of the fact that he had made complaints about discrimination but that he simply deploys a number of emotive stock phrases. One such example which features more than once at Schedule Two is a prime example:

"*It is my disability that directly resulted in the act and therefore would not have happened to anyone without my disability. A hypothetical comparator would be treated more favourably as they would be treated in accordance with HMRC policy and guidance. A reason for the act was because I have a mental health disability and therefore all rights, safeguards and protections that are available to all other employees are deemed to no longer apply to me. This is because my disability has been used to portray me as aggressive and dangerous. A hypothetical comparator would be treated more favourably as*

they would be treated in accordance with mandatory guidance. HMRC has a culture of discrimination, harassment and victimisation and this act is evidence of that that people acted in accordance with the Respondent's plan to punish the Claimant for having a mental health disability and displaying the known and expected consequences of such. The protected acts identified were viewed by the Respondent as an unacceptable challenge to the culture of bullying and discrimination which must not be allowed to proceed. This was the latest in a long campaign of victimisation due to my refusal to accept the culture of discrimination that is enforced in HMRC and my constant attempts to undertake protected acts to challenge this. This forms part of a lengthy concerted campaign of victimisation as being directly linked to my attempts to undertake protected acts."

50. The Claimant's own witness evidence and cross examination of the Respondent's witnesses was peppered with similar themes and also, on occasions, with rather contradictory positions. One notable issue in this regard was the Claimant's view of Human Resources, including that it was "not a real job" whilst also suggesting that he might have sought to pursue a senior opportunity in that department at some stage in the future or that such could have been considered as an alternative to dismissal.

51. Whilst again we have no doubt that the Claimant ultimately believes such a discriminatory and victimising culture to exist as we shall come to, that belief is not rooted in fact nor was the Claimant able to take us to any facts from which we could seek to understand a number of the allegations that he was raising. The allegations were serious ones and we had to conclude in many areas that the Claimant had not really given any real thought to whether or not he was going to be able to make out those particular complaints. That was despite us having sought to assist the Claimant at an early stage by providing him with a note to provide some guidance as to the legal tests for direct discrimination and victimisation so that he could seek to apply that to the facts of his own case.

52. It has also been a rather troubling feature of this case that the Claimant has ultimately been unable to pin down the claims that he is actually making and the problem in reality was a difficulty in him appreciating that he would actually be required to prove his discrimination case in the first instance by deploying facts rather than mere assertions. He also had to be frequently reminded during cross examination of the difference between a complaint of direct discrimination and discrimination arising from disability - the latter of which was not a claim which was before us in these proceedings.

53. Whilst we accept of course that the Claimant is a litigant in person, that he has a mental health disability and that he has raised on a number of occasions difficulties with preparation, for which we have adjusted processes where we can, it is concerning that he continued for example to seek to add further protected acts to those that he had identified in his original Claim Form and that simply appeared to be by reference to what he could pick out of the bundle of documents as referring to victimisation or discrimination without really giving any real thought to how, or whether he was in fact saying, that those particular

communications motivated people to act in any certain way. Whilst we accept of course that the Claimant had not read the hearing bundle prior to the commencement of the hearing itself, that would not have ultimately been necessary for the Claimant to be able to articulate the claim that he was making.

54. The somewhat shifting sands of the claim was also a hallmark, as we have observed above, of the Claimant's completion of the schedule of allegations at Schedule Two to include what facts or evidence he relied upon to show that there was direct discrimination or victimisation. We accept the submissions of Mr. Beever, and indeed had observed for ourselves, that the Claimant relied generally on nothing but an assertion that the act complained of must be discrimination or victimisation without any real thought or basis as to how he was going to seek to prove that.

55. This is perhaps most noticeably demonstrated by the Claimant's reliance on protected act number three, which were comments that he had made on a Mental Health Action Plan for the Respondent's Large Business team dated 12th February 2016. The Claimant relied on this document as a protected act which he contended had caused him to be subjected to victimisation yet he was not able to say who that document had ever been sent to other than "a number of senior managers in the Large Business team at the time".

56. The Claimant continued to rely on that particular protected act despite the fact that it is difficult to see how it would be possible to do so when he could not say who was aware of it or what possible influence it might have had on any the individuals who he says subjected him to the treatment of which he complains.

57. We should also perhaps observe that there was also an exhibition of a number of the same traits for which he was criticised by the Respondent during the course of the hearing before us. That manifested itself by way of the Claimant continuing to raise issues which had already earlier been dealt with to the delay of getting on with the actual evidence in the case and also often repeated complaints in relation to how he perceived the Tribunal to have treated him unfairly, and in respect of one Employment Judge particularly. That had led to the Claimant identifying earlier in the proceedings a number of Employment Judges who he did not want to hear the case. That included most of the Employment Judges that had had any previous dealings with the file. It was perhaps an unfortunate situation that the Claimant continued to levy criticism in relation to any decision taken with which he did not agree, which included allegations that the Tribunal had caused him detriment or disadvantage.

58. The exhibiting of many of the same traits for which he was criticised by the Respondent in our view gave credence to the accounts before us as to the Claimant's behaviour in the period of his employment and did not resonate with the Claimant's continued denials that he had or would act in such a manner. In many cases, as we shall come to, in all events, the documents speak for themselves.

59. We raise those matters only to show a consistency of behaviour because it is relevant to a number of the difficulties which the Respondent experienced with the Claimant and which we set out in our findings of fact below. We stress, however, that the Claimant is perfectly entitled to vocalise any concerns that he has and any criticism of us, our decisions or that of other Judges in this region have been put from our minds when dealing with the merits of the complaints before us.

60. Invariably, the matters that we have raised above as to the prism through which the Claimant views the Respondent and the lack of factual evidence to support that position led us to have difficulties in accepting the evidence of the Claimant, particularly where that was at odds with the evidence of other witnesses or the documentation that we had before us. As we have already observed, in all events it was difficult to discern any facts upon which the Claimant might be seeking to rely, rather than bland assertions of the form which we have identified above.

61. Therefore, unless we have expressly said otherwise, we have preferred the evidence of the Respondent's witnesses who we found on the whole to be much more candid, open to the possibility of an alternative point of view and accepting that, in some cases, things could and should have been done better. That was perhaps in contrast to the Claimant who made very little if any of what would have been sensible concessions during the course of Mr. Beever's cross-examination.

62. We considered Mary Aiston, Dan Coughlin and Emma Spear to be particularly impressive witnesses. Mr. Coughlin's evidence was consistent and in accordance with the contemporaneous documentation before us. That in fact led to the rephrasing of the allegation which had previously involved Mr. Coughlin by the Claimant by way of him seeking an amendment to that particular allegation. That amendment application is detailed in earlier Orders.

63. We also considered Sarah-Jayne Williams to be an impressive witness who was able to give a reasonable and rational explanation as to the actions that she took during the course of her dealings with the Claimant and, again, she was able to accept that things could have been done better and indeed proffered an apology to the Claimant for circumstances where that had occurred.

64. We did consider that some of the Respondent's witnesses appeared to have a distinct lack of recollection in relation to certain issues or actions involved in the claim. That included most notably Lynn Coulby and Melanie Clare. Whilst in relation to the latter particularly as an Human Resources professional, that might on the face of it appear surprising, we do take into account that the matters upon which both witnesses were being asked to comment in cross-examination in detail by the Claimant were ones which had occurred some number of years previously.

65. Against that background and taking into account their relatively limited involvement – with Lynn Coulby dealing only with one particular grievance and with Melanie Clare simply by having an overview of the whole process involving the Claimant at a higher level - that is not something which we view as particularly surprising. We are therefore satisfied that there was no attempt to be evasive or to mislead but that any lack of recollection or confusion in evidence was as a result of the considerable passage of time since the events in question.

66. A particular instance in relation to Melanie Clare was the difference between her evidence and that of Jamie Gracie and Sheldon Whatmough as to preparation of a draft letter and report to Dan Coughlin. We come to that issue further in our findings of fact below but we are satisfied that the differences in recollection resulted from the passage of time and nothing more sinister as the Claimant infers.

67. However, we should make mention here of Monique Deveaux and the specific issue which the Claimant relies upon in terms of both her attitude towards him and also the issue of credibility. That is in relation to a Facebook post which the Claimant had obtained from Ms. Deveaux's personal Facebook page. This was a so called "meme" which had been shared from the account of another individual. It featured Kermit the Frog and the caption *'Ever look at someone and think this mother fucker is going to be the reason I lose my job'*. It was posted by Ms. Deveaux the day after she had had what might be described as somewhat fractious dealings with the Claimant. She had gone on to reply to a comment made by another individual, presumably a Facebook friend, on that particular posting when he had commented 'Often' and in reply Ms. Deveaux had put 'Yup!'.

68. Ms. Deveaux's evidence was that that post had nothing to do with the Claimant and that although she was not a prolific Facebook "poster", it was simply something that she had seen and shared but she could not now say why she would have done that.

69. Ultimately on balance, we did not accept that evidence. Given the timing of that particular posting and the difficulties that Ms. Deveaux was experiencing with the Claimant, we consider it more likely than not that that Facebook post was made as a result of the frustrations that she was experiencing in dealing with him.

70. We considered on that basis, having found her to have not been credible on that point, whether that tainted the remainder of her evidence. We ultimately found that it did not, particularly as many of the documents which we had before us spoke for themselves. We also take into account in this context that the Claimant had made it plain in both comments made to the Tribunal and also in cross-examination of other witnesses whilst Ms. Deveaux was present, that he expected that if findings were to be made on this particular issue that Ms. Deveaux had shared the post with reference to him, or indeed at all, then that would place her in breach of the Respondent's social medial policy and that there would be an expectation that action would be taken. The Claimant's

expectation or suggestion in that regard appeared to be that the Respondent should therefore take formal disciplinary action against Ms. Deveaux, or at least that was what we perceived him to be saying, certainly in cross-examination of Mary Aiston.

71. That clearly placed Ms. Deveaux between something of a rock and a hard place given that had she admitted in evidence that the post was about the Claimant, he would clearly have been calling for the Respondent to have taken disciplinary action against her. Given that senior members of the Respondent were present during the course of the Tribunal hearing, it would be exceptionally difficult in those circumstances for such an admission to be made. Whilst we did not consider on balance that Ms. Deveaux was telling us the truth about the Facebook post, in the context that we have described above we do not view that as having tainted the rest of her evidence but we have treated it with caution and, particularly, have examined it very carefully against the contemporaneous documentation.

72. We are also satisfied that the posting of that particular meme on social media did not taint Ms Deveaux's feelings towards dealing with the Claimant. As we shall come to, he was undoubtedly very difficult to deal with and although the posting was not a professional or appropriate way of dealing with matters, it in our view represents only frustration as to the difficult circumstances in which Ms. Deveaux found herself. It was also a post which did not draw specific attention to the Claimant, was not something Ms. Deveaux ever believed that he would see and was not disparaging or mocking of mental health or mental health issues.

THE LAW

73. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be below.

74. The Claimant's discrimination complaints all fall to be determined under the Equality Act 2010 ("EqA 2010) and, particularly, with reference to Sections 13, 27 and 39.

75. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

(1) An employer (A) must not discriminate against a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c)by dismissing B;
(d)by subjecting B to any other detriment.
(3) An employer (A) must not victimise a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;
(b)as to the terms on which A offers B employment;
(c)by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)—
(a)as to B's terms of employment;
(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
(c)by dismissing B;
(d)by subjecting B to any other detriment.

Direct Discrimination

76. Section 13 EqA 2010 provides that:

77. *"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".*

78. It is for a Claimant in a complaint of direct discrimination to prove the facts from which the Employment Tribunal could conclude, in the absence of an adequate non-discriminatory explanation from the employer, that the employer committed an unlawful act of discrimination (**Wong v Igen Ltd [2005] ICR 931**).

79. If the Claimant proves such facts, the burden of proof will shift to the employer to show that there is a non-discriminatory explanation for the treatment complained of. If such facts are not proven, the burden of proof will not shift.

80. In deciding whether an employer has treated a person less favourably, a comparison will in the vast majority of cases be made with how they have treated or would treat other persons without the same protected characteristic in the same or similar circumstances. Such a comparator may be an actual comparator whose circumstances must not be materially different from that of the Claimant (with the exception of the protected characteristic relied upon) or a hypothetical comparator.

81. Guidance as to the shifting burden of proof can be taken from that provided by Mummery LJ in **Madarassy v Nomuna International Plc [2007] IRLR 246:**

"'Could conclude' ….. must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of …… discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage …. the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like….. and available evidence of the reasons for the differential treatment.

The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

82. The protected characteristic need only be a cause of the less favourable treatment but need not be the only or even the main cause. A Tribunal when considering the cause of any less favourable treatment will be required to consider that question having regard not only to cases where the grounds of the treatment are inherently obvious, but also those where there is a discriminatory motivation (whether conscious or unconscious) at play (see **Amnesty International v Ahmed [2009] ICR 1450**).

Victimisation

83. Section 27 EqA 2010 provides that:

(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.
(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
(4)This section applies only where the person subjected to a detriment is an individual.
(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

84. It will not be sufficient for a Claimant to simply use words such as "discrimination" for that to amount to a protected act within the meaning of Section 27 EqA 2010. The complaint must be of conduct which interferes with a characteristic protected by the EqA. There need not be explicit reference to the protected characteristic itself but there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the EqA 2010 applies (see **Durrani v London Borough of Ealing UKEAT/0454/2012**).

85. In dealing with a complaint of victimisation under Section 27 EqA 2010, Tribunal will need to consider whether:

(a) The alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010 (which are set out above);

(b) If so, was the Claimant subjected to a detriment; and

(c) If so, was the Claimant subjected to that detriment because he or she had done a protected act.

86. In respect of the question of whether an individual has been subjected to a detriment, the Tribunal will need to consider the guidance provided by the EHRC Code (as referred to further below) and the question of whether the treatment complained of might be reasonably considered by the Claimant concerned to have changed their position for the worse or have put them at a disadvantage. An unjustified sense of grievance alone would not be sufficient to establish that an individual has been subjected to detriment (paragraphs 9.8 and 9.9 of the EHRC Code).

87. If detriment is established, then in order for a complaint to succeed, that detriment must also have been "because of" the protected act relied upon. The question for the Tribunal will be what motivated the employer to subject the employee to any detriment found. That motivation need not be explicit,

nor even conscious, and subconscious motivation will be sufficient to satisfy the "because of" test.

88. A complainant need not show that any detriment established was meted out solely by reason of the protected act relied upon. It will be sufficient if the protected act has a "significant influence" on the employer's decision making (**Nagarajan v London Regional Transport 1999 ICR 877**). If in relation to any particular decision, the protected act is not a material influence of factor – and thus is only a trivial influence - it will not satisfy the "significant influence" test (**Villalba v Merrill Lynch & Co Inc & Ors 2007 ICR 469**).

89. In any claim of victimisation, the Tribunal must be satisfied that the persons whom the complainant contends discriminated against him or her contrary to Section 27 EqA 2010 knew that he or she had performed a protected act (**Nagarajan v London Regional Transport [1999] ICR 877**). As per **South London Healthcare NHS Trust v Al-Rubeyi (2010) UKEAT/0269/09** and **Deer v Walford & Anor EAT 0283/10**, there will be no victimisation made out where there was no knowledge by the alleged discriminators that the complaint relied upon as a protected act was a complaint of discrimination

The EHRC Code

90. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

Unfair dismissal

91. Section 94 Employment Rights Act 1996 ("ERA 1996") creates the right not to be unfairly dismissed.

92. Section 98 deals with the general provisions with regard to fairness and provides that one of the potentially fair reasons for dismissing an employee is on the grounds of that employee's capability. The burden is upon the employer to satisfy the Tribunal on that question and they must be satisfied that the reason advanced by the employer for dismissal is the reason asserted and which is a potentially fair reason for dismissal falling under either Section 98(1) or 98(2) ERA 1996 and, further, that it was capable of justifying the dismissal of the employee. A reason for dismissal should be viewed in the context of the set of facts known to the employer or the beliefs held by him, which cause him to dismiss the employee (**Abernethy v Mott, Hay & Anderson 1974 ICR 323, CA**).

93. It is therefore for the employer to satisfy the Tribunal as to the reason for dismissal. If they are not able to do so, then a finding of unfair dismissal will follow.

94. However, if an Employment Tribunal is satisfied that there was a potentially fair reason for dismissal and that that is the reason advanced by the employer,

then it will go on to consider whether the employer acted fairly and reasonably in treating that reason as a sufficient reason to dismiss.

95. The all-important question of fairness is contained with Section 98(4) ERA 1996 which provides as follows:

> *"(4) Where the employer has fulfilled the requirements of subsection (1),* (in this case that they have shown that the reason for dismissal was redundancy) *the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case."*

96. There are many reported authorities concerning termination of employment of employees suffering long-term ill health but for the most part they all illustrate the point made by Phillips J in one of the first such cases, **Spencer v Paragon Wallpapers Ltd [1977] ICR 301**, that:

> *"Every case depends on its own circumstances. The basic question which has to be determined in every case is whether, in all the circumstances, the employer can be expected to wait any longer and, if so, how much longer? Every case will be different, depending upon the circumstances."*

97. It was also noted in the same case by Phillips J that the relevant circumstances include *"the nature of the illness, the likely length of the continuing absence, the need of the employers to have done the work which the employee was engaged to do".*

98. Cases of this nature are therefore inherently fact sensitive but key to the consideration of fairness in the context of a capability dismissal (once it has either been established that there was a potentially fair reason to dismiss on that basis or where it is not in dispute) is the process adopted by the employer before dismissing for that reason. The relevant considerations are whether the employer:

    a. Consulted with the employee concerned;

    b. Undertook a proper medical investigation so as to establish the nature of the illness and its prognosis; and

c. Gave consideration to other options such as redeployment, adjustments to working arrangements or ill health retirement where the employee is incapable of continuing in their current position.

99. Again, guidance can be found in that regard from the decision in **Paragon Wallpapers** and the observations as follows:

"In cases of ill health…usually, what is needed is a discussion of the position between the employer and the employee, so that the situation can be weighed up, bearing in mind the employer's need for work to be done and the employee's need for time to recover his health."

100. The burden is no longer upon the Respondent alone to establish that the requirements of Section 98(4) ERA 1996 were met in respect of the dismissal. This is now a neutral burden.

101. However, we remind ourselves that an Employment Tribunal hearing a case of this nature is not permitted to substitute its judgment for that of the employer. It judges both the employer's processes and decision making by the yardstick of the reasonable employer and can only say that the dismissal was unfair if either falls outside the range of responses open to the reasonable employer. (see **Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23**). Put another way, could it be said that no reasonable employer would have done as this employer did?

FINDINGS OF FACT

102. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of the issues in this claim. We have therefore invariably not made findings on each and every issue where the parties are in dispute with each other unless that is necessary for the proper determination of the complaints before us. We have particularly reminded ourselves in that regard that this is a case where the parties were at odds with each other on almost every issue that arose during the latter stages of the Claimant's employment and to make findings of fact on all of them would be both disproportionate and unnecessary.

103. The relevant findings of fact that we have therefore made against that background are set out below. References to pages in the hearing bundle are to those in the bundles before us and which were before the witnesses.

104. We should observe that there are a number of individuals named within these proceedings from whom we have not heard evidence. Many of them are the subject of criticism by the Claimant which, whilst not forming part of the claim, are said to be relevant to the surrounding circumstances. Given that this Reserved Judgment will be placed online we consider it unfair to name such individuals when they have not given evidence before us and had the opportunity to challenge the criticisms that the Claimant makes of them.

105. We shall therefore refer to any such individuals by use of their initials only. It will be evident to the parties, but not to the public at large, who those initials relate to in each case.

The Claimant's career and mental health issues

106. The Claimant first commenced work within the Civil Service on 1st September 1989. He joined the Respondent on 4th January 2000 but had his continuity of service throughout his Civil Service career preserved (see page 106 of the hearing bundle). Prior to his employment with the Respondent, the Claimant was employed by the Home Office from 31st May 1995 to 4th January 2001.

107. The Claimant therefore had a lengthy career within the Civil Service and indeed that is of course to his credit. Whilst working for the Respondent the Claimant was employed principally as a Tax Specialist. We have no doubt, and no one has suggested to the contrary, that the Claimant was a dedicated member of staff who ultimately served the Respondent well in relation to his role as a Tax Specialist and generally. We understand him to have had particular experience and expertise within his area of specialism and that in turn made him a valuable and well thought of member of staff.

108. The Claimant has suffered with mental health difficulties for several years and certainly since 2011 (see page 1966B of the hearing bundle). The Claimant has a severe anxiety state with obsessional features and ruminations (see page 1966E of the hearing bundle) and it is conceded by the Respondent that the Claimant has at all times been a disabled person within the meaning of section 6 EqA 2010 for the purposes of these proceedings.

The Claimant's first and second grievances

109. On 5th June 2014, the Claimant raised his first grievance with the Respondent (see pages 107 – 111 of the hearing bundle). It is a lengthy grievance and it is not necessary that we set out the contents in any great detail.

110. In short, it centred around events that had occurred at two PMR Masterclasses in April and September 2013 and, particularly, in relation to the actions of another member of staff, RP.

111. The grievance also referenced stress which the Claimant had experienced following actions after both PMR Masterclasses and, particularly, in relation to a presentation of a Simply Thanks voucher which had been made to RP by the Respondent, which the Claimant felt was inappropriate and that it represented an endorsement from the Respondent in relation to RP's earlier actions.

112. The Claimant also complained about actions which had been taken in relation to his sickness absence and difficulties in relation to return to work and Keeping in Touch ("KIT") arrangements.

113. Paragraph 20 of the grievance referred to one of the actions complained about which related to a contention that the Respondent had ignored his request for

input into a decision relating to the appointment of his line manager. That was referenced by the Claimant as having a detrimental effect on his health and, in his opinion, was further evidence of bulling and victimisation.

114. The Claimant went on to say within that part of his grievance the following:

"*My complaint does include a complaint of bullying, harassment and victimisation*".

115. The Claimant relies upon that comment as the first of his protected acts for the purposes of his victimisation complaints. The Respondent disputes that the content was such as to amount to a protected act and we make our findings on that issue below. At the time of this particular grievance, the Claimant was based within the Large Business team of the Respondent which is situated in Birmingham at City Centre House.

116. The grievance was passed to a fact finder, Sally Pigott, who produced a detailed fact finding report dated 30th October 2014. That was in turn passed to a decision maker, Angela Russell, to consider and determine the outcome of the grievance.

117. Ms. Russell wrote to the Claimant on 27th February 2015 (see pages 161 – 162 of the hearing bundle). She partially upheld the Claimant's grievance in relation to a delay in him being contacted after he had left the office and subsequent KIT arrangements not being properly maintained. By that stage, one of the individuals involved in that aspect of the grievance had retired and therefore no further action was taken, save as to log the matter on his personnel file in the event that he requested a reference in the future.

118. The part of the grievance relating to the actions of RP and others that the Claimant had complained about were not upheld. The Claimant was offered the right of appeal and advised as to how he should go about that. The outcome also made recommendations for resolution and moving forward, which were as follows:

a) That the Claimant move office location away from those who he felt had bullied, harassed and victimised him to make a fresh start and move on;

b) That a health and safety stress assessment was to be completed upon the Claimant's return to work in conjunction with a face to face meeting with an Occupational Health specialist to consider any current issues that the Claimant had; and

c) That the Respondent consider taking appropriate action (disciplinary if necessary) as a result of any issues arising from the investigation.

119. The Claimant appealed against the decision taken by Ms. Russell. Although that appeal was not upheld (see pages 181 – 183 of the hearing bundle) the Claimant did, however, receive a written apology from Judith Knott CBE, a

Director in Large Business, on behalf of the Large Business Directorate and the Respondent. That apology letter was dated 30th June 2015 and it apologised firstly for two instances of bullying behaviour by more senior members of staff in Large Business and that those incidents had occurred. The letter secondly apologised that Keeping in Touch ("KIT") arrangements had not been handled properly. In that regard, the letter from Ms Knott said this:

> "*Secondly, in the course of looking into your grievance I also found that, overall, Large Business directorate did not handle your keeping-in-touch arrangements, and your return to work following mental illness, as well as you, as a valued member of staff, were entitled to expect. I would like to offer you an apology for that too."* (See page 198 of the hearing bundle.)

120. The apology followed on from the outcome of the Claimant's second grievance, which was raised on 12th October 2014. The Claimant relies upon that grievance as his second protected act for the purposes of his complaint of victimisation. We do not have in the extensive documents before us a copy of the Claimant's original second grievance letter. What we do have, however, is a copy of the grievance manager's review which was completed by Judith Knott on 16th October 2014 on receipt of the grievance and her being allocated to deal with it.

121. Although the circumstances of the second grievance appeared to largely arise from issues stemming from the first grievance with regard to the events of the PMR Masterclasses, a decision was made to deal with matters separately. We note from Ms. Knott's review that the grievance recorded that the Claimant felt that he had been bullied and intimidated by his then line manager, MB, and by MB's manager, NJ, in relation to his Keeping in Touch arrangements. It also recorded that he felt bullied and intimidated in discussions with his new line manager, AW, about his return to work. The review also recorded that the Claimant felt that a proposed move from the Birmingham office (where it had been established he would not be able to return to) to a post in Nottingham was also a further example of bullying.

122. The Claimant also complained that his Keeping in Touch calls had been overheard by another individual, JG, and that senior managers in Birmingham had not taken actions to prevent what he perceived to be bullying by immediate line management.

123. He had also complained that the Respondent, or at least those within the Large Business Department, were trying to make him commit suicide (see pages 122 – 126 of the hearing bundle).

124. As well as the letter of apology, Judith Knott sent the Claimant a grievance outcome letter dated 25th June 2015 (see pages 189 – 190 of the hearing bundle). Again, the grievance was partially upheld. Complaints against NJ were said to amount to bullying as was the behaviour of JG in relation to being present during Keeping in Touch calls without that fact being disclosed to the

Claimant. The behaviour was not found to amount to victimisation or harassment and it was said that appropriate action would be taken.

125. Complaints made by the Claimant against others in relation to the alleged failures by senior managers were not upheld as bullying, harassment or victimisation but it was accepted that Keeping in Touch arrangements were not dealt with as they should have been. The Claimant was advised of the right of appeal and how to exercise that right.

126. The Claimant appealed against the decision of Judith Knott in relation to the aspects of his grievance that she had not upheld. We understand that appeal to have been partially resolved in the Claimant's favour with regard to a finding of harassment.

127. By that time, the Claimant had been the subject of two Occupational Health referrals and reports (see pages 118 and 157 of the hearing bundle). In short, those reports set out that it would be detrimental to the Claimant's mental health for him to return to the Birmingham office. In the interim, the Claimant had been allowed to work from home and had thereafter had a phased return to work, with modified hours and days of attendance and a change of location from Birmingham to Nottingham.

Reasonable Adjustment Passport

128. Following the first and second grievances, the Respondent also put in place a Reasonable Adjustment Passport, now known as a Workplace Adjustment Passport (or "WAP"), for the Claimant. That was put in place in conjunction with the Claimant's new Line Manager in Nottingham, HP.

129. The date on which the Reasonable Adjustment Passport was put in place was 8th December 2015, with it being due for a review on 30 September 2016. It is clear that the purpose of the review of the Reasonable Adjustment Passport was to ensure that the adjustments set out were still necessary and also that they were up to date and contained all necessary adjustments required to assist the passport holder – in this case the Claimant. That is common sense but it was also set out in advice from Human Resources ("HR") to HP and her immediate line manager, Tim Bowes, on 27th January 2016 (see page 224A of the hearing bundle).

130. The Reasonable Adjustment Passport set out the following agreed adjustments:

a) That the Claimant's base location would not at any stage be Birmingham and that if he was to attend in Birmingham for training events or business, then his Line Manager would ascertain in advance details of the event style and agenda and make arrangements to ensure that the Claimant was protected from stressors, as far as was reasonably practicable, and not uncomfortable with planned syndicate members;

b) That the Claimant was to have a buddy within his new Nottingham base to provide a supportive senior colleague with whom he could discuss urgent problems relating to his disability; to provide his Line Manager with timely awareness of any disability related problems and to provide the Claimant with a channel to receive location specific communications that might impact him and his work life;

c) In terms of performance reviews, it was to be recognised that the Claimant's wellbeing would be protected by management arrangements that would take into account his disability on a day to day basis. That was expected to be a more intensive management process and for assistance with any particularly challenging task to ensure that there were no barriers for delivery. It was further recognised that the Claimant's disability required a flexible form of work deliverables targeting and that there would be weekly one to one discussions to discuss work identified difficulties and set an agreed target;

d) That performance reviews would be moderated to take account of the expectation of output and speed of delivery. It was also agreed that as there were open unresolved formal grievances, that there would be reasonable time at work allowed for the Claimant to prepare and drive the grievances to a resolution; and

e) It was also agreed that the Claimant could remove himself from any circumstances where he felt that he was being exposed to bullying or exclusion and that he could remove himself from the office at short notice, either temporarily or for the rest of the day, to deal with any immediate crisis in regard to his mental health.

131. We pause there to note that part of the Claimant's case centres around an inherently or institutionally embedded attitude within the Respondent about those suffering from mental health disabilities and also those who raised complaints or protected acts. We remind ourselves that in this regard, that the two grievances that the Claimant had raised were ones which he relies upon as protected acts for the purposes of these proceedings but it is clear that the Respondent was entirely supportive of him in respect of those grievances – even to the extent of permitting him time at work to bring them to a conclusion – and there were no recriminations at all. Indeed, he received an apology from a very senior member of the Respondent organisation.

132. The Reasonable Adjustment Passport, which the Claimant has not suggested at any point was not adhered to by the Respondent, is also evidence flying totally in the face of the general contention as to institutionalised discrimination against those with mental health disabilities. Firstly, it is abundantly clear that there were significant adjustments agreed and put in place for him. That is not evidence of a culture that does not support those suffering from a mental health disability. Significant adjustments were proposed and agreed to ensure that the Claimant was not in any way disadvantaged.

133. Moreover, there was clearly no issue taken with the fact that the Claimant had raised concerns or complaints, which included allegations of harassment and victimisation, because he was specifically given time within the working day to work upon those grievances so as to bring them to a conclusion. Again, had the Respondent been of the mindset which the Claimant contends was prevalent throughout all of his dealings with them in relation to "closing down" those who did protected acts, it would be curious indeed for him to have been given time to work upon the advancement of those particular complaints. That simply does not sit with the pattern of behaviour which the Claimant describes in the course of these proceedings.

134. Similarly, the Claimant had also been enrolled onto the Positive Action Pathway programme by the Respondent. As can be seen from pages 225 to 228 of the hearing bundle, the Positive Action Pathway programme was a 12 month cross Government development scheme for ethnic minority, disabled, LGBT and female members of staff with a view to supporting those in underrepresented categories to develop the skills and confidence to fulfil their potential and remove any barriers to career progression.

135. The Claimant was specifically identified for inclusion on the Positive Action Pathway by the Respondent as a result of his mental health condition. Although the Claimant did not progress on the Positive Action Pathway, that was as a result of an extended period of sickness absence which we shall come to in due course. Had the Claimant not been absent, there is nothing before us to suggest that he would not have continued on the Positive Action Pathway.

136. Again, the fact that the Respondent participates in this initiative and had specifically identified the Claimant for inclusion within the same because of his mental health disability does not support the Claimant's overarching contention that those with mental health disabilities were targeted for negative treatment by the Respondent or that the Respondent is institutionally discriminatory towards those suffering from mental health conditions. If that was the case, we see no basis for the Respondent having specifically identified the Claimant for inclusion on the Positive Action Pathway nor identified him on more than one occasion – as was his own evidence before us - for management progression.

137. Furthermore, the Respondent specifically requested the Claimant's comments on a Mental Health Action Plan for Large Business which had been developed. The Claimant submitted a detailed report in relation to those matters which appears at pages 229 to 239 of the hearing bundle. That is accepted by the Respondent to be a protected act. The report identified suggestions where the Claimant felt that areas of support were lacking and where further work or steps could be taken to assist those suffering from mental health conditions. Again, if the Respondent was negatively pre-disposed towards those with mental health disabilities (or the Claimant generally because he suffered from such a condition) it would be unusual for them to have developed the action plan in the first place let alone sought the Claimant's input into the proposals.

138. As we have already observed above, the Claimant was not able to provide any indication to us as to who that particular report was sent to other than senior managers in Large Business at the time. There was no evidence that any of the individuals from whom we have heard during the course of these proceedings had had sight of that particular document.

Pension issues and the third grievance

139. In early 2016, there were difficulties in relation to the Claimant's pension contributions. Those issues did form the basis of allegation number 77 in relation to direct discrimination but we say very little about those matters given that that is a complaint which was withdrawn by the Claimant during the course of these proceedings.

140. What we would say, however, is that the matter descended into a considerable amount of tense communications with the Claimant, amongst other things, accusing those involved of fraud and the like. We agree with Mr. Beever in this regard that this showed perhaps something of a lack of objectivity on the Claimant's part and it is in our view demonstrative of the fact that each and every action with which the Claimant does not agree is generally met with an allegation against all those involved of direct discrimination, bullying, harassment or victimisation.

141. The pension point issue became the subject of the Claimant's third grievance. In relation to that particular grievance, although we do not go into it in great detail given the withdrawal of allegation 77, it did bear the hallmarks of what was to come in relation to later grievances and complaints. The complaint was set out in an email sent to SB of the Respondent's Human Resources Department and the relevant parts said this:

"I confirm that the named people in my formal complaint are those complained about but it is also important to note that the complaint is also into anyone else who has had an active role in these matters but whose involvement has not been brought to my attention. My expectation is that your investigation will obtain all email correspondence & notes of discussions which should identify whether there are others whose attitudes & behaviours are appropriate to include within the grievance. …" (see page 280 of the hearing bundle)."

142. Again, that showed a lack of objectivity in that the Claimant was seeking to raise a grievance against anyone with any involvement in the matter without any thought to whether there was in fact any evidence of any wrongdoing on their part. That was also to become a feature of later complaints raised by the Claimant with the Respondent.

143. SB investigated the matters raised by the Claimant in respect of the pension contributions issue and on 21st November 2016 a specialist fact finder report was produced. Thereafter a decision was made by SE on the grievance raised by the Claimant. We do not go into detail about that here given that complaints raised in these proceedings about the alleged actions of SB and SE were withdrawn by the Claimant during the hearing but we would observe that again there had been an escalation in respect of those complaints and in the final

analysis nine separate individuals, CBr, CB, DG, EG, JD, JM, LD, SR and VT were included within the scope of the grievance. None of the Claimant's complaints against any of those individuals were upheld.

Discussion with HP in June 2016

144. Shortly after the Claimant issued his third grievance, he was asked by his then Line Manager, HP, to obtain information from his General Practitioner about his medical condition. Although we have not heard from HP, we consider that to have been likely to have been requested in the context of looking at the Reasonable Adjustment Passport and in respect of the HR advice received in connection with a review of the same to which we have already referred above. There is support for that within the content of an email later sent by HP to her Line Manager, Tim Bowes, on 14th July 2016 which we refer to below and in the evidence of Tim Bowes during the course of this hearing.

145. We consider that this was a clumsy way of going about matters as the more normal course would have been for HP to have referred the Claimant to Occupational Health and for them to have obtained the necessary information from the Claimant's General Practitioner rather than asking the Claimant to obtain that directly. We do not know why HP decided to short-circuit that more standard process, but we do bear in mind here the Claimant's own evidence that he and HP enjoyed a very close working relationship prior to these events. That had included the sharing of personal information about their own circumstances, including the issue of the Claimant's mental health. That may, therefore shed some light on why HP chose to take this particular course.

146. The Claimant contends that HP was aggressive in her approach (that also being a feature in relation to allegations made against many individuals in these proceedings) and he said that she had insisted or demanded on more than one occasion that he provide the information. It is not necessary for us to make any findings on that for the purposes of these proceedings but suffice it to say, however, that the Claimant took exception to what HP had asked/done and we are entirely satisfied that that was the catalyst for all that was to come later.

147. The Claimant set out his concerns about HP's actions in a long email sent to her on 17th June 2016. We do not need to set out that email in full and the Respondent has conceded for the purposes of the victimisation complaint that it constituted the Claimant doing a protected act. It was a very lengthy email running to around two and a half pages and whilst the Claimant included a section to suggest that he did not want the email to be perceived as him being ungrateful for the support that he had been shown by HP, he nevertheless went on to set out in fairly strident terms why he considered the request which had been made for details to be provided of his current medical issues to have been inappropriate and outside the scope of various guidance in place with the Respondent to which he referred and quoted from.

148. The Claimant suggested a discussion in relation to that matter on 21st June 2016 when he was due in all events to meet with HP and her then direct line

manager, Tim Bowes. HP sent a copy of the Claimant's email to Mr. Bowes ahead of the meeting (see page 292 of the hearing bundle).

149. The meeting took place and a note of the actions agreed appears at page 293 of the hearing bundle. That included HP seeking advice from Human Resources ("HR") with regard to the need for further medical advice and that the Claimant was encouraged to participate in an Occupational Health referral. Thereafter, it was determined that reasonable adjustments could be reconsidered, discussed and agreed.

150. A further issue that was discussed at the meeting was in relation to suitable communication arrangements between HP and the Claimant given the issues that had arisen and there was to be a discussion between the Claimant and Tim Bowes about that. The Claimant's participation in the Positive Action Pathway was also discussed with Mr. Bowes offering to facilitate an introduction for the Claimant to relevant contacts.

151. Shortly after that meeting, the Claimant took a brief spell of ill-health absence as a result of stress and anxiety. During the course of that absence HP sent an email to the Claimant, the subject of which was "Hope you are feeling better". The content of the email expressed that HP hoped that the Claimant would be well enough to return to work and that they would be able to discuss a stress reduction plan. HP indicated that the Claimant could contact her on her mobile if needed.

152. In reply, the Claimant asked for what he referred to as disability related sickness absence from 22nd June 2016 to 24th June 2016 to be discounted for managing attendance purposes. He referred to the relevant HR guidance in that respect (see page 294 of the hearing bundle).

HRACC1 forms

153. On the same day, the Claimant completed an HRACC1 form. The purpose of HRACC1 forms is to record accidents and illnesses which are caused by events in the workplace. As we understand that would include issues in relation to occupationally induced workplace stress. The Claimant relies upon that HRACC1 and a second form, to which we shall come to in due course, as protected acts for the purposes of his victimisation complaint.

154. The Claimant sent the HRACC1 form to HP referencing various matters, including the guidance for completing of forms, and he also added a note that the details provided on the HRACC1 were an "open and honest" attempt to describe the causes and effects of his absence and were not intended to be taken personally.

155. The content of the narrative completed by the Claimant in the HRACC1 form said this:

"I had prepared an email to my manager raising serious concerns over my treatment but had refrained from sending it as I was very concerned as to how it may be received. Having a meeting arranged with my manager and

manager's manager on 21/06/16 I felt that I must make my views known prior to this meeting as the issues raised would make any other discussion redundant and it would also give my manager an opportunity to prepare for the discussion rather than springing this on her at the meeting. The issues raised included being told that I must obtain details from my GP and a lack of appropriate security around highly confidential medical information. I therefore issued the email on Friday 17/06/16, knowing that my manager would not see this until the following Monday.

On Monday afternoon I received a telephone call from my manager who made it clear that she regarded this as a personal attack and was very angry and upset.

I attended the meeting as planned on Tuesday 21/06/16 which was very stressful and at times very confrontational with further claims of me causing upset, continued attempts to deny that there are current issues and no indication that my disability is appropriately considered but, significantly, no claim that I have in any way contravened any HMRC policy or guidance or specific details as to why open and honest communication has been received in the way it has. Having re-read my original email, I fail to see any basis for the reaction it has received.

I have already been forced to endure three years of unbearable levels of workplace stress and have been diagnosed as suffering from a mental health disability (depression, stress, anxiety) and am taking anti-depressants as a result. The incidents described here are the latest which directly resulted in sickness absence. Due to the events described above, I spent the evening/night of 20/06/16 physically shaking and extremely stressed. This also resulted in a withdrawal from my family and the world in general.

The next day, I was very stressed at work and travelling home from my manager's Coventry office which took approximately 4.5 hours due to a fatality on the train line.

On the evening of 21/06/16, I experienced similar symptoms and, on preparing to leave for work on the morning of 22/06/16 I felt very nauseous and was shaking and tearful. I contacted my manager and explained that I was not well enough to attend work. During the day, whilst occupying myself with other activities, I was able to reduce the levels of stress being experienced but any thought of work and the on-going issues leads immediately to very high stress levels. Other symptoms include lack of concentration, problems sleeping, anger/frustration at my treatment by HMRC and difficulty with interpersonal relationships.

This stress prevented me from returning to work on 23 and 24/06/16 with me reluctantly returning on Monday 27/06/16.

Despite returning on 27/06/16, I still feel extremely stressed as a result of the many workplace issues I continue to face which totally dominate my life to the exclusion of everything else. The issues documented here are merely the tip of the iceberg and include other workplace issues such as involvement in two

formal grievances (at Director General and Director level) and an on-going 4 month battle with HR who are demanding an additional payment of pension contributions whilst refusing to provide any convincing evidence that this is due."

156. The first of the HRACC1 forms was submitted by the Claimant on 28th June 2016. The HRACC1 investigation process is designed to be completed within 20 days. It is common ground that in this instance it was not but we shall come to that issue further below.

157. HP sought HR guidance in relation to the HRACC1 process and received their advice on 14th July 2016, which she forwarded on to Mr. Bowes (see pages 306 to 307 of the hearing bundle). The advice was that as HP was mentioned in the HRACC1 form, then somebody independent should deal with matters and that that should either be her own Line Manager – in that case Mr. Bowes - or someone otherwise independently identified by him. It also referred again to an Occupational Health referral and that there was a "desperate need" for an Occupational Health assessment in the Claimant's case.

158. On the same date as the HR advice was received, HP forwarded to Mr. Bowes an email entitled "Way forward". This followed on from the actions points which had been identified at the meeting of 21st June 2016. The relevant part of the email which related to obtaining updated medical information said this (see page 308 of the hearing bundle):

"*Adrian was correct that there is no guidance stipulating information required from his GP. My request for such an update was made in Adrian's interests so that the reasonable adjustments could be tailored to Adrian's needs. HR's advice is that an occupational health referral is vital (OH+ process) and that Adrian should be encouraged to provide any medical evidence from his own medical advisors; GP, counsellor, psychiatrist etc. This would allow the OH referral to be more efficient in identifying Adrian's needs around reasonable adjustments.*"

159. On 12th July 2016 there was a further discussion by way of a telephone conference between the Claimant, HP and Tim Bowes. The Claimant was also accompanied on the call by a PCS Representative. These types of discussion had taken place previously by way of meetings at Coventry but an action point from the 21st June discussion had been to cancel those in the future because the Claimant had expressed concern about travelling to Coventry.

160. At that telephone conference there was an impasse in relation to the content of the Claimant's email of 17th June 2016, with the Claimant believing that the content was appropriate but there being a disagreement as to that by HP who did not. The following issues were also discussed, identified and recorded in a later email sent to the Claimant:

    i. That an Occupational Health referral would be needed and that the Claimant had agreed to that to make sure that the Reasonable Adjustment Passport was up to date. One of the

areas for comment by Occupational Health was to be the impact of the Claimant's disability in relation to his communications so that that could be reflected on two-way communication processes;

ii. That there be an independent notetaker for such discussions;

iii. That there would need to be a discussion about required standards and pace of work;

iv. That whilst the Occupational Health referral, the Reasonable Adjustment Passport and the HRACC1 process was being reviewed, interim ways of communication needed to be agreed with the Claimant reflecting on that and preparing an email outline of what would best support him;

v. That the HRACC1 process needed to be followed through, including fact finding and with appropriate actions being put in place;

vi. That the Claimant was to have a defined route to raise concerns; and

vii. That the Claimant would provide details of matters that he wanted Tim Bowes to discuss with the Positive Action Pathway contacts.

161. The Claimant was sent a note of those action points and matters discussed during the conversation generally. That included comment which was made during the call by the Claimant's PCS representative who was there to represent him. That comment was to the effect that in the opinion of the PCS representative, the call had been handled in a supportive way by Mr. Bowes.

162. As we shall come to again later, the Claimant originally contended as part of these proceedings and as an alleged act of discrimination that Mr. Bowes had deliberately lied to a grievance investigator when asked about this call and that that comment had never been made by his PCS representative. The Claimant withdrew that particular allegation of discrimination during the hearing before us given that he accepted in the course of his cross-examination of Mr. Bowes that the PCS representative had in fact made that comment. His position changed at that point to the fact that he did not agree with the observations of his PCS representative that the call had been supportive.

163. Despite being present on the call when the comment was made, being provided with an email recording that particular comment shortly thereafter and accepting in his own cross-examination of Mr. Bowes that that comment had been made, the Claimant had nevertheless included within allegations of discrimination for the purposes of these proceedings, an assertion that Mr. Bowes had lied by making that reference to the grievance investigator. In our

view, this is demonstrative of the fact that the Claimant has, it seems, given little thought to the substance of the allegations that he makes in the course of these proceedings, despite them being very serious allegations - in this case an allegation that Mr. Bowes had lied during an investigation and that in doing so he had discriminated against the Claimant. The Claimant had it in his own knowledge that that allegation was unfounded yet he persisted with it until and during cross examination of Mr. Bowes on the issue.

164. There was thereafter follow up email communication between the Claimant and Mr. Bowes. That was by way of an email from the Claimant to Mr. Bowes on 13th July 2016 timed at 10:31 (see page 310 of the hearing bundle) in which the Claimant sought to correct one point that Mr. Bowes had recorded in order to clarify what was said in respect of any suggestion of bullying, harassment or victimisation from HP. The Claimant amended the relevant paragraph to read as follows:

> "…
>
> "*Concerning the email of 17/6/16, Adrian confirmed that the references to discrimination, bullying, harassment & victimisation in the email were not aimed at* [HP] *and he believed that there was no reason to infer that they were"*.
>
> …"

165. That amendment was agreed by Mr. Bowes.

The second HRACC1 form

166. On 15th July 2016, the Claimant submitted a further HRACC1 form to HP. There was a lengthy narrative included within that HRACC1 and we do not set it out in full here given that it is accepted by the Respondent for the purposes of these proceedings that that constituted a protected act for the purposes of the victimisation claim.

167. The key points in relation to the second HRACC1 were as follows:

a) It included a complaint about the way in which HP had dealt with a catch up call on 1st July 2016;

b) That there was an issue about agreed actions to remove stressors not having been taken and difficulties with confidential medical information;

c) That HP's thoughts as to whether the email of 17th June 2016 was appropriate was considered to be a threat of potential disciplinary action;

d) That the approach taken towards the Claimant was inappropriate by viewing him as a problem rather than him having impairments that he had to overcome;

e) That it had been recommended by Workplace Wellness (the Respondent's Employee Assistance Programme) that the Claimant commence legal action under what he referred to as the Prevention of Harassment Act 1997[1]; enter into early conciliation with ACAS and that he had been advised to take action under the Equality Act 2010 for disability discrimination and to notify ACAS of his intention to take the Respondent to an Employment Tribunal;

f) That the call with HP had been extremely stressful;

g) That he had emailed Mr. Bowes on 5th July 2016 to raise his concerns and request a time for a telephone conversation so as to arrange a private meeting;

h) That Mr. Bowes had not been available and that the Claimant had been too unwell to attend work with effect from 7th July 2016;

i) That the Claimant had participated in a call with Mr. Bowes on 8th July 2016 where he had informed him that he was off work with workplace stress and that waiting for the call had been hugely stressful and the call itself lengthy and at times very confrontational. As a result, it was said that it had caused him extreme stress over the weekend;

j) That no action had been taken on the first HRACC1 form and if timely action had been taken then it could have prevented the further episode of sickness absence with workplace stress;

k) That the situation had also had an impact on the Claimant's partner's health and that the Respondent had already been made aware of her fear that she may return home to find that he had committed suicide. The Claimant set out, however, that he did not consider himself suicidal due to the support of his family and his own strength of character; and

l) That the completion of the second HRACC1 form was a cause of further stress and fear as a direct result of how the earlier HRACC1 had been received.

168. The Claimant submitted the second HRACC1 to HP by email on 15th July 2016 (see page 324 of the hearing bundle). Again, it is not disputed that the second HRACC1 form was not dealt with within the 20 day timescale required by the relevant procedure.

[1] This of course should read "The Protection from Harassment Act 1997"

Commencement of the Claimant's ill health absence

169. The Claimant also submitted a lengthy email to Mr. Bowes on 18th July 2016 (see pages 328 to 330 of the hearing bundle) setting out his proposed communication strategy and asking for a period of disability adjustment leave. The communication strategy issue was of course an action point from the telephone conference of 12th July 2016.

170. Later the same day, HP sent an email to Mr. Bowes copying in the Claimant (see page 331 of the hearing bundle). That email attached a copy of some performance feedback that the Claimant had provided on 2nd March 2016 in relation to HP. The email said this:

> "*Tim,*
>
> *Copy attached of Adrian's email to you dated 2/03/16 containing his performance feedback on me. I didn't ask him to provide me with feedback and he volunteered it all by himself. Just thought I'd remind all parties about that because the situation that he describes there is the one that I recognise as reality.*
>
> *…"*

171. That was clearly a reference to the fact that the Claimant had made complaints in his email communications about HP and, in particular, the way in which he had perceived that she had dealt with the situation with the request for medical information, his email of 17th June 2016 and their subsequent telephone conversation. It is clear that HP was upset, rightly or wrongly, about the comments that the Claimant had made and the email is suggestive of someone wanting to make the point clear that they did not feel that the criticisms were justified.

172. The Claimant replied less than half an hour later to say this:

> "*I am now leaving for the day as I cannot bear further arguments, a continued refusal to apply the guidance and attempts to actively seek to cause me damaging stress.*
>
> *I intend to be in work tomorrow and expect on my arrival to find an email detailing the revised support that has been put in place, including an appropriate person that I can speak to. If this is not going to happen, then please ensure that I am sent a text message prior to leaving my home at 7.45 informing me that HMRC cannot provide a safe working environment and, as a result, I should not attend work. Both you and Tim have my personal mobile number.*
>
> *…*"

173. HP sent a message to Mr. Bowes in response on the same day (see page C87 of the Claimant's disclosure bundle). The response said this:

> "…
>
> *My view on this is that if Adrian is too ill to be at work he should phone in sick. Otherwise he is expected to be at work and doing some work. I shall not be contacting him on his personal mobile, a) because it is not necessary and b) because I am sure on his recent behaviours he would take objection to the contact for some spurious reason.*
>
> …"

174. That reply appears on the face of it to be somewhat terse but it has to be viewed in the context of the fact that there remained a dispute between the Claimant and HP about the appropriateness or otherwise of the content of his email of 17th June 2016. It is little different in reality to comments made by the Claimant that HP's actions were "grossly damaging" and the like. It is clear to us that matters had quickly escalated following the request for medical information toward a breakdown in the relationship between the pair with each believing the other to be at fault. We also note of course that this was an email between HP and her Line Manager and it was not one directed towards the Claimant with any expectation that he would ever see it. Indeed, it has only come to light with regard to a Subject Access Request made by the Claimant.

175. HP replied to the Claimant in a long email timed at 18:58 on 18th July 2016. For the main part, that email focused on the need for the Claimant to identify any special communication arrangements that he thought would assist and the need to urgently arrange a face to face discussion to get the Occupational Health referral process initiated so as to revisit the Reasonable Adjustment Passport.

176. The email was reasonable in tone and content. It set out details of the support measures and reasonable adjustments already in place from the Reasonable Adjustment Passport, including the opportunity for the Claimant to spend time dealing with grievance related matters in work time. HP requested that the Claimant keep her informed of any work time that he planned to spend on formal grievances so that reasonable time could be agreed. That was in line with both the Reasonable Adjustment Passport and also advice that HP had received from HR, to which we have already referred above.

177. The Claimant did not attend work after his email of 17th June 2016 and, in fact, he never returned to work after that point.

178. A KIT telephone meeting took place between the Claimant and HP on 19th July 2016 and again a main area of focus for HP in that discussion was the Occupational Health referral (see pages 334 to 335 of the hearing bundle).

179. The Claimant sent text messages to Mr. Bowes on a number of occasions during the early stages of his ill health absence notifying him of the fact that he remained off sick. Those included text messages sent on 11th July, 12th July and 19th July 2016 with a request in the first of those texts for HP not to contact him. The Claimant sent a further text message to Tim Bowes on 20th July 2016. He relies upon the content of that text message as a protected act for the purposes of the victimisation complaints. The text message read as follows:

> "*Tim, I will not be in work today. If possible, I would be grateful if you could let me have a time when you would be available today to call me for a quick chat to discuss the actions taken to end the ongoing victimisation. Regards Adrian*."

180. Mr. Bowes replied to the Claimant on the same day. His text message in response said this:

> "*Adrian, I assume you have notified your absence to* [HP] *as your line manager in line with guidance. With regard to today I have a full day but have a little more time tomorrow. However, I do not think it is appropriate at this stage as you appear to be not well enough to attend work. Having reviewed all the arrangements in place and the recent communications I believe the level of support is comprehensive, in line with guidance and should provide a safe and supportive environment. I do not therefore understand why you now feel victimised. If there are any specific instances these need to be entered on to the HRACC1 together with evidence and specifics on what you require to overcome these especially if you are advocating a change of role or line manager these can then be investigated. The recent details outlined by* [HP] *and the need for OH referral is advice straight from HR. The OH needs to be discussed with Hazel so that arrangements can be made to take forward allowing the findings to be used to enhance your WAP[2]. Best wishes, Tim*"

181. The Claimant relies on this reply as a shift in the attitude of Mr. Bowes towards him once he had raised what he contends to be a protected act within the original text message of 20th July 2016. We do not agree that to be an accurate assessment of the situation.

182. The Claimant contends in this regard that Mr. Bowes was refusing to discuss matters with him. That is not an accurate reading of the text message reply. Mr. Bowes was clearly saying that he was busy that day but would have a little more time tomorrow if the Claimant wanted to have a discussion but that he was concerned as to the appropriateness of that as the Claimant was not fit to be at work. That is perhaps an understandable position given that the Claimant was saying that he was

[2] WAP is an abbreviated reference to the then revised term for a Reasonable Adjustment Passport - namely a Workplace Adjustment Passport.

suffering from workplace stress and had referred to, amongst other things, to matters that had been "grossly damaging" to him. It is therefore understandable why Mr. Bowes raised an issue as to whether a telephone call would be appropriate.

183. It was also not unreasonable for Mr. Bowes to enquire why the Claimant was feeling victimised. The Claimant had not set out any specifics of why or how he was saying that he was being victimised nor, given the actions which had been taken by Mr. Bowes up to that point to try to assist him, could that have been in any way evident.

184. It was plainly not unreasonable for Mr. Bowes to ask the Claimant to make clear what it was that was causing him to say that he was being victimised so as to provide him with an understanding as to why that was the Claimant's position. We cannot see anything of a shift of attitude from Mr. Bowes after receipt of the Claimant's text message of 20th July 2016.

185. On 22nd July 2016, the Claimant sent a text message to HP to advise her that the "huge amount of ongoing workplace stress" made it unsafe for him to attend work. He asked for the email address and telephone number of the Respondent's Disability Champion and the email address of the Course Director for the Positive Action Pathway.

186. HP replied to say that she was taking HR advice and asked for the best contact telephone number and time to speak to the Claimant so that they could have a dialogue rather than communicate by text. That was not an unreasonable course to take given that HP, as the Claimant's Line Manager, was responsible for keeping in touch arrangements for him during his absence.

187. The Claimant replied as follows:

> *"I would like to go on record to state that, as you are the cause of the workplace stress, I do not believe that it is appropriate to insist that you are my only contact within HMRC but I will reluctantly speak to you if that is what is required. Please call me on this number, 10am is convenient for me. Regards, Adrian*"

188. HP called the Claimant accordingly and a note of their conversation appears at pages 342 and 343 of the hearing bundle. That note was taken by HP.

189. The Claimant denied in cross-examination[3] that the content of the note was accurate. However, there are two important parts of the note which the Claimant said in evidence that he did not recall if those particular matters were said or not. Those concerned accelerating the Occupational Health referral and the Claimant saying in reply that he was not well enough to have a face to face meeting whilst he was off sick.

[3] This was during Mr. Beever's cross examination of him on 20th September 2019.

190. Those two issues do feature, along with the Claimant's request for details of the contact for the Disability Champion and the Positive Action Pathway Course Director, in a later email update from HP to Mr. Bowes and Melanie Clare of HR (see page 340 of the hearing bundle). As the Claimant cannot say whether they were discussed or not and they feature within both the contemporaneous note and the email update, we find it more likely than not that the note is accurate and that expediting the Occupational Health referral and the Claimant's reply that he could not have a face to face meeting were discussed.

191. After the telephone call between HP and the Claimant, communication largely followed by text message (see pages 344 and 345 of the hearing bundle).

192. By way of a letter dated 29th July 2016 (which was sent to the Claimant by email the previous day and by post the next) HP set out the contact details for the Respondent's Disability Champion. The letter also set out that she had been unable to locate the details of the Positive Action Pathway Course Director but she provided an email address to the Claimant in relation to candidate enquiries, which she said that she felt may be of assistance.

193. HP also set out details of when the Claimant's entitlement under the Respondent's sick pay scheme would expire and the date upon which his entitlement to Statutory Sick Pay ("SSP") would expire. Finally, HP provided an address for the Claimant to send his further Statement of Fitness for Work ("Fit Note").

194. The Claimant responded on 28th July 2016. His email might, at best, be described as challenging. HP forwarded that email onto Mr. Bowes on the same day. HP's email said this:

> "*I've received this from Adrian Teague and I am pretty upset now about his abusive accusations. I do not believe that I should be engaging in an on-going dialogue with this employee. Every contact creates increasing levels of accusations from him and the impact on me is increasingly damaging.*
>
> *Every accusation he has and is making is unwarranted, subjective and unsupported. Of course, I appreciate that he is ill and it may be that he cannot help what he is doing.*
>
> *Is there no scope for formal written communications in this case to come from HR professionals in a case like this? It obviously needs to be accelerated to OH+ given that his pay will run out 20/10/16 according to HRSC[4] which presumably is based on his past record of paid sick leave over the last 4 years. My line manager is on leave until 15/08/16*

[4] A reference to the HR Service Centre which deals with matters of pay and the like.

and we cannot just keep escalating these issues up every management chain that this employee works within. I only line manage 2 HO's[5] within a technical customer-facing team, yet my business delivery has been virtually ground to a halt over the last month with this employee's HR issues.

…"

195. HP replied to the Claimant by way of a letter dated 29th July 2016. She provided details as the Claimant had requested of Mr. Bowe's line manager, AL, and indicated that she had made a request for information from HR about the position in relation to enquiries he had made with regard to his pay. She also provided details of Workplace Wellbeing and for the Respondent's Nottingham Mental Health Advocate.

196. In relation to Keeping in Touch arrangements, HP said this:

"*We should be keeping in touch whilst you are away ill from work but I am conscious that you view me, your line manager, as the cause of the stress that is preventing you from attending work. Whilst you may not see it, I am sincerely keen to support your return to work and to urgently achieve the Occupational Health referral which is key to setting any Reasonable Adjustments and to potentially authorising Sick Pay Pension Rate, should it be required at any point in the future. If you need to contact me to discuss matters, that's fine with me. …*"

197. She then provided contact details, including for the Claimant to submit his latest Fit Note.

198. The Claimant replied on 2nd August 2016, again in terms that might best be described as somewhat challenging. Amongst other things, he referred to:

a) Information provided in the letter as being "totally untrue" although he did not specify what it was said was untrue in this regard;

b) That he had been provided with advice by Workplace Wellness which was to take action against the Respondent under the Protection from Harassment Act 1997 and the Equality Act 2010;

c) That his absence had been caused by HP's "grossly damaging behaviour", which he contended had never been disputed;

d) That provision of detail of the Mental Health Advocates was an attempt to avoid recognising HP's responsibly in his current ill health and that the problem was not with the Claimant but with HP;

e) That HP had demonstrated "grossly unacceptable" behaviour;

[5] A reference to Higher Office grade within the Civil Service which was the Claimant's then grade.

f) That HP had reacted to his first HRACC1 by "grossly damaging behaviour" which was "textbook victimisation";

g) That she had behaved in a "shocking manner";

h) That the effect of her actions had injured not only the Claimant but also his family and that his partner had not been able to leave him in case he killed himself; and

i) That there had been efforts to push him into taking his own life.

199. The Claimant concluded his letter by saying this:

> "*In the meantime, I would again suggest that you should immediately arrange appropriate, supportive contact. Whilst I do not expect that you will do this, I would again point out that you should arrange to have no further contact with me due to the stress that you have repeatedly and intentionally caused. This is requested as an immediately required reasonable adjustment as is my request for HMRC to immediately cease the bullying, harassment, victimisation & discrimination and provide me with appropriate, supportive contact.*
>
> *…*"

200. The Claimant also requested details of those investigating the HRACC1 forms and for them to contact him without delay (see pages 357 to 363 of the hearing bundle).

Involvement of AL and the investigation of the HRACC1 forms

201. The Claimant forwarded a copy of that email to AL (who was the next tier Line Manager of Mr. Bowes) on 3rd August 2016 (see pages 366 to 368 of the hearing bundle). Along with that, the Claimant sent a lengthy email asking that AL immediately intervene and ensure that immediate action was taken to address the bullying that he said that he was experiencing and to provide an "appropriate supportive contact" to assist in a return to work.

202. AL replied on the same day as follows and said this:

> "*Adrian*
>
> *Thank you for raising these issues with me. Can I confirm what you are asking of me here before I act?*
>
> *Are you asking me to intervene informally between you, Tim and* [HP] *to identify and agree how to address the causes of workplace stress, including behaviours you describe as bullying? In doing so to avoid pursuing these concerns through the formal grievance procedure?*
>
> *Is the above correct, I am keen to avoid misinterpreting your request?*

If so, do you have any specific proposals or are you content at this stage for me to explore the matter further informally with the three of you, including reviewing the HRACC1s?

…"

203. The Claimant responded as follows:

"*…*

Thank you for your response.

What I want is for the bullying to end, to be treated in line with HMRC guidance and to be appropriately supported (in line with the social model of disability that HMRC subscribes to) with a view to facilitating a return to work.

In terms of what this looks like in practice, I am simply incapable of taking on the further stress of now having to raise a further formal grievance and believe that it would be inappropriate for me to be expected to do this. I would therefore be grateful for you to take these matters forward though I am not sure whether it is possible, by reference to the guidance, to deal with such serious matters informally. If you believe that this can happen then I am happy for you to do this as long as it does not preclude formal disciplinary action if this is found to be appropriate.

I'm sorry that I cannot give a clearer answer. I just want this to stop.

…"

204. AL arranged for a discussion with the Claimant which took place on 10th August 2016. The note of actions to be taken as a result of that conversation were recorded in an email from AL of the same date have taken on a particular significance in these proceedings and we therefore set them out in full below.

"*Adrian*

Thank you for the discussion this morning. I agreed to confirm the actions we agreed to take to address the issues you raised and assist you back to work. Could you review and amend below as appropriate please?

Actions:

1. *The actions and behaviour of* [HP] *and Tim Bowes:* [AL] *to consider the concerns raised by AT regarding the actions and behaviours of [*HP] *and Tim Bowes from a conduct and discipline perspective and take any action* [AL] *considers appropriate.*

> 2. *Support return to work: AT considers there to be a lack of supportive contact from HMRC to assist his return to work.* [HP] *is unable to provide such contact due to the breakdown in their relationship.* [AL] *to identify an alternative individual to provide the supportive contact needed to assist a return to work.*
>
> 3. *Removing the workplace stresses to enable a return to work: we distilled this down to the prime cause being an irreparable breakdown in the relationship between AT and HP. We agreed there are two prime options here: a) we move AT from HP's line management chain, or b) we move HP from AT's line management. AL to consider options and return to AT and HP.*
>
> 4. *Refer the general issue of HMRC's response to the disability-related issues that AT raises, specifically referring the general issue to Mark Dearnley*[6] *and Janet [DN: what is Janet's surname?]. We agreed that any such referral could wait for AT's return to work*.
>
> …"

205. The Claimant replied the same day setting out what he considered to be clarification in relation to the points made by AL. That included the following in relation to the relationship breakdown point.

> "2. Again, *I agree with the point but would like to make it clear that, rather than this be viewed as "a breakdown in their relationship", this problem is solely due to* [HP's] *refusal to behave appropriately.*
>
> *3. Again, I would stress that it is not about a breakdown of a relationship i.e. both parties sharing some level of responsibility, but is solely due to* [HP's] *(and subsequently Tim Bowes*) *behaviour.*"

206. By that stage of course, the Claimant had also complained about Mr. Bowes within the second HRACC1 form. It is not clear to us what it is that Mr. Bowes had in fact done to warrant that complaint given that he was seeking to support the Claimant and to find a way to resolve the difficulties that had arisen in the line management relationship with HP.

207. AL replied the same day by way of an email timed at 18:10 to confirm that the actions had been phrased in the way that they had on the basis that, at that stage, there had not been able to be any form of judgment on who was responsible for the breakdown of the relationship. The email was perfectly measured in tone and content and it was a reasonable stance to take given that there had been no investigation and AL could not simply take the Claimant's view that HP and Mr. Bowes were the ones at fault.

[6] Mark Dearnley was the Respondent's then Disability Champion.

208. The Claimant replied (see page 373 of the hearing bundle) indicating that he had not intended his email to be confrontational and that although it had been agreed that AL would progress the matter, that was on the understanding that formal action still remained an option; that his belief was that the Respondent's guidance would not allow informal action to be taken but that he would wait to hear from AL on the point. The Claimant asked not to be contacted in future after 5.00 p.m.

209. AL replied at 18:53 apologising for the late timing of the email and that future correspondence would be between 9.00 a.m. and 5.00 p.m. The Claimant is critical of that position in that it did not accord with the times for contact which he had sought to stipulate in his email. However, it was only a brief email acknowledging the Claimant's points and confirming that in future he would not be sent emails by AL after 5.00 p.m. or before 9.00 a.m. We do not see anything wrong in that approach.

210. By this time, Tim Bowes had forwarded to AL the first and second HRACC1 forms that the Claimant had submitted. Mr. Bowes had rightly concluded, in accordance with HR advice to which we have already referred and which was given earlier to HP, that he could not and should not deal with the second HRACC1 at the very least, given that he was named within the same. AL was Mr. Bowes' direct line manager and HP's counter-signing manager and was therefore the logical person for the HRACC1 forms to be sent to.

211. On 12th August 2016, shortly after his initial discussions with the Claimant, AL via his personal assistant, JG, sent both of the HRACC1 forms to AG. At the material time, AG was the Assistant Director of Wealthy and Midsized Business Compliance. AL asked that the matter be actioned as soon as possible. In fact, by that point both HRACC1s had exceeded the 20 day deadline for investigation under the Respondent's policies. It was suggested that AG seek out some advice from Melanie Clare of HR and asked for the name of the trade union representative who would be involved in processing the HRACC1 forms.

212. AG sought a discussion with Melanie Clare as suggested (see page 381 of the hearing bundle) and also notified HP that he had been appointed to investigate and that he would like to set up a meeting (see page 382 of the hearing bundle). AG also wrote to the Claimant along similar lines, asking to set up a meeting either face-to-face or via telephone and that he was happy to travel to Nottingham to meet with the Claimant if that was easier for him. AG asked the Claimant for copies of documentation referred to in his HRACC1 forms and that it would be helpful to have those in advance of the meeting. He noted that he was currently in the process of identifying the local trade union safety representative to deal with the matter but to expedite the situation, asked if the Claimant had his details if he had already been in contact with him (see page 383 of the hearing bundle).

213. In the meantime, the Claimant had engaged in a series of emails with AL on 12th August 2016. They started in fairly measured and pleasant terms with the Claimant indicating that he had been provided with a further Fit Note which he had posted to HP and wishing AL a pleasant break as he was due to take some annual leave and that he would update him on his return.

214. AL replied to thank the Claimant for the update and confirmed the appointment of an independent Grade 6 manager (i.e. AG) to investigate the HRACC1 forms as had been agreed.

215. This unfortunately led to something of a downward spiral in relation to communications from thereon in. The Claimant expressed concern that the HRACC1 forms had not already been investigated and completed. AL replied to say that he had held the HRACC1 forms pending discussion and because the Claimant had asked him to intervene and it seemed the appropriate thing to do. He commented that it would be odd to have multiple people looking at the matter and that they had discussed and agreed that the Claimant wanted him to investigate the behaviours and actions contained within the HRACC1 forms and that had now triggered the investigation. Although of course matters had not progressed within the timescales required by the Respondent's relevant HRACC1 procedure, they were already outside that timescale at the point that the matter was referred to AL by Tim Bowes.

216. The Claimant replied as follows:

> "*Andy*
>
> *The HRACC1's are a totally separate procedure to HMRC's grievance procedure and there is no basis for the two to be treated together. The only significance of the HRACC1's in relation to the potential action in respect to a grievance is that they provide information to be considered in respect to a grievance but this should not affect the legally required procedure on dealing with HMRC's statutory H&S responsibilities.*
>
> *I would also point out that the HRACC1's were completed some weeks before you obtained them and it was at my request that copies were obtained. This therefore leaves serious questions over why no action has been taken in respect to these until now.*
>
> *I would also like to point out that I was not made aware that it had been decided not to action the HRACC1's and, if asked, I would not have given my agreement to any delay in actioning these.*
>
> *…*"

217. AL replied as follows:

> "*Adrian*
>
> *As I understand it you asked me to intervene informally. You also asked me explicitly to consider the HRACC1's as part of that intervention. I have now done so and* [AG] *a Grade 6 in MSB*[7] *will be investigating them as part of my informal intervention. If you wish that not to proceed you should confirm by return.*
>
> *…".*

218. There was nothing wrong about the content or tone of that particular email. AL's position clearly was that the Claimant had asked him to look at matters on an informal footing and that was what he was doing and what he understood to have been agreed with the Claimant.

219. However, the Claimant wrote back in strident terms in a lengthy email stretching to one and a half pages. Amongst other things, he asserted that:

a) AL's emails had caused and continued to cause him a huge amount of stress;

b) That he did not believe it was appropriate to seek to "argue" with him in a "such a confrontational manner";

c) To raise further complaints and queries about the process for dealing with HRACC1 forms;

d) That he had been left extremely stressed by the emails and was shaking as a result;

e) That further communication should be focussed on supporting him rather than causing "further harm" as "seemed to be the current focus"; and

f) That he should not be expected to have to deal with issues at the Respondent's "whim", including emailing his family email address at 6.53 pm.

220. That email was not reasonable in tone or content and it is impossible to discern how the Claimant could reasonably conclude that AL was arguing with him, being confrontational or seeking to cause him harm.

[7] An abbreviation for Mid-Sized Business.

221. AL replied as follows:

> "*Adrian*
>
> *I do not accept my emails are confrontational in nature, but as they are causing you concern we should cease this form of communication.* [JG] *has advised you separately who is investigating the HRACC1.*
>
> *…*"

222. We do not find the content or tone of that later email from AL to be inappropriate either.

223. The Claimant contends that it was demonstrative of AL refusing to communicate with him. That is plainly not the case. It was simply a reflection of the fact that the Claimant was indicating that AL's emails had caused him a considerable amount of stress, including leaving him shaking, and therefore AL suggested that email communication cease in those circumstances. There was no refusal to communicate with the Claimant.

224. In the meantime, AG had continued investigating the issues set out in the HRACC1 forms. He emailed the Claimant noting that the Claimant had been on sick leave and was not due back in work until 1st September 2016, which would make it difficult to progress matters within the timescale set out for the HRACC1 investigation. Of course, by that point they were already outside that particular deadline but AG's position was that he could not investigate without speaking to the Claimant. He also noted that he himself was on annual leave for week commencing 5th September (see page 385 of the hearing bundle). That email was sent in error to the Claimant's work email which meant that the Claimant did not access it because he was of course absent on sick leave.

225. On 2nd September, AG wrote to the Claimant again by email. Given that he had sent his original email to the Claimant of 16th August 2016 to the Claimant's work email he therefore copied into the body of his message the content of the 16th August email as the Claimant would not have seen it. He asked again to arrange a discussion and whether the Claimant would consent to previous Occupational Health reports being released. He noted that it was his last day in the office before he was on annual leave and that he hoped it would not cause the Claimant difficulties if matters were picked up more fully when he returned on 12th September 2016 but that if there were any urgent matters that day, then the Claimant should let him know before he commenced his leave. Again, the email from AG was in perfectly measured and friendly tone.

226. The Claimant replied in terms which did not match the spirit of AG's email. Again, it is a long response and we do not set out the entirety of that email here but in short, it expressed concerns about the delaying in dealing with matters; asked for copies of the HRACC1 forms and details of the specific

legislation that covered the statutory process, along with copies of all further correspondence and communications in relation to this matter. The latter parts of the email said this:

> "…
>
> *As regards there now being a further delay in dealing with this, I am concerned that this matter still appears to be regarded as unimportant and something for which immediate action is not required. I do not agree with this view but appear to have no choice.*
>
> *I would like to point out that despite being on long term sickness absence as a direct result of victimisation, discrimination, harassment and bullying, HMRC removed all routes of communication on 15 August 2016 and I have been left with no support or even a contact since then.*
>
> *Please note that this email is not in any way intended to be confrontational and I appreciate that you are coming to these matters relatively late. I trust that you appreciate the huge amount of stress that these matters have and continue to cause and my belief that the procedure for reporting accidents & workplace ill health has itself been used to victimise and damage my health.*
>
> …"

227. The Claimant often refers in email communication to matters not being intended to be confrontational. However, when one reads a number of those items of communication and specifically ones which we shall come to in relation to KIT Contacts (namely RW and Monique Deveaux) that is precisely how they come across. It is not surprising that people found them so, despite the Claimant's attempt to caveat that position.

228. We would also note here that it was not correct for the Claimant to say that he had been left without support or a point of contact. As we shall come to below, the Claimant had been informed a matter of days previously that RW was now to be his Keeping in Touch manager. HP had tried to deal with the Keeping in Touch process with the Claimant but it had been the Claimant who did not want that contact. AL had also attempted to assist the Claimant but that later resulted in a subsequent complaint by the Claimant against him and a further escalation of the matter to AL's Line Manager, Mary Aiston.

229. AG replied to the Claimant later the same day. He offered the Claimant apologies for the misunderstanding about the Claimant having been on annual leave (when he was of course on sick leave) and for his unavailability the following week. He was clearly at pains to assure the Claimant that he was taking steps to progress the investigation as soon as possible.

230. The Claimant replied later the same day to thank AG for what he considered to be an appropriate supportive response; wished him a pleasant break and that he looked forward to working with him in order to resolve the matters upon his return from leave (see page 401 of the hearing bundle).

231. On 31st August 2016, the Claimant replied to AL's email of 12th August. That email said this:

> "*Despite my efforts to avoid raising a further formal grievance, your refusal to deal with my grievance has left me with no option but to do this.*
>
> *Please let me have the name and email address of your manager so that a formal grievance can be raised.*
>
> *…*"

232. We would observe at this point, that AL had not in fact refused to deal with the Claimant's complaints. He was progressing them, including dealing with the HRACC1 forms in accordance with the actions that had previously been discussed with the Claimant.

233. By this stage, the Claimant had raised a complaint in relation to HP; had thereafter raised a complaint in relation to HP's manager, Tim Bowes, and now was seeking to raise a complaint in relation to AL in respect of his attempts to deal with the matter. As we shall come to, that further escalated to further complaints and grievances against AL's line manager, Mary Aiston and a significant number of others. As we shall also come to in that regard, it is difficult not to be persuaded of a point made by Mr. Beever that as matters progressed it became difficult to find anybody that had had any contact with the Claimant that he had not at some stage complained or sought to raise a formal grievance about.

234. AL, replied to the Claimant, via his personal assistant, and provided contact details for Mary Aiston as his Line Manager as the Claimant had requested.

235. On 12th September 2016 upon his return from annual leave, AG updated the Claimant that the trade union representative who had been appointed to look at the HRACC1 forms would be DF and provided DF's contact details. He indicated he would be in touch shortly.

236. The Claimant replied to thank AG for the update and for the guidance he had provided. He had noted a 20 calendar day time limit for the investigation and that the investigation of the HRACC1 forms were now outside that time frame. He noted that he appreciated that the failure did

not lie with AG and thanked him for progressing matters but that he wanted to "*ensure that the refusal to deal with the HRACC1's is recognised as a very serious matter*" and "potentially illegal" and his belief was that this formed part of a campaign of victimisation, discrimination, harassment and bullying (see page 449 of the hearing bundle). That was also copied to RW who, as we shall come to, had by that time been appointed as the Claimant's Keeping in Touch ("KIT") Contact and to the Claimant's PCS representative.

237. AG replied in perfectly reasonable terms and indicated that he had noted that the time limit had been exceeded and this would be included in his report. He sought again to arrange a meeting for discussion with the Claimant and said that he would either travel to Nottingham to meet him face to face or conduct the meeting by telephone if the Claimant would prefer that.

238. The Claimant replied indicating his preference for a face to face meeting but that this should be at a venue near his home in Burton-upon-Trent. He asked for copies of the relevant legislation so that he could consider his preferred outcome, including details of any penalties that should be imposed should that legislation not have been implemented by the Respondent (see page 453 of the hearing bundle). He also indicated in a further email his belief that the matters recorded in his HRACC1 forms should have been reported to the Health and Safety Executive (see page 455 of the hearing bundle).

239. AG replied on 15th September 2016 setting out that he was unable to arrange a meeting within a venue of a different Civil Service Department in Burton-upon-Trent as the Claimant had suggested but would be happy to arrange a meeting at whatever HMRC office would be convenient or if the Claimant was able to arrange an alternative venue, he would be happy to meet there. He referred, insofar as the Claimant's request for legislation was concerned, to the Health and Safety Executive website and noted that he would include the issue of timescales within his report. He also confirmed that issues of work related stress did not need to be reported to the Health and Safety Executive and provided the Claimant with the relevant documentation in that regard.

240. The Claimant replied to confirm that he would now deal with matters by way of a telephone conference rather than a face to face meeting and made further requests for information in relation to the position on legislation.

241. As a result of the issues that the Claimant was raising, AG not unreasonably sought some guidance from Human Resources. He received a reply on 20th September 2016 (see page 460 of the hearing bundle). Amongst other things, the view of HR in relation to the content of the HRACC1 forms were that those appeared most suitable to be dealt with by way of a grievance than under the HRACC1 process. Whilst the

Claimant contends that that was not in the circumstances an option available to the Respondent, we have seen during the course of these proceedings the relevant guidance which makes it clear that matters that are more suited to a grievance can be dealt with under that procedure rather than the HRACC1 process.

242. On 23rd September 2016, AG wrote to the Claimant providing some proposed times for a telephone conference to discuss the matters in the HRACC1 forms (see pages 463 to 464 of the hearing bundle).

243. On 26th September 2016, the Claimant replied to AG raising various concerns over the approach that he contended that AG was taking and replying to the points in respect of setting up a telephone call (see page 474 of the hearing bundle).

244. At the beginning of that email the Claimant referred to what he saw as AG's "*very confrontational*" approach. This was very similar to the accusation which had been levelled at AL. In fact, when looking objectively at the communications between AG and the Claimant, they are anything but confrontational, at least from AG's perspective and it is difficult to see how the Claimant could have formed the view that he did.

245. AG replied to the Claimant on the same day apologising if he had viewed his approach as confrontational which was not his intention and reiterating his commitment to seek to resolve the issues (see page 478 of the hearing bundle).

246. On 27th September 2016, AG was provided with further advice by HR to again indicate that the contents of the HRACC1 forms appeared to be more appropriately dealt with as a grievance than as an accident investigation report (see pages 480 to 481 of the hearing bundle).

247. AG did, however, continue with his investigations of the matter by way of gathering additional information from Mr. Bowes and also from the Claimant. That included participating in a detailed fact-finding telephone conference with the Claimant on 27th September 2016 (see pages 493 to 498 of the hearing bundle) and meeting with Tim Bowes on 4th October 2016 to investigate further in relation to the HRACC process (see pages 636 – 636 of the hearing bundle).

248. AG and DF also met with HP on 13th November 2016 (see pages 503 to 504 of the hearing bundle). The Claimant had by that time also written to DF to complain about the way in which the HRACC1 forms were being handled and, particularly, in relation to the time limits (see pages 505 to 506 of the hearing bundle).

249. On 4th October 2016, the Claimant again emailed DF making further complaints about the way in which the HRACC1 process was being dealt with (see page 536 of the hearing bundle).

250. On 11th October 2016, the Claimant sought a further update from DF in relation to the progress with the investigation of the HRACC1s. DF replied to confirm that matters were still under investigation. The Claimant replied and that was again in strident and perhaps somewhat challenging terms (see page 589 of the hearing bundle).

251. The Claimant also sent a further email to DF the following day setting out, amongst other things, the fact that he did not believe DF to be a "competent person" to deal with the HRACC1 forms and he also complained as to his opinion of the standard of DF's email from the previous day. In that regard the Claimant said this:

"*…I would also like to point out that, in my opinion, your email is not of a standard that should be acceptable to HMRC. If there are medical reasons which impact upon your ability to communicate appropriately then there should be reasonable adjustments in place to ensure that you are able to represent HMRC in your communications to an acceptable standard.…*"

252. That was offensive and unnecessary. There was nothing wrong with DF's email to the Claimant. That email was copied to AG who understandably sought advice from Human Resources in relation to the same (see page 595 of the hearing bundle).

253. It was confirmed that the matter would be forwarded to a different colleague within Human Resources for consideration and DF commented to AG in respect of the Claimant's email that "… *I think this is how he reacts when he is not getting his own way*" (see page 596 of the hearing bundle).

254. Thereafter, matters continued to rumble on in relation to the Claimant raising issues with AG and DF about how the HRACC1 process was being dealt with. Particularly, following further communications from the Claimant AG had written to him indicating that he did not believe it appropriate as the Claimant had requested that he provide the name and email address of members of the Respondent's Senior Leadership Team with ultimate responsibility for health and safety nor did he consider it appropriate to raise matters before the Respondent's Executive Committee.

255. The Claimant replied to that communication on 18th October 2016. As that email is relied upon as a protected act, it bears setting out in full and the Claimant's email to AG said this:

"*I would like to remind you that I remain an Officer of HMRC and am not aware of any basis for you refusing to provide information that would be*

available to me were I at work rather than being on sickness absence due to workplace stress.

Whilst I note your refusal to provide the details requested, I would like to point out that I regard this as victimisation and discrimination (i.e. victimisation as the refusal is based on my attempts to appropriately challenge what is, at best, a refusal to apply mandatory guidance and discrimination as the damage to my health due to my disability that your confrontational approach has and continues to cause is known).

I would also like to point out that I have reached my conclusion that there is an ongoing failure to meet the requirements of H&S legislation after being forced to identify and interpret this legislation myself after your refusal to even identify the legislation that applies in this case. Whilst I have fully explained the basis for my opinion, including extracts from the relevant legislation, you fail to provide any evidence whatsoever to support your position.

I trust that the TU H&S rep will escalate this matter in order to ensure that the refusal to apply mandatory guidance (and potentially a failure to comply with legislation) is appropriately dealt with.

I will be obtaining the contact details requested from another source and raising my many concerns, including your attempts to prevent these issues being appropriately considered, with them."

256. On 19th October 2016, AG sent his proposed response to Jamie Gracie and Melanie Clare in relation to the outcome of the HRACC1 forms investigation. He also referred to email communication from the Claimant accusing him of discrimination and victimisation and that his inclination, given he did not believe there to be any reasonable basis for such an allegation, was to refuse to correspond further with the Claimant. Jamie Gracie made a few suggested amendments to the draft letter (see page 649 of the hearing bundle). We do not find that unusual as it was common practice that Human Resources were asked for their specialist input into communications and outcome letters.

257. The Claimant places great stall on the fact that those within Human Resources who were providing assistance in this regard were often of a lower grade to the Manager seeking their input and that it would be unusual for a lower grade officer to check and amend letters of those in a higher grade. We accept, however, that Human Resources were being asked for specialist input and that that course is entirely in keeping with their role and the fact that they were being asked for advice.

258. On 9th November 2016, AG sent the completed HRACC1 investigation and supporting documentation to Lynn Coulby (see page 722 of the hearing bundle). As we shall come to below, by that stage Lynn Coulby had been tasked with investigation of the grievances that the Claimant had raised in respect of HP, Tim Bowes and AL.

259. In relation to the first HRACC1, the conclusion was that there was no evidence that either HP or Tim Bowes had acted in an unreasonable manner in their approach and that this was entirely a case of interpretation of events between two individuals.

260. The final conclusion in relation to the first HRACC1 said this:

> "*I have found no evidence to support Mr Teague's claim that his managers were unreasonable in their approach to him. I am unable to recommend any actions that could be taken in that regard to prevent a recurrence. However, I would recommend that HMRC brings all outstanding grievance cases to a conclusion as soon as reasonable practicable and that any recommendations arising from those grievances are fully implemented.*
>
> *Additionally, I suggest the outstanding OH referral should be discussed with Mr Teague so that any supportive recommendations arising from this can be implemented.*"

261. The investigations in relation to that HRACC1 concluded on 21 October 2016. That was of course well outside the 20 day timescale for the investigation to have concluded under the Respondent's policies.

262. The same conclusion was reached in relation to the second HRACC1 (see page 741 of the hearing bundle). That concluded on the same date. It was subsequently sent to the Claimant by Jacqueline Smith as Reviewing Manager, in response to which the Claimant raised that he did not feel that there had been any appropriate investigation in relation to the matter (see page 743 of the hearing bundle).

263. We do not agree that that was an accurate assessment. As we have set out above the investigations took in information provided by the Claimant, HP, AL and Tim Bowes who were the relevant individuals to provide information about the HRACC1 complaints. Moreover, on the basis of the information available to those investigating the matter, the conclusions reached were entirely reasonable ones.

Appointment of RW as a KIT Contact

264. HP wrote to the Claimant on 30th August 2016 (see page 387 of the hearing bundle). She thanked him for providing his Fit Notes and noted that they should be engaging in Keeping in Touch discussions. However, she noted that as the Claimant had asked that she not contact him, she had made arrangements for the required contact to be taken over by RW, who was the Attendance and Wellbeing Champion for Wealthy and Midsized Business Compliance and that RW would be in touch over the next few days. Although HP remained the Claimant's line manager during that time and would have accordingly dealt with issues such as requests for annual leave, assessing Fit Notes and the like, it was a sensible approach given the Claimant's confirmation that he did not wish to speak

to HP, for somebody else to take over the Keeping in Touch (KIT) arrangements.

265. On 7th September 2016, the Claimant was sent a letter by RW setting out her role as KIT contact. The letter said this:

"*Dear Adrian*

I understand [HP] *has already written to advise I will be contacting you in my capacity as Attendance & Wellbeing Champion.*

[HP] *has asked me to progress the Department's Keeping in Touch procedure objectively and my intention is to reach a result which will be mutually satisfactory to yourself and the Business as a whole. It's important for you to be aware from the start that I will not be taking on a Decision Maker's role and will have no influence in how things progress apart from ensuring everything is done openly and in line with existing guidance. Do you have a copy of the attendance guidance and procedures? Would you like me to forward you a hard copy version as I'm not sure external emails can access the links?*

Please contact me either on the above email address, the direct dial below or on my blackberry … so we can start the Keeping in Touch process.

If you write to us please send your letter to Wealthy and Mid-sized Business Compliance using the above address. If you don't use the correct address we may not get your letter.

…"

266. A copy of the letter was also sent by email to the Claimant the following day along with the covering email, indicating that RW would appreciate the Claimant to contact her as soon as he could so that they could begin getting to know each other.

267. On 15th September 2016, there was further contact between the Claimant and RW who sent an email to the Claimant which said this:

"*Adrian*

You should send your fit note to [HP] *using the STEPS code address you have used previously. Can you confirm this is what you have done with your previous sick note for the period ended 13/09/16 please?*

I have been informed the [sic] *the period of 149 days included in your CSIB decision has been removed from your sick absence record so the dates for your pay to be affected by absence will be reset. Although HRSC has not officially advised anyone of the revised dates as yet, my understanding is your pay should not be reduced in October. Hopefully this will help alleviate your anxiety to some degree.*

I am disappointed you feel HMRC has refused to take any positive action to facilitate your return to work as I can assure you the Business would be pleased to hear from you that you are returning to work as soon as you are well enough and the barrier of your current ill health has been overcome. The completion of a stress reduction plan by yourself and a subsequent OH referral are part of the return to work process and as you are aware I am working on these for you. I hope to have the guidance and plan ready to send to you by the end of this week.

Would it be possible for me to ring you next Thursday (22 September)? Would 11 suit? By then you should have received the paperwork regarding the stress reduction plan and I should have the skeleton of the questions we need to put on the OH referral to facilitate your return to work.

…"

268. There was nothing wrong with the content or tone of that email. However, the Claimant replied as follows:

"*I have been left very stressed by your email and the continued refusal to recognise and take action on the causes of my absence i.e. the extreme levels of victimisation, discrimination, harassment and bullying, that are the cause of my absence and the continued attempts to focus on my disability to excuse the unacceptable behaviour I have been exposed to.*

It should be noted that [AL] *recognised over a month ago that* [HP] *should not continue to be my manager and yet no action appears to have been taken on this. Even HMRC's legal responsibilities in respect to H&S legislation have been ignored and it is only my involvement that has forced any action whatsoever.*[8]

I note that your reply to me is entitled "FW: proposed email". I would be grateful if you would immediately send me the full email chain identifying who is collaborating on your responses.

Please also let me have all email communication in connection with me and all copies of notes of discussions. If there is any reason why these cannot be immediately sent to me then please let me have the business case for this.

As regards the fit note for the period ending 13/09/16, this was sent for [HP's] *attention to the address previously supplied.*

I confirm my availability for you to call me as proposed next Thursday.

…"

[8] We pause there to observe that shortly after AL identified the actions to be taken, the Claimant escalated a grievance in relation to his involvement to Mary Aiston. It is therefore unsurprising that AL was unable to continue to deal with those particular aspects of the matter.

269. On 22nd September 2016, RW sent to the Claimant the emails that he had requested in his email of 15th September 2016. That followed on from a KIT telephone conversation earlier that same day. She ended her email by thanking the Claimant, telling him to take care and that they would speak soon. She told him about the actions she was taking to progress the OH referral. It was clear to us that RW was taking a supportive and appropriate approach to dealing with the Claimant.

270. The Claimant sent an email to RW on 28th September 2016. That email complained about RW having been in contact with HP and required her agreement that the failure to take action to remove the workplace stress, which the Claimant said had been agreed on 10th August 2016 with AL, had continued to deny him an opportunity to return to work.

271. RW replied in perfectly reasonable terms the following day setting out that her role was to deal with keeping in touch with the Claimant and therefore she was unable to comment on what had or had not been done. She also provided the Claimant with an explanation of the steps that she was taking in relation to him.

272. The Claimant replied the same day commenting, amongst other things, that RW's response appeared "*to confirm a continued refusal to provide any opportunity for a return*" and referred to what the Claimant believed to be the Respondent's *"grossly unhelpful approach"* which *"knowingly caused further stress"*. That was not a reasonable or fair assessment of the situation given that it was clear that RW was seeking to assist the Claimant in a return to work.

273. The Claimant also set out in later emails to RW in early October 2016 that he considered that obtaining an Occupational Health report was simply a "red herring" and that the refusal to take action in relation to the actions points identified on 10th August 2016 amounted to continuing victimisation. He set out that he had contacted Mary Aiston in respect of those matters. It was clear from what the Claimant said in that regard that he was letting RW know that he had complained about her to Mary Aiston. Again, this was another individual who was seeking to assist the Claimant who he had raised complaints about.

274. In that email exchange, amongst other things, RW had asked the Claimant if he wanted her to continue with the process of obtaining advice from Occupational Health. That was presumably as a result of the Claimant's reference in the aforementioned email to RW to the issue of Occupational Health involvement being a "red herring". Again, the email chains are measured in tone on RW's part and having seen them all in totality that is in contrast to the emails in response from the Claimant which might at best again be described as challenging. The Claimant's email in reply pointed out his position was that he was not refusing to take part in the Occupational Health referral process, although he also referred to that process being used to victimise him and, despite his assertions that he

was willing to participate, he in fact expressly set out that he was now not prepared to agree to a report at that time. In that regard, his email to RW said the following:

> "…
>
> *As regards the OH report, I have never refused such a report and have & continue to do everything possible to facilitate my return. As the OH report is, in my opinion, being used to victimise me (i.e. used to justify a refusal to take agreed actions due to my raising a formal complaint) then I am not prepared to go along with this very serious failure to apply mandatory guidance. I therefore will not agree to an OH report until action is taken to cease the victimisation. Once already agreed actions are taken, I will then discuss the need for an OH report.*
>
> *…"* (See page 540 of the hearing bundle).

275. We have not been able to understand why the Claimant contends that seeking to obtain an Occupational Health report, which would be a perfectly understandable course given the Claimant's ill health absence and the need to consider reasonable adjustments, could amount to victimisation. The purpose of the process was to seek to bring about a supported return to work for the Claimant.

276. The Claimant also indicated within his email to RW that he had at no point requested a change of line manager as he did not believe that this was appropriate. That was somewhat contradictory given the Claimant's continued referral back to the actions points identified by AL on 10th August 2016.

277. By 3rd October 2016, it had been decided that more intensive Human Resources support was going to be required in respect of the Claimant. Given the circumstances regarding the content and tone of the Claimant's communications, the complaints that he was raising and his continued ill health absence, that decision is entirely unsurprising.

278. Jamie Gracie put himself forward as an ongoing casework support point of contact and it was suggested that there should be a "telekit conference" to discuss a way forward. Again, that is not unusual given the circumstances. The Claimant points to the fact that there are no notes of those telekit conversations or indeed other telephone discussions which may have taken place from time to time when HR support was given. The Claimant maintains that is highly unusual and suspicious given the nature of the Respondent's business and his own experiences that he would frequently take detailed notes when meeting with customers of the Respondent. However, the Claimant is comparing apples with oranges.

279. The matters that were being dealt with and advised on by Human Resources were not complex tax investigations, which was what the Claimant was used to undertaking. Whilst we note of course that the

Claimant is extremely process and policy driven, it is not unusual in our experience for individuals to have telephone or other discussions which are not expressly minuted and a record kept. Particularly, the evidence of a number of the Respondent's witnesses was that the audit trail, that being the issue referred to by the Claimant in relation to questions in this area, would be evident from the subsequent actions taken by the Respondent and, for example, email or letter communication. We therefore do not find anything turns on not keeping meeting notes of the telekit or other telephone discussions and there is certainly insufficient to even begin to draw an adverse inference in that regard.

280. On 6th October 2016, the Claimant wrote to RW by email saying that he was unsure whether there was going to be a KIT conversation that day but that he did not feel that would be beneficial as it would only result in a "huge amount of stress". RW responded later that morning to say that she had not intended on telephoning as they had only spoken the previous week and that she had agreed not to do so without suggesting times by email beforehand. She suggested a catch up the following week. Again, that is evidence of a pattern of continued support by RW adhering to the requests which the Claimant had made in relation to scheduled contact.

281. The Claimant replied in what again can perhaps best be described as challenging terms. He set out a number of issues which he considered were open issues which still needed to be addressed by RW. Part of his email bears setting out in full and those parts read as follows:

"*I am happy to have a KIT call but I am not happy to agree to one if it is merely to place additional stress on me. I know of no reason why the issues above remain unanswered and I am also unaware of what help or support you have provided as you appear to refuse to take any action or provide any certainty over the many issues that I face.*

Please let me have a full response to these and any other issues that remain outstanding without further delay. If this is not possible, please let me have a full explanation as to why no action has been taken to facilitate a return to work for over 2 months.

Please note the final sentence if (sic) *your email below, despite finishing with a question mark, is not a question but a statement.*"

282. RW replied on the same day. Although she did not address a number of the issues that the Claimant had raised, she did explain about steps that she was taking to contact the Positive Action Pathway with regard to the Claimant's absence from work and asking if there were any other additional issues that he wished to be included in communications to them. She also suggested a time and date for a further KIT call.

283. The Claimant responded, referring to being bombarded by a large amount of "grossly stressful emails"; that a KIT call in the afternoon would leave him extremely stressed all day and that he was not therefore available and that he wanted an explanation as to all of the other matters raised in his earlier email.

284. He also set out that he wanted details of the specific purpose of the KIT call on the basis that he explained that he did not feel that he had received any support whatsoever whilst being on sickness absence due to workplace stress.

285. RW sought advice from Melanie Clare of HR in relation to responses on the open points. It is clear from that email, which is at page 584 of the hearing bundle, that the focus of RW was to try not to cause the Claimant any further stress or anxiety. There is no reason to assume that the content of what was said in that contemporaneous document was not the reality of the situation and, as we have already observed, the content of email communication to the Claimant from RW demonstrates a supportive tone and a stance which was intended to try and assist the Claimant.

286. On 17th October 2016, RW wrote to the Claimant. She did not do so by email but by letter. She referred specifically in doing so to the fact that she believed that a letter might reduce the Claimant's stress because of what he had said about the level of email communication. She made it clear that she was happy to continue to correspond in that way and that the Claimant could reply in whatever way he felt most comfortable and possibly include how he would like her to continue responding to him. Again, that was a measure of support for the Claimant and to try to reduce any stress that he was under.

287. RW set out that for their next KIT conversation, she would like to discuss what could be undertaken to assist the Claimant in a return to work. She also set out that she had taken the following actions:

a) Contacting AL to ask him what progress had been made regarding the issues set out in his email of 10th August 2016 and that she hoped to update the Claimant by the time of their next conversation;

b) That she continued to believe that an Occupational Health referral would be beneficial and that although the Claimant had said that he had never expressly asked for HP to be removed from his line management, from earlier communications she had understood that to be what the Claimant wanted. She set out that an Occupational Health report would give useful information to assist in facilitating a return to work so that all options could be addressed, including possible reasonable adjustments;

c) That she was contacting the Positive Action Pathway to advise them of the Claimant's current absence from work and to ensure that he would be able to resume the course on his return;

d) That she was chasing up matters relating to his pay and queried how he would like that information to be provided; and

e) That she did not understand his position as set out in emails to her that the Respondent was failing to deal with HRACC1 forms as an investigator had already been appointed and that, irrespective of the concerns that the Claimant had with the timeframe, the investigation was definitely going ahead.

288. RW suggested a time for a further KIT call with those arrangements being in the morning to accommodate the Claimant's preferred option.

289. The Claimant asked RW to send him an electronic copy of her letter of 18th October 2016 and RW did so shortly after he made his request. The Claimant had by that point already received the hard copy letter.

290. There was also an email exchange between the Claimant and RW before his receipt of that letter. That began with the Claimant's reference to who he should forward his latest Fit Note to and confirmation from RW that he could send it to her. She provided the appropriate details for him to do so.

291. The Claimant replied requesting a full update on all open issues "without further delay". That included a request for information as to why he had been denied "any support whatsoever" whilst on sickness absence and that he was being caused a huge amount of stress and a continuation of damage to his health.

292. RW confirmed that she had written to the Claimant by letter (that being the one to which we have referred above) as a result of his reference to emails causing him stress and she also dealt with an update in relation to the matters which he had set out in his email. RW did express surprise that the Claimant felt that he had been denied any support whatsoever and referred to her role as the KIT contact; previous references to Workplace Wellness and earlier offers to arrange an Occupational Health referral, which the Claimant had declined, and that AL had also been in touch by telephone and email. She expressed a view that the Claimant had been supported but that she was willing to consider other support that he thought might be appropriate or that he required.

293. Again, the email content was perfectly in keeping with what the position was in reality and was both reasonable in tone and content. Unfortunately, the Claimant's response was not. The part with regard to her comments as to a lack of support bear setting out in full. The Claimant's reply in that regard said this:

> "*…*
>
> *Support*
> *You have refused to provide any support whatsoever:*

- *despite you confirming that you are aware of HMRC's adoption of the social model of disability, you ignore the clear causes of my absence and attempt to portray this as being due to me. This is demonstrated by your request to have details of my medication and a refusal to consider HMRC's agreement to the causes of the stress on 10 August 2016 before I have an OH report. As you are aware, I have only withdrawn my consent for an OH report as a direct result of this being used to discriminate and victimise (i.e. using this procedure to justify a refusal to take action to remove recognised causes of workplace stress).*

- *as demonstrated by this response, your refusal to address points that I repeatedly raise.*

- *misrepresenting my position as demonstrated by you stating "I would remind you I have offered you the Workplace Wellness services as part of the Employee Assistance Programme (their number is 0800 1116387 and this is a 24 hour helpline) but* ***you did not wish to avail yourself of this****". This is totally untrue and again demonstrates your attempts to blame me as, as you are aware, I have contacted Workplace Wellness who have confirmed that the only help they can give is legal advice in respect of taking action HMRC. I have also informed you that my GP confirms that there is nothing that he can do to help the situation as it is entirely caused by HMRC.*

- *you have failed to show any sympathy, support or assistance as demonstrated by ignoring my point about the apparent removal of my HMRC email account. Surely part of the KIT procedure is to ensure that the employee continues to feel engaged with and valued by HMRC during their absence. How do you think it makes me to feel to find that my email account may have been terminated whilst on sickness absence due to workplace stress and that this may have happened by a person(s) subject to a serious formal complaint and without even informing me.*

- *you have made phone calls pointless as you have refused to take any action and so have no updates to provide. The calls are simply designed to follow a process without any attempt to actually meet the aims of that process i.e. providing me with support.*

- *you amend the agreed contact arrangements without even informing me let alone consulting me. I have not agreed nor did I request that you communicate with me by post.*

- *HMRC has and continues to refuse to apply H&S legislation (accident report completed in June still remains uninvestigated and there is a refusal to stop victimising me) but, despite you being an Attendance and Wellbeing Champion, you have refused to take any action.*

- despite many requests over several months, there has been a refusal to provide any updates whatsoever regarding my participation in the Positive Action Pathway.

This is just a small number of the many examples of your & HMRC's refusal to apply both mandatory guidance and legislation.

I would like to point out that the treatment of people with mental health issues is currently a high profile issue within HMRC, CS[9] and the wider society. Despite this, the approach that has and continues to be taken towards me demonstrates an approach that is simply extraordinarily confrontational and demonstrates that the large amount of policy and guidance in respect to these issues is simply there to put an appropriate form of words in place whilst HMRC has no intention whatsoever of taking any action to end the campaign of victimisation that I have now been exposed to for over three years.

Finally, I would like to point out that suicide is the main cause of death of men between the ages of 35 and 49 (I was recently 50 but believe that this age group best suits my circumstances). HMRC, rather than recognising this fact, actively appears to attempt to encourage suicide in members of staff who declare mental health issues and attempt to appropriately challenge senior managers' inappropriate behaviour.

…" (See pages 605 and 606 of the hearing bundle).

294. The content of that email was in fact far from fair or accurate. RW had been continuing with the process, as recommended by Human Resources, to try and arrange an Occupational Health referral. As we have already observed, that was a sensible course. The Claimant's complaints and grievances were being investigated and he was aware of the actions that were being taken by AG and DF and also Lynn Coulby in respect of those matters.

295. There had not been any challenging communication from the Respondent and particularly not from RW. It is in fact clear to us that the only challenges and challenging communication were coming from the Claimant.

296. The Claimant has, during the course of the hearing before us, sought on many occasions to indicate that there was nothing wrong with his correspondence or communications to RW or anyone else and that the content was in fact entirely reasonable. However, his position was also that to any extent that we may have found his correspondence not to have been reasonable, then that was entirely as a result of his disability.

[9] This is a reference to the Civil Service.

297. We agree with Mr. Beever that that is not a finding that we can make. Particularly, we have no medical evidence at all that the Claimant's communications were as a result of, or even affected by, his disability. The report of Dr. White (to which we have already referred above) mentions nothing in that regard nor is there anything else before us to suggest that it is the Claimant's disability which causes him to write such lengthy and confrontational emails.

298. Whilst the Claimant has pointed at length in the cross-examination of numerous witnesses to a policy of the Respondent with regard to recognised signs and symptoms of stress and asserted therefore that if there was a difficulty in communication, it must be on account of his disability, that does not take the point forward. That policy does not suggest that everybody who exhibits the symptoms listed therein did so on account of the fact that they are suffering from stress. Therefore, the Claimant's point that to criticise him for his correspondence, or for that matter any other confrontational position taken, was to "criticise him for being disabled" is not something with which we can agree with him.

299. Moreover, during the course of the matters that led to these proceedings and during the proceedings themselves, the Claimant has demonstrated an astonishing lack of insight for anyone else involved in the process other than himself. It was, for example, suggested on more than one occasion by the Claimant that whilst he did not accept RW would have been entitled to feel aggrieved by the content of his correspondence, if she had been, then she was not entitled to advise him of that but instead should have contacted Workplace Wellness to try to "manage her own stress levels".

300. The Claimant's point appears to be that if he says that he suffers from a disability and that might manifest itself in inappropriate correspondence, then there could and should be no criticism whatsoever of him for that and that those in management positions should simply not comment on the matter but contact Workplace Wellness themselves. That appears to stem from guidance of the Respondent which directs managers to consider their own stress levels when dealing with people who may display challenging behaviours as a result of mental health issues. The Claimant appears to read into that guidance that people to whom he directed hurtful, unjustified and unfair criticisms were not allowed to express their concern about that to him or others. That is not a reasonable reading of the guidance issued in that regard.

301. Not surprisingly, RW sent a copy of the exchange onto Jamie Gracie for advice. Jamie Gracie replied to suggest that they have a discussion over the matter and asked if RW was "ok". Again, that is not surprising given the content and tone of the Claimant's email to RW.

302. The Claimant contends that Jamie Gracie asking RW if she was "ok" was in marked contrast to actions taken in respect of him where nobody had ever asked him if he was ok. That is, however, not entirely accurate. HP

did so in communications and RW had also expressed concern about his welfare in her dealings with him. It is not surprising that Jamie Gracie asked RW if she was "ok" given the content of the email exchange with the Claimant and it is equally not surprising that she referred to the matter in further communications with Jamie Gracie as a "pretty aggressive" response and that she would need to mention to the Claimant the tone of his emails in later correspondence.

303. Whilst the Claimant can see nothing wrong with his emails to RW, having read the content for ourselves it is clear that on any reasonable reading those can be viewed as "pretty aggressive". We remind ourselves in this regard that all that RW had done was to try and take steps to support the Claimant and bring about a return to work. It is entirely unsurprising that she viewed the content of the emails in the way that she did.

304. On 21st October 2016, the Claimant wrote a long email in response to RW's letter. That email ran to some two and a half pages and, again, was highly critical of the way in which the Claimant believed that RW had dealt with him. The Claimant relies upon this email as being a protected act for the purposes of the victimisation claim, but it is too lengthy to set it out in its entirety here. However, some of the common themes or issues raised were as follows:

a) That the Claimant had been left extremely stressed by the contents of RW's letter and due to what he termed her continued refusal to act towards him in an appropriate manner;

b) That RW had repeatedly refused to take any action in relation to the causes of his workplace stress;

c) That he was refusing to agree to an Occupational Health report because of the way in which he maintained that RW was using this as an excuse to take no action on the causes of his workplace stress;

d) That he found it unbelievably stressful because he said that RW continued to refuse to hear what he had "continually and very clearly" said;

e) That he had never requested a change of manager but had wanted to be treated in accordance with the Respondent's policy and guidance and to be free from bullying, harassment, discrimination and victimisation;

f) That Workplace Wellness had suggested that he take action under the Protection from Harassment Act 1997 and that ACAS had advised him to take action under the Equality Act 2010 but that those facts had been ignored and that a 5 minute telephone call with someone who "*knows nothing about*" him was not going to provide some "*magical insight*";

g) That he would agree to an Occupational Health report once the "known causes of the workplace stress" had been dealt with;

h) That RW's interpretation of the Positive Action Pathway was wrong;

i) That he had been left waiting for over three weeks for an explanation in relation to his pay;

j) That it was a fact that RW had fully supported the refusal to take action on the HRACC1 forms or on anything else;

k) That sending a formal letter, particularly one which the Claimant asserted was "totally unacceptable" according to the Respondent's guidance in terms of its content, was not going to reduce the stress that RW had and continued to cause him and that that was "ridiculous", particularly as RW had not bothered to tell the Claimant;

l) He recommended that RW read the relevant guidance as he asserted that she had failed to demonstrate even the "most basic of appropriate attitudes and behaviours";

m) That contact should have the primary aim of supporting him during his absence rather than the "*current aim*" of denying him any support and continuing with the victimisation, discrimination etc;

n) That contact in writing should be by email and adopt a supportive tone and that in its present form RW's communication was not even professional, let alone supportive;

o) That she should be willing to "actually do something" rather than provide empty words;

p) That he would not agree to a KIT call simply to allow RW an opportunity to further damage his health but that he would agree to one if RW was able to provide a "realistic and honest" reason why a call would be beneficial; and

q) That he wanted to point out how confrontational it was for RW to know that he had been seeking to contact the Respondent's Disability Champion for several months and that RW had provided an incorrect email address for him the day previously as he was no longer in that role.

305. The latter point followed on from an email exchange the day previously where RW had attempted to provide details for the Respondent's Disability Champion who she had at that time understood to be MD. RW suggested as the Disability Champion whose details she had provided had now been confirmed as moving on, that the Claimant should contact the Disability Network Co-ordinator. The Claimant did not agree with that and said that he now required the email address for Jon Thompson, the Chief Executive Officer of the Respondent.

306. RW forwarded that email chain to Jamie Gracie with the comment *"is there any point in me doing anything for him at all?"*. That clearly shows an amount of frustration on RW's part but in light of her attempts to assist the Claimant and his responses to those attempts, that is not entirely surprising.

307. Jamie Gracie suggested a telephone conversation between himself and RW. He also, not unreasonably given the impact that the Claimant's communications were having on RW, suggested that there needed to be a point in time that the Claimant was asked to stop with his communications and for that to be explained to him (see page 657 of the hearing bundle).

308. RW replied to Jamie Gracie in the following terms:

> "*Thanks for your time on this Jamie, I really do appreciate it. I haven't replied at all yet and don't intend to reply to the first email until after our telephone conversation on Monday … Regarding the second email which has angered me as it accuses me of doing something deliberately to raise his stress levels. I find that really insulting and hurtful that he would think I would do something like that so I haven't answered him yet, even I need time to calm down when confronted with something bordering on character assassination.*
>
> *I'll provide him with Jon Thompson's email address this afternoon but I really want to tell him how his assertions have left me feeling. Are you about this afternoon for me to ring you? …*"

309. Again, we do not find it surprising that RW found the communication from the Claimant upsetting.

310. Having been furnished with Jon Thompson's email address, the Claimant forwarded an email that he had prepared and sent to MD in his capacity as HMRC Disability Champion. MD had, however, by that stage left the organisation. That email set out in detail all of the issues involving matters relating to the HRACC1 forms and matters relating to the Claimant's work email account which had been suspended whilst he was on ill health absence.

311. Again, this is a lengthy email and so we do not set it out here in detail. In his covering email to Jon Thompson, the Claimant referred to an *"extraordinary level of bullying, harassment, discrimination and victimisation"* that he contended that he was being subjected to and what he referred to as the Respondent's ongoing refusal to stop. He also offered to assist the Respondent in tackling that particular "culture" on the basis that he maintained that he believed that he was the only person involved who had demonstrated the attitudes, behaviours and leadership required to tackle them. He suggested that he was happy to take on or assist with the role of Disability Champion if MD's role was being replaced.

He subsequently sent a further four emails to Jon Thompson, including copies of the HRACC1 forms and earlier communications between himself and AG, AL and Mary Aiston.

312. Sir Jon Thompson forwarded those on with a request that someone take advice as to how the emails were best dealt with (see page 691 of the hearing bundle). Given his position within the Respondent organisation, that course of action was unsurprising.

313. After receiving advice, Sir Jon Thompson replied to the Claimant's email on 14th November 2016 (see page 750 of the hearing bundle) and said this:

> "*Adrian*
>
> *Thank you for getting in touch. I understand you have two complaints and reported two incidents at work and you are waiting on the outcomes of those. I have looked into this for you and would like to reassure you that the issues are under consideration and are being handled in line with our policies. Given that those investigations are ongoing, it is right that we allow that process to take its course.*
>
> *If you would like any of the material you sent to me to be considered as part of those complaints, you should share them with the investigating officers.*"

314. The Claimant contends that the content of that email was untrue. The essence of that complaint appears to be the Claimant's contention that matters were not in fact being handled in accordance with what he consistently refers as mandatory guidance and the fact that Sir Jon Thompson had not looked into the matters personally. That is entirely a matter of semantics. Sir Jon Thompson sought advice from Human Resources in relation to the matters that had been raised and the steps being taken to deal with the Claimant's complaints. That was an obvious step to take because Human Resources would be best placed to provide him with information. Whilst it is perhaps fair to say that policies were not being followed to the letter with, for example, the investigation of the HRACC1 forms within the specified time limits, it cannot be said that it was untrue for Sir Jon Thompson to have commented that the Claimant's issues were being handled in line with the Respondent's policies. His grievances were being investigated and considered by Lynn Coulby and by AG and DF who were investigating the concerns raised in the HRACC1 forms. It is perhaps therefore unsurprising that the message was sent as it was.

315. On 28th October 2016, the Claimant raised a further complaint with RW via email. This was headed "*Continued harassment*" and it was copied to Mary Aiston. This largely centred on the fact that he had received a letter to his

home address from HP about an issue that he had raised with RW regarding the return of his Fit Notes. He maintained that HP had not provided an explanation to him but had used her letter as an excuse for further victimisation and harassment and to exert her control over him. He set out that matters were being discussed with Sir Jon Thompson and that he would be bringing the contents of the email to his attention.

316. A copy of that email was forwarded to Melanie Clare by RW with an indication that there should be a response from Mary Aiston and that Sheldon Whatmough (another Human Resources Officer) would be involved in pulling together a brief to provide Mary Aiston with an overview as to next steps and agreed actions.

317. On the same date, RW wrote to the Claimant by email setting out that she was pulling together a response to all of his outstanding questions but there would be a delay in replying due to her taking annual leave and that she wanted to let him know about that because she thought that it would be less stressful.

318. Thereafter and in accordance with her indication that she would provide the Claimant with a full response, RW wrote to him on 8th November 2016.

319. That was by email as the Claimant had requested. The email was detailed and ran to some five and a half pages in length. It sought to deal with all of the issues which the Claimant had raised in his emails of 21st October and 28th October 2016. The email from RW was in perfectly reasonable and measured tone throughout but particularly the penultimate paragraph which said this:

> "…
>
> *I realise this is a very long email but I hope it has gone a long way to clearing the air between us. I understand you have been off since July and as KIT manager I want to engage with you so that I can make informed decisions on how best to support you. I do not want to make recommendations to a decision manager based only on the information I currently have but in the absence of reasonable input from you I may need to consider this. My view is that the more involvement in this procedure with yourself the better and I would really like to discuss this with you by telephone if possible. I feel it would be much easier for us both for you to be involved and engaged in a reasonable manner and genuinely hope you will see fit to agree to this.*
>
> *…*"

320. It was clear here that RW was explaining to the Claimant that given his continued absence at some stage the matter may need to be passed to a decision maker to determine if that absence could be further sustained. She made it clear that she did not want to proceed down that route on the basis of the limited information to hand and encouraged the Claimant for

those reasons to engage in the process. That of course was the process that RW had sought to engage the Claimant in from the outset which was to consent to input from Occupational Health.

321. Unfortunately, the Claimant did not reply in the spirit of RW's email and sent a long and again somewhat challenging response (see pages 746 to 748 of the hearing bundle). Given the length of the email in reply we do not set that it out here in full but the pertinent points can be summarised as follows:

a. That RW's email had caused him a huge amount of stress, a fact which he said that he was sure that she would be aware of;

b. That RW had threatened him with disciplinary action[10], which he regarded as very clear and extreme victimisation;

c. That RW had made what he considered to be untrue statements in respect to his behaviour and that she herself had constantly shown what he referred to as an "extraordinary level of passive aggressiveness";

d. That the Respondent's guidance required RW to be responsible for monitoring her own stress levels and to seek support if necessary and that it was not acceptable to place stress onto him and that he was the only person with any knowledge and respect for the Respondent's guidance;

e. That RW had threatened him rather than recognising the extraordinary level of professionalism and leadership that he had consistently demonstrated;

f. That RW had demonstrated a discriminatory approach which she had adopted from the outset and that there was very clear discrimination and victimisation;

g. That rather than his communications being deemed unacceptable, he believed that he deserved compensation, promotion, a recognition bonus and a people award for the professional way in which he had appropriately challenged an "extreme campaign of victimisation" and demonstrated a level of leadership far in advance of anybody else;

h. That the Respondent's approach appeared to be either to force a job holder to "shut up or kill themselves" and that two of his colleagues had committed suicide the previous year;

i. That RW still refused to actually do anything to assist and continued to refuse to provide answers to reasonable questions which was the cause of a huge amount of stress to him;

[10] That was not an accurate or objective assessment of what RW's email said.

j. That he was copying his email to Mary Aiston[11] for appropriate support to be provided as that support was *"clearly not available*" from RW and that the Respondent should identify somebody with an understanding of the issues around mental health, mandatory guidance and advice and be prepared to deal with the Claimant in an open, honest and professional manner as he himself had demonstrated throughout; and

k. That he had already informed Lynn Coulby of his intention to extend the formal complaint to include RW's actions and behaviours.

322. None of that, on a reasonable and objective reading of the actions of RW and the communications that she had sent to the Claimant, could be said to be a fair or accurate assessment of the situation.

323. RW continued to arrange regular KIT calls with the Claimant (see for example pages 883 – 884 of the hearing bundle) with KIT discussions taking place on 30th August 2016, 9th September 2016, 22nd September 2016, 13th October 2016, 20th December 2016 and 6th January 2017 (see pages 895 – 899 of the hearing bundle).

324. On 14th December 2016, the Claimant was advised by letter from the Human Resources Service Centre that his pay would be reduced to half pay with effect from 6th January 2017 and that he would exhaust his entitlement to any contractual sick pay with effect from 21st March 2017 (see pages 865 – 866 of the hearing bundle). The Claimant is critical of that letter and the timing of it as it was received shortly before Christmas. He appears to contend that it was intended to cause him additional and unnecessary stress. Whilst we do not doubt that it would have caused the Claimant anxiety as he was, at that time, the sole source of income for his family, it is clear that the Respondent did need to forewarn the Claimant that his entitlement to contractual sick pay was shortly due to be reduced in case he was not aware of the position. If they had not, it appears likely that that would have formed the subject of complaint from the Claimant that he had been ambushed by an unexpected reduction in his pay.

325. On 22nd December 2016, the Claimant raised a complaint with RW about being moved to half pay. He also sent that complaint to Lynn Coulby (who as we shall deal with below had been tasked with considering his fourth grievance) with a view to asking her to consider those matters as part of the investigation into his grievances.

326. RW replied to the Claimant indicating that there was nothing that she could do to prevent him from being moved on to half pay but she suggested as a practical solution that he apply for Civil Service Injury Benefit. RW attached various documents to assist him in that regard. The Claimant replied the same day complaining about the process of moving to half pay and asking for details on how to prevent that.

[11] We shall come to the involvement of Mary Aiston in matters below.

327. RW sought advice on the point from Human Resources. It was clear that despite being about to commence a period of annual leave that day, RW's concern was that the Claimant should not be caused more stress over the Christmas period (see page 906 of the hearing bundle) and so she wanted to deal with the matter prior to her leave. Again, we are satisfied that that was a supportive position for RW to have taken.

328. RW also contacted HP in regard to a request made by the Claimant to take some annual leave. That had to be a matter for HP who remained the Claimant's Line Manager and RW was not in a position to authorise the leave. RW updated the Claimant with regard to the steps that she had taken, advised him that she was now herself on annual leave but that she would speak to him on 6th January 2017, which had been previously arranged as a KIT contact session. There were further communications between RW and the Claimant before the KIT contact discussion on 6th January 2017.

329. Prior to that KIT discussion there was also an email dialogue between RW and Human Resources regarding options to facilitate the Claimant's return to work. RW raised that one option would be for HP to manage his workflow and for RW to manage his performance assessment reviews and human resources issues. We accept that it was necessary for HP to retain some degree of involvement with the Claimant if he was to return to work in the same role on the basis that it was a niche area that HP was responsible for managing.

330. Melanie Clare of Human Resources replied setting out a number of options to facilitate a return to work following a discussion with RW. Those are set out at page 915 of the hearing bundle and included the temporary option suggested by RW pending the outcome of the grievance and with mentor support. A second option was identified to look for an alternative role for the Claimant within Mid-sized Business and a third option of looking for an alternative role within Wealthy and Mid-sized Business Compliance.

331. At the KIT discussion RW explained the options and that if the Claimant wished to consider the second or third options, then Melanie Clare would progress finding an alternative role quickly. The Claimant was also invited to consider any other suggestions that he may have to make with regard to a return to work.

332. A note of the action points discussed between RW and the Claimant on 6th January was emailed to him after the KIT call (see pages 917 – 918 of the hearing bundle). It was clearly a fairly difficult discussion. The Claimant did not want to explore option one as he continued to feel that HP and RW were the cause of his workplace stress and RW undertook to obtain further details of options two and three so that the Claimant could consider those further.

333. The Claimant made some amendments in relation to the note of the KIT discussions, which can be found at pages 920 – 922 of the hearing bundle. Some of those amendments are in rather strident and blunt terms.

334. RW sought to progress the matter in relation to options two and three and referred those matters to Melanie Clare with an indication that it would be good progress if some details around available posts could be provided (see page 923 of the hearing bundle). Again, that is not consistent with the Claimant's position that RW (and the Respondent generally) were not seeking to assist him in a return to work and that everything was focused on him being in some way removed from the organisation.

335. The Claimant wrote again to RW on 13th January 2017. He complained that although RW had provided Jennie Granger's name[12] (which he pointed out she had spelt incorrectly), she had refused to provide her email address. Whilst it is accurate to say that the email address was missing from RW's email to the Claimant, it is clear that there was no refusal to provide the same. As with other instances, that omission has been unfairly categorised by the Claimant as a refusal when in fact there was none. The Claimant also complained that RW had contacted him outside the stipulated hours of 10.00 a.m. to 2.00 p.m. on a Tuesday which was the period when he had said that he would be open to receiving emails from the Respondent.

336. The Claimant also set out in that email his contention that RW had not provided any options to return to work. That was of course not an accurate assessment given the content of the discussions which they had had in relation to return to work options on 6th January 2017.

337. On 17th January 2017, Melanie Clare provided to RW a number of role options for the Claimant. That included option one which the Claimant had eschewed at the Kit discussion on 6th January 2017 but with the added possibility of the part of line management which was proposed to be taken up by RW on a temporary basis being taken by HP's new countersigning manager, AC. Three other options were also outlined, including one, option two, which would be the creation of an entirely new role for the Claimant within Mid-size business (see pages 933 – 934 of the hearing bundle). We are satisfied that that is demonstrative of the Respondent going the extra mile to try to bring about a return to work and flies in the face of the Claimant's contention that they were intent on dismissing him.

338. The options highlighted in Melanie Clare's email with regard to the Claimant's return to work were set out fully in an email from RW to the Claimant on 17th January 2017 (see pages 951 – 952 of the hearing bundle). That was of course on the very same day that RW had received the email from Ms. Clare. Again, that does not accord with the Claimant's criticisms that he was not being assisted in a return to work.

[12] Which the Claimant had requested so that he could again escalate further complaints. Jennie Granger was at the time the Director General of Customer Compliance with the Respondent.

339. The Claimant responded indicating that he had made a formal complaint to Jennie Granger (we deal that complaint separately below) and that had included a request that she took immediate action to end the "*gross victimisation*" which the Claimant said he believed was an attempt to force him to commit suicide. He referenced the fact that he believed that RW had refused to accept any responsibility and continued to cause him as much stress as possible.

340. His email also raised various further complaints and said this:

"*You also appear to still refuse to copy me into emails etc. in connection with me despite the fact there is no basis whatsoever for such exclusion. It should be noted that it is you and not me that is subject to a very serious formal complaint which, if proven, may result in a finding of gross misconduct and I have also asked Jennie Granger to consider the legal consequences of these matters as I believe it may be illegal to behave in this manner.*"

341. The Claimant ended the email by dealing with the options which had been referred to in relation to a return work. In that regard he said this:

"*As regards the options you provide, I have made it clear from the outset that, in order to assistant* (sic) *HMRC, I would consider a different role but that it is HMRC's responsibility to ensure that I can return to my current role without the fear of a continuation of the bullying, discrimination, victimisation and harassment that I have been subjected to.*

Given the options provided to me, I wish to return to my current role but do not wish to have to have any dealings with people who are subject to serious formal grievances and it is for HMRC to provide an appropriate basis for such a return. Having any contact with either you or [HP] *does not appropriately deal with the causes of the workplace stress and I therefore request that you provide full details as to how such a return will look in practice. Who will be my line manager and what action will be taken to ensure that I do not have to have any contact with* [HP] *or yourself?*

Please let me have a full response to this and all other outstanding points. Please note, until this information has been provided, I do not believe that I am being allowed a return and I also believe that any discussion with you will simply be used to further victimise and bully."

342. Again, that was an unnecessarily confrontational approach given that it was clear that RW was simply seeking to provide the Claimant with options for a return to work in her role as KIT contact.

343. Unsurprisingly given the tone and content of the email RW referred the message to Jamie Gracie. It is clear that by that point matters had come to a head for RW in dealing with the Claimant's communications and the points that he made in the same. That is demonstrated by the penultimate paragraph of her RW's email to Jamie Gracie, which said this:

"*This is really starting to take its toll on me I'm afraid. Mr Teague's accusations against me are spiralling and I really do feel the need to set my case out. He's now copying Jennie Granger* (sic) *into his emails. I hardly look like a competent or caring manager. Being honest, I'm not sure I can take much more of this myself I'm afraid. Not like me, but I'm very close to tears over these recent and continued accusations. Am going out for a walk now and will try and book a T/C[13] with you tomorrow to discuss the response to this."*

344. Given the circumstances, we do not find RW's reaction to the Claimant's communications at all surprising. We can well see how she would have been upset by the emails generally but particularly the content of this one.

345. RW replied to the Claimant on 19th January 2017 as follows:

"*Adrian*

I refer to your most recent emails and must advise you I find their contents to be very upsetting as my actions have always been with the aim of supporting you. I am seeking further advice and guidance concerning your points and will be in touch when I have further information. I will contact you between 10 and 14:00 on Tuesday 24 January 2017."

346. 24th January was of course the next occasion when RW was able to contact the Claimant given the arrangements that he had put in place for receiving contact from the Respondent.

347. The Claimant replied shortly thereafter. Again, the contents of his email were far from productive. He referred to the fact that it was "totally unacceptable" for RW to be expressing any emotional upset and that she should not be sharing her problems with him. Again, this provides a total lack of insight by the Claimant in relation to the impact of his communications on anyone else. The email went on in the same vein and ended that with regard to the suggestion in RW's email that her aim had been supporting him, that was "demonstrably untrue" (see page 959 of the hearing bundle).

348. As a result of those most recent communications there was a telephone conversation between RW and Melanie Clare on 20th January 2017 at which RW expressed that she did not want to continue to deal with the Claimant going forward. Melanie Clare indicated that she could

[13] A shorthand for telephone call or telephone conference.

understand that position as RW was starting to feel the matter was very personal and upsetting. We can similarly understand that as it is plain to see from the correspondence why that would be RW's position. Melanie Clare explained that she was preparing a brief for Dan Coughlin, the Human Resources Director for Customer Compliance Group, and that the options appeared to be allocating a different KIT manager or having a central Human Resources Single Point of Contact ("SPOC") to deal with all of the Claimant's emails. It was suggested that Jamie Gracie may wish to discuss the second option with Jan Beasley.

349. As we shall come to further below, both of those options were taken up and RW ceased to have any further involvement with the Claimant as either a KIT contact or otherwise.

Complaints to and about Mary Aiston and the grievance investigation by Lynn Coulby

350. On 6th September 2016, the Claimant emailed AL's Line Manager, Mary Aiston, setting out a formal complaint in relation to HP, Tim Bowes and AL in relation to what he described as bullying, harassment, discrimination and victimisation. Again, whilst we have no doubt that the content of the email represented what the Claimant believed to be the position, it did not accord with the reality of the situation in relation to attempts to assist him from the Respondent. It referenced, for example, not being provided with details of any contact within the Respondent, which of course was not accurate and that AL and Tim Bowes had refused to consider his grievance and investigate the HRACC1 forms. That was not accurate either given the fact pattern set out above.

351. The text of the email bears setting out in full, not least as the Claimant relies upon this as a protected act:

> "*Mary*
>
> *Please consider this email to be a formal complaint in respect to* [HP] *(G6 manager),* Tim Bowes *(*[HP's] *manager) and* [AL] (Tim Bowes *manager) in relation to bullying, harassment, discrimination and victimisation.*
>
> *Despite being on sickness absence as a direct result of the victimisation etc. that I have and continue to be subjected to, I have been left without any contact within HMRC. I would appreciate if you would take immediate action to end the victimisation etc. and provide me with an appropriate, supportive point of contact.*
>
> *I would also like to bring to your attention a refusal by* [AL] *and Tim Bowes to consider my grievance and a refusal to operate the mandatory and statutory guidance regarding investigating accidents at work. Despite completing two accident reports on 28/06/2016 (71 days ago) and 15/07/2016 (53 days ago) there has been a refusal to*

investigate these within the 20 calendar day time limit.[14] My current absence would have been avoided if the HRACC1's had been appropriately dealt with in a timely manner as required by HMRC guidance and the relevant legislation.

Please note that these matters are merely the latest in a campaign of bullying etc. that I have now been subjected to for three years during which time I have received decisions of bullying & harassment (including being threatened with violence by a G6 manager in my own home whilst on sickness absence)[15] but there has and continues to be a refusal to end the bullying etc. I currently have one formal grievance under way and have been attempting to raise a further formal grievance since, from memory, February 2016, but have been prevented from doing this by the victimisation etc. that I have been continually exposed to.

I have constantly attempted to avoid raising grievances and tried to work with HMRC collaboratively and informally but my efforts are simply met with an extraordinary level of hostility and conscious attempts by HMRC to damage my health and, I believe, attempt to force me to commit suicide.

Raising further grievances is hugely stressful to me and, as a result, I am unable to set out my case in any detail here but will forward several emails following this email which should set out the basis for the grievance. Below this email is the last communication I have had with [AL] *which demonstrates his refusal to consider a grievance, refusal to deal with HRACC1's in accordance with the mandatory time limits and his removal of any point of contact.[16]*

Despite [HP] *notifying me on 30/08/2016 of the appointment of* [RW] *as a supportive contact, I have received no contact from* [RW] *and have not been provided with any means to contact her. Please also note* [HP's] *refusal to even provide me with details of my own line management and HMRC's Disability Champion.[17]*

I would also like to point out the fact that I have been notified of a move to nil pay during October 2016 and yet there has been a refusal to even discuss a return to work with me. In addition to this, I have received confirmation that a previous period of sickness absence was as a result of HMRC's action and requested on 02/08/2016 that the impact if [sic] *this decision be explained to me. As with all of my questions, this was*

[14] Again, we accept there had been no refusal to deal with these matters, despite the Claimant labelling it as such and that AL had taken positive steps as soon as the matter was left in his hands to appoint AG to deal with the matters. Again, this is an example of the Claimant seeing refusal where none lay.
[15] That had been the subject of one of the Claimant's 2014 grievances.
[16] Again, it is clear from a sensible reading of AL's email that he had done none of those things.
[17] Again, that was incorrect. The Claimant was aware that HP continued to be his Line Manager and that RW was only his KIT contact. He had already been provided with details of the fact that Mark Dearnley was the Disability Champion and his contact details in HP's earlier emails.

simply ignored in order to create a huge amount of stress and, I believe, to ensure a move to nil pay.

I would like to inform you, in the absence of any other HMRC contact, that I visited my GP on 01/09/2016 and was issued with a further fit note stating that I am unfit for work due to "stress at work, anxiety and depression" for the period 01/09/2016 to 15/09/2016. This note has been posted to [HP] *at the address previously supplied.*

As I have been forced out of work by HMRC's grossly damaging behaviour, I no longer have access to emails etc. but these should be available from [HP] *and Tim Bowes.*

In addition to dealing with this formal complaint, I would ask that I am immediately provided with the support I am entitled to.

I will endeavour to forward relevant emails today (my home IT is unable to attach them to this message) but would ask that you appreciate the huge amount of stress that this causes. I may, therefore, have to leave this until tomorrow if I feel that I cannot face this today.

…"

352. The Claimant subsequently forwarded on a number of emails to Mary Aiston which he said demonstrated the basis for his grievances against Tim Bowes, HP and AL (see pages 409 to 442 of the hearing bundle).

353. On 15th September 2016, Mary Aiston replied to the Claimant's email of 6th September 2016. She confirmed that she had taken HR advice, which it would appear would have been from Melanie Clare, and that she had appointed Lynn Coulby as an independent manager to review his grievance as a matter of priority. She asked him to complete a grievance template setting out the key issues in relation to the grievance and to give consideration to the resolution that he was seeking. The email also referred to the fact that RW had been identified as a Keeping in Touch manager and that she would be contacting the Claimant shortly if she had not done so already. RW had of course already been in touch the week previously.

354. Mary Aiston indicated that she would ask RW (who was still the KIT contact at that time) to contact the Claimant directly to set up a meeting to progress queries with regard to pay, an Occupational Health referral and how to discuss support during absence and to achieve a return to work. She also confirmed that AG had been identified to consider the HRACC1 forms and would be progressing those as quickly as possible. She recommended that the Claimant may wish to contact Workplace Wellness and asked the Claimant to let her know if there was anything else that she or his management team could be doing to support him. There can be no question that that was a well-meaning, well intentioned and supportive email.

355. The Claimant replied the following day by way of a lengthy email (see pages 468 to 469 of the hearing bundle). We do not set out that email in its entirety here but it made the following points:

a) That he requested that any communication sent by the Respondent was only done between the hours of 9.00 a.m. and 5.00 p.m. because having to deal with the Respondent's emails on a daily basis meant that he was unable to escape his workplace stress;

b) That completion of the grievance template would be a huge burden as he would have to re-write his complaint and that a meeting with the investigation manager would provide an opportunity to clarify and elaborate on the complaints;

c) That in terms of a resolution, he wanted matters to be fully and appropriately investigated in accordance with guidance and legislation;

d) That if a sanction was appropriate, it should be made without exception of grade or position and with the support of the Respondent for any legal consequences;

e) That he had been denied his opportunity on the Positive Action Pathway and that the Course Director should be informed of that;

f) That those within the Respondent and Civil Service generally with responsibility for diversity, disability, mental health strategy and health and safety should be informed of the position and the Respondent's "*apparent support of a culture of bullying, harassment, discrimination and victimisation*" that the Claimant believed existed;

g) That HP was still his Line Manager despite not being an appropriate person to continue in that role and no action having been taken to address the matter;

h) That RW had requested details of his medication and that that had been inappropriate given his views as to the social model of disability;

i) That Workplace Wellness had advised that he should take legal action against the Respondent under the Protection from Harassment Act 1997 and that ACAS had similarly advised he take action under the Equality Act 2010;

j) That HR had refused to provide him with details of the relevant legislation in respect of the HRACC1 forms;

k) That AL had agreed to make contact with the Respondent's Disability Champion and had not done so and subsequently against his wishes removed all HMRC contact[18]; and

l) That a single point of contact be put in place.

356. As the issue of a single point of contact ("SPOC") has become something of a significant issue in relation to these proceedings, it is worth setting out in full that part of the Claimant's email relating to this particular matter.

357. That part of the email, which appears at page 469 of the hearing bundle, said as follows:

> "*In relation to other support that could be provided to me, I would like to suggest that an appropriate person (i.e. one with the knowledge, appropriate attitude and authority to take action and who does not regard an appropriate challenge to be an attack on HMRC which must be denied or excused) to be appointed to oversee and 'ringmaster' the many issues I am having to face. These issues being my current absence and the refusal to take any action to facilitate a return to work, this formal grievance, the current formal grievance that is underway in respect to the actions of HR (I currently have no contact whatsoever in respect to this), a further formal grievance in respect to the actions of Large Business which I have been attempting to make since approximately March 2016 but have been prevented from doing so due to having to deal with the issues covered by this and the HR complaint, my participation in the Positive Action Pathway and any other appropriate issue. This person to act as a single point of contact and to ensure that I am not constantly having to deal with HMRC emails and forms. To clarify, this role is not the same as the one that* [RW] *currently has.*"

358. Mary Aiston replied on 23rd September 2016 to say, amongst other things, that she did not consider it necessary to appoint someone as a SPOC.

359. On 3rd October 2016, the Claimant replied to Mary Aiston's letter of 23rd September 2016 raising his concerns about the refusal to appoint a SPOC. He referred to the Respondent's insistence on "bombarding" him with "*very confrontational emails*" and that he was continuing to be victimised. We would observe that not one of the emails from the Respondent to the Claimant that we have seen could be properly characterised as confrontational and the volume of email traffic was without a doubt as it was because of the Claimant sending a large number of emails to a variety of different people.

[18] Again, that is not an accurate position of what had in fact occurred. AL's attempts to deal with matters had been stymied by the Claimant raising a grievance against him with Mary Aiston and there can be no question that he had removed all contact with the Respondent. Specifically, the Claimant was by that time well aware that he had RW as a KIT contact following his request that HP did not contact him.

360. The Claimant also asserted in his email that RW had refused to take any action to facilitate a return to work. He set out in that regard an email exchange that he had had with RW on 28th and 29th September 2016. The email chain forwarded in relation to RW stemmed from an email that the Claimant had sent to RW on 28th September 2016 to which we have referred above. The Claimant requested that Mary Aiston *"take immediate action to end the ongoing victimisation, discrimination, harassment and bullying"* and to arrange for him to receive the support that he was entitled to.

361. The Claimant further complained to Mary Aiston on 3rd October 2016 about RW and suggested that there was a continuation of a refusal to deal appropriately with him. Again, that referred to his perceived belief that the Respondent intended to force him to commit suicide but that he did not intend to succumb to those pressures. In fact, there was nothing at all wrong with the email which RW had sent to the Claimant and which formed the basis of his complaint about her to Mary Aiston.

362. It was confirmed on behalf of Mary Aiston that the emails had been forwarded to Lynn Coulby who would be in contact with him shortly. That was a reasonable course given that Ms. Coulby had been tasked with consideration of the Claimant's grievance. On 4th October 2016 Lynn Coulby acknowledged receipt of the additional emails relating to RW and confirmed that she would be in touch shortly to advise with regard to the next steps.

363. The following day the Claimant forwarded to Lynn Coulby a further email exchange which he had had with RW over the course of the preceding few days and to which we have referred above. That followed on from an earlier email to Ms. Coulby in which the Claimant had complained about various actions taken to date and asked her to take "immediate action to end the ongoing victimisation" (see page 538 of the hearing bundle).

364. On 11th October 2016, there was further communication between the Claimant and Lynn Coulby with requests again from the Claimant for Lynn Coulby to "*end the ongoing victimisation*". It is difficult to see what the Claimant was expecting Ms. Coulby (or indeed Mary Aiston) to do at that time given that actions were being taken by various people within the Respondent organisation to seek to deal with the complaints and issues that he had raised and to facilitate a return to work process.

365. Lynn Coulby replied to the Claimant to confirm that she would be asking a fact finder, SB, to contact him in order to put some additional questions to him. In point of fact, that never progressed on the basis that the Claimant complained about the involvement of SB in the investigation of the grievance because he had been involved in investigating grievance number three regarding the pension contribution issue.

366. The Claimant made his concerns in that regard plain on the same day (see page 581 of the hearing bundle). He specifically referred to SB not being an "appropriate person" to be involved in these matters. He also asked for clarification as to Lynn Coulby's role and whether she was the investigation manager or decision manager. He had understood Mary Aiston to be the latter. He also raised concerns in relation to the timescale that had been in place thus far for dealing with the matter.

367. Lynn Coulby sought advice from Jamie Gracie and the email exchange in that regard provides a clear and contemporaneous explanation of what happened in relation to the fact finding process. In this regard, Jamie Gracie replied to say that there was no reason that SB could not be used again because he was not a decision maker in the pension contribution process but that the Claimant's perception was clearly different and he was to be encouraged to provide more information to enable an informed decision to be made. It was referenced that another fact finder could be identified but that would take time and that the Claimant had already expressed his concern about the delays thus far.

368. Jamie Gracie indicated that he believed that Lynn Coulby's suggestion to offer to speak to the Claimant and ask questions of him was a good one. He noted that as well as the issue of delay, getting another fact finder involved would involve the sending of at least one more email from Lynn Coulby and several more from the new fact finder and that was a concern to him given that the Claimant had already said that he was receiving too many emails. The Claimant had in this regard asserted that he was being denied an opportunity to escape from the workplace stresses as a result of what he referred to as a "bombardment" of emails from the Respondent.

369. Against that backdrop, the view of Jamie Gracie was that it was better not to appoint another fact finder given that the Claimant did not want SB to take up that role and that Lynn Coulby could undertake the role of both investigation manager and decision manager herself. In that regard, his advice was this:

"*There is nothing wrong procedurally with you being effectively the Investigation Manager and Decision Manager, especially where the complaint is not considered to be complex*."

370. He specifically referred in a later follow up email to the Respondent's guidance on the position to which we have been taken at some length during the course of these proceedings.

371. It is abundantly clear from this email that Lynn Coulby acted on the advice provided to her by Jamie Gracie of Human Resources and that she had been referred to the Respondent's guidance in that regard. It is also abundantly clear that the advice of Jamie Gracie was given specifically in light of the concerns raised by the Claimant. The Claimant had not wanted SB to be involved and despite the fact that there would have been nothing

prejudicial with regard to his involvement, the Claimant's concerns were acted upon and a decision was taken that SB would not undertake the fact finding investigation. Furthermore, the Claimant had also complained about delay and receipt of multiple emails and so as to avoid both those things, the advice was that both the investigation and decision maker roles would be undertaken by Lynn Coulby.

372. The Claimant also forwarded to Mary Aiston his email exchange with AG of 18th October 2016 to which we have referred above. He referenced in that email a breach of the 20 day time limit for concluding the HRACC1 process; his view that there was no basis to refuse to provide him with information; that no action had been taken to investigate his serious formal complaint; that he had provided details to Lynn Coulby of ongoing victimisation but she had refused to take any action and that he wanted Mary Aiston to provide him with details of the Respondent's Senior Leadership Team with responsibility for health and safety and for her to take immediate action to end the ongoing victimisation (see page 618 of the hearing bundle).

373. Mary Aiston sought advice from Melanie Clare in relation to the content of the Claimant's email. Melanie Clare also sought input from Jamie Gracie (see page 634 of the hearing bundle). Given the content of the correspondence and the ongoing issues, that was an understandable course to take.

374. Lynn Coulby wrote to the Claimant on 31st October 2016 in relation to the outstanding grievance. She described her role in that regard as Investigation Manager and that she would report the outcome to Mary Aiston. That was confusing as it suggested that Mary Aiston was going to be the Decision Manager when, in fact, it was already clear from earlier communications that Lynn Coulby also occupied that particular role. In our view, it would have been more sensible for there to have been a separate Investigation Manager so as to keep the roles separate but, as we have already observed, it was clear from the email of Jamie Gracie why that particular step was taken and his view that that remained in accordance with the Respondent's policies.

375. Lynn Coulby continued to receive human resources support from Jamie Gracie during the period that she was dealing with the Claimant's grievance. Jamie Gracie had of course been designated as the HR Casework support in relation to the Claimant's case and it was clear to us that Ms. Coulby would have required support because she was not particularly experienced in dealing with these types of matters. The evidence before us was that it was not unusual for there to be a caseworker appointed in complex cases of this nature. The case was considered complex because by that stage there were many overlapping features in relation to various grievances and complaints that the Claimant had raised in addition to the fact that he was now off on long-term sickness absence which the Respondent was also seeking to manage.

376. The Claimant replied to Lynn Coulby's email on 31st October 2016 (see pages 710 – 711 of the hearing bundle). Lynn Coulby had indicated that she would now deal with matters by way of a fact find rather than involving SB. That of course was in view of the Claimant's complaint about the adequacy of SB as a fact finder and she proposed a meeting or, if it was more convenient to the Claimant, a telephone call for the purposes of that fact find.

377. The Claimant replied that he was not well enough to attend a meeting but that he was prepared to have a telephone call but only on the understanding that due consideration was given to his health and that he only be questioned in order to obtain "vital information" that was not available from other sources. He requested a call in the morning so that he was not to be occasioned rising stress levels waiting for the same to take place and also made it clear that he may terminate the call at any point should he feel that it was in any way confrontational or damaging to his health. He also referred to the fact that the grievance was now 39 working days old and that he understood the position that there was to be a senior management review at 40 days. He asked for the name of Mary Aiston's manager, who he said that he presumed would be undertaking the review. He also indicated a wish to provide that particular manager with a submission detailing his concerns over the failure to deal with his grievance and what he referred to as the inappropriate timescale and that the victimisation of which he complained had been allowed to continue. He also referred to his belief that it was mandatory for those investigating complaints to have completed two specific training courses within the last 12 months. He asked for details of those courses and the dates on which Lynn Coulby had completed them.

378. The final two paragraphs of the Claimant's email said this:

> "*…*
>
> *I would also like to ensure that it is understood that my complaint is not only in respect to the named people but is also in respect to anyone whose involvement in these matters comes to my attention during the investigation, for example, should HR have been involved but failed to take appropriate action.*
>
> *Finally, I would also like to make you aware that my treatment in general, including the lengthy time it has taken to even reach this point and the refusal of HMRC to take any action whatsoever to end the victimisation etc, have been referred to Jon Thompson whose office is currently considering matters,*
>
> *…*"

379. Again, and understandably, Lynn Coulby took advice from Jamie Gracie in relation to those matters (see page 707 of the hearing bundle). In the course of dealing with her views in relation to the communications received from the Claimant and his reference to the matter of further complaints, Lynn Coulby said this:

> "*… I don't believe there is much we can do to stop this escalating but we can attempt to keep contact to only the most essential until the reviews into his various complaints are completed. I'm suggesting this, not only to ensure Adrian does not feel additionally victimised, but also to protect those he comes into contact with because whilst I am mindful of Adrian's stress issues and how that can impact on perception and behaviour, this is becoming increasingly vexatious with continued addition of names to the list, repeated requests for escalation and potential new complaints.*
>
> *…*"

380. That has resulted not only from the Claimant's indication that there may be some unidentified individuals who he might add to the scope of the grievance but also that in replies to Lynn Coulby he had by that stage now added a number of further named individuals to be considered as part of the grievance. Those were now AG, DF, RW and any HR advisers who had supported AG. Again, it should be noted that by this stage, anybody who had had any meaningful contact with the Claimant had been added to the scope of his grievances and complaints.

381. In view of the fact that RW had now been named in his complaints, the Claimant requested that Lynn Coulby discuss with Mary Aiston the provision of an "appropriate supportive contact", which he maintained the Respondent had refused to provide since the beginning of his absence. That was of course not an accurate assessment given that RW had been seeking to assist the Claimant from the outset of her involvement.

382. As part of her investigation into the Claimant's grievances Lynn Coulby wrote to him to set a date for a telephone call to discuss the grievance. That was scheduled for 15th November 2016 at 10.30 am. The Claimant was advised of his right of accompaniment at the grievance meeting. Lynn Coulby also arranged to undertake the training to which the Claimant had referred in his earlier email.

383. That telephone discussion took place as scheduled and notes of the same can be found at pages 755 – 759 of the hearing bundle. Lynn Coulby spent around an hour and ten minutes discussing matters with the Claimant on that occasion.

384. Part of the discussion on 15th November centred around whether Lynn Coulby was the Investigation Manager or Grievance Manager. Lynn Coulby confirmed her position at that time as Grievance Manager.

385. The Claimant indicated in reply his understanding that Mary Aiston was the Grievance Manager and that Lynn Coulby was the Investigation Manager. Lynn Coulby agreed to notify Human Resources that the meeting had gone ahead on the basis of the Claimant's understanding in that regard. That was actioned by Lynn Coulby after the meeting, as can be seen at page 760 of the hearing bundle. However, as we have already set out above, it had been determined that Ms. Coulby was undertaking both the role of Investigation Manager and Grievance Manager (or decision maker).

386. At the end of the conversation, Lynn Coulby confirmed that matters would be picked up again the following week (see page 760 of the hearing bundle).

387. Lynn Coulby also fed back to Human Resources at the Claimant's request that he wanted a single named point of contact within the Respondent to be put in place to maintain a regular weekly dialogue on an agreed day and time and that he also wanted a senior management review into the complaint investigation and for someone to be appointed. Lynn Coulby left those matters with Jamie Gracie – who was of course the designated caseworker - to pick up.

388. Lynn Coulby wrote to the Claimant by email after the meeting thanking him for the conversation. She said that she had found the information that he had provided valuable and that it would be useful to continue the conversation. She set out details of her absences from the office and asked the Claimant for a date and time that would best suit him to pick up the discussion. The Claimant suggested 10.00 a.m. on 24th November 2016. In his reply, he thanked Lynn Coulby for the manner in which she had undertaken the call and for showing concern for his health and allowing him to explain his concerns in an open and non-confrontational manner. He said that he had felt better after the call rather than stressed.

389. The second half of the grievance investigation discussions between the Claimant and Lynn Coulby took place as planned on 24th November 2016 (see pages 843 – 854 of the hearing bundle). The meeting was opened by Lynn Coulby enquiring how the Claimant had been since the previous call and was closed with her wishing the Claimant well and hoping that he would soon start to make a recovery. Again, that is at odds with the Claimant's contention that he was never offered any support or supportive contact by the Respondent and that no one had ever asked him how he was or how he was doing.

390. After the discussion the Claimant also forwarded to Lynn Coulby a number of email threads by way of further information (see pages 855 – 860 of the hearing bundle).

391. On 8th December 2016, Mary Aiston wrote to the Claimant in connection with his email to RW of 11th November 2016 to which she had been copied in. Again, the email was perfectly measured in tone and entirely reasonable in content. However, given the Claimant' reaction to it, it is worth setting out the content of that email in full:

> *"Dear Adrian*
>
> *Thank you for your response of the 11 November 2016 to* [RW] *which you kindly copied me into.*
>
> *It would not be right for me to comment on matters that are the subject of ongoing procedures so I will limit my response to the matters raised outside of your formal grievances.*
>
> *I have reviewed your correspondence and, whilst I note your sense of frustration, I can find no evidence to support your perception of poor treatment and victimisation. I am satisfied that both your keeping-in-touch (KIT) manager (*[RW]*) and line manager (*[HP]*) are acting professionally, reasonably and sensitively in these matters and in accordance with guidance. I am satisfied that this support, in conjunction with specialist advice where necessary is appropriate for you.*
>
> *I feel that it is now imperative that you communicate with your KIT manager to ensure that we are offering you all the support we can to facilitate a return to work. To achieve this we need to able* (sic) *to explore with you what you perceive as the causes of your workplace stress and the barriers you feel are preventing a return. I would therefore ask that you work with your KIT manager to this end.*
>
> *In terms of the ongoing investigations I am assured that they are all progressing and will be finalised soon.*
>
> *It is not correct that you have been 'threatened with disciplinary action'. I am satisfied that your KIT manager was correctly informing you that your communications tone and content was unacceptable and correctly reminded you of your obligations to comply with the Civil Service Code and act professionally at all times.*
>
> *Finally, to clarify for you, I am in effect the business sponsor and not the decision maker in your grievance. The grievance manager is Lynn Coulby who will report to me any recommendations we need to progress as a business. Please continue to work with Lynn in progressing this matter.*
>
> *I sincerely hope now that you can take a step back and draw a line under the previous correspondence. I expect you to now work with your KIT manager to move forwards and towards an early return to work when you are well enough.…*"

392. We pause here to observe that that was a perfectly reasonable response in the circumstances given that decisions on the grievance were not matters for Mary Aiston – as she made clear to the Claimant - but were subject to ongoing investigations. The email was in keeping with the evidence of both Lynn Coulby and Mary Aiston before us as to the role of the latter in the grievance process and the way in which the grievance outcome recommendations would be reported to her. It was for Lynn Coulby to investigate and determine the grievance but that if actions needed to be taken as a result those would be passed to Mary Aiston to process on behalf of the Respondent.

393. We would also observe that, like RW, Mary Aiston was seeking to encourage the Claimant to engage with the KIT process and work towards a return to work. That is a far cry from the picture painted by the Claimant that the Respondent was determined to dismiss him at any cost.

394. The Claimant replied on 13th December 2016 by way of a long email. He reiterated many of the same issues as identified in previous communications but notably asked Mary Aiston for the name and email address of her manager so that he could raise a formal grievance against her. Again, this is consistent with the Claimant's escalating of matters whenever he received from anybody dealing with him a response with which he did not agree. By that stage, the Claimant had made complaints about no less than 15 people namely CBr, CB, DG, EG, JD, JM, LD, SR and VT in connection with the pensions contribution issue; HP, Tim Bowes and AL; DF and AG and RW as well as unknown persons who might have had involvement in his issues. He now sought to escalate that further to a complaint about Mary Aiston.

395. Again, not unreasonably in the circumstances, Mary Aiston sought advice from Human Resources and on 10th January 2017 she replied to the Claimant to provide details of her line manager as he had requested.

396. The Claimant wrote to Mary Aiston in reply on the same day and that bears setting out in full given that the Claimant relies upon it as a protected act. The email said this:

> "*Mary*
>
> *Thank you for your response.*
>
> *Whilst I do not believe that it is appropriate or constructive to enter into further arguments, I would just like to point out that I believe that I have already repeatedly demonstrated that any claim that "HMRC guidance is being followed in relation to the grievance that you have raised" is untrue.*
>
> *I would also like to point out that, despite a refusal to address the causes of the workplace stress which were known before my absence*

began and therefore allow a return to work, I was notified two days before Christmas of a move to half pay on 6 January 2017. I was left with no support over Christmas and, despite it being agreed that I have not been given an opportunity to return to work, my entire household income has now been reduced by 50% (though currently deferred due to me having to use two weeks annual leave).

Despite now being on half pay, there is still a refusal to provide any details regarding a return to work though this is unsurprising when, despite being subject to a serious formal complaint, the very people who have and continue to victimise me have been allowed to continue their behaviour unbated. For example, in December I received a letter at my home address from [HP] *which caused a huge amount of distress which I believe was its intention.*

Following the Prime Minister's speech yesterday regarding attitudes to those of us with mental health issues, I will be seeking as part of the resolution of the formal complaint that I will be making to Jennie Granger an agreement that details of the three years of victimisation that I have been subjected to since declaring a mental health issue to HMRC are provided to the Cabinet Office in order to inform the Government's approach.…"

397. Lynn Coulby continued her investigations with regard to the grievances raised by the Claimant. Having by this time had two discussions with him she then arranged to meet with HP on 19th December 2016 to discuss the allegations that concerned her. The notes of that particular meeting are at pages 869 – 875 of the hearing bundle.

398. Following that meeting, HP sent to Lynn Coulby some further emails relevant to their discussions. That included an email sent in early October 2016 to the Positive Action Pathway asking them to note the Claimant's absence from work and thus his inability to be present at events and requesting whether his participation in the programme could be deferred pending his return to work.

399. On 20th December 2016, the Claimant wrote to Lynn Coulby by email (see page 882 of the hearing bundle). Within that email he referenced his intention to raise a formal complaint against Mary Aiston and contended that there was still a refusal to follow mandatory guidance given that Mary Aiston was insisting that she was not the decision manager. That position had of course already been explained to the Claimant on a number of occasions by both Lynn Coulby and Mary Aiston. The Claimant simply was not prepared to accept it.

400. The Claimant set out in the email what he described as the stressful effects of being required to speak with RW (as part of the KIT process) later that morning but thanked Lynn Coulby for what he perceived to be her assistance in bringing about an adjustment that RW would only contact

him during agreed hours on a Tuesday. He expressed his gratitude for those arrangements being put in place.

401. As we have already observed above, the Respondent's grievance procedure requires progress on a grievance to be reviewed once a period of 40 days from presentation of the complaint has passed. That review took place in mid-December 2016 by Laurence James, the Business Unit Head of Wealthy and Mid-sized Business Compliance (see pages 885 – 890 of the hearing bundle. It is common ground that the review did not take place within the 40 day time limit but substantially longer than that. In reality, it was probably only triggered by the Claimant making reference to the review in his earlier email to Ms. Coulby.

402. As part of his review, Mr. James understandably raised concerns about delay in relation to the grievance process and issued a reminder that grievance managers needed to be appraised of their responsibilities to drive the cases through quickly. In the opinion of Mr. James, however, the majority of delay in relation to one of the grievances lay at the door of the Claimant and he also determined that with regard to the grievance being dealt with by Lynn Coulby, there had been delay on both sides.

403. On 17th January 2017, the Claimant emailed Lynn Coulby referencing the complaint that he intended to make to Jennie Granger about Mary Aiston and asking Lynn Coulby to take no further action in respect of his grievances pending what he referred to as "*Jennie's agreement to take over the investigation*". We deal with the Claimant's complaint to Jennie Granger separately below.

404. By this stage, the Claimant's original grievance that was being considered by Lynn Coulby had now expanded to also include RW. Lynn Coulby wrote to RW by email on 2nd February 2017 (see page 1002 of the hearing bundle) seeking information from her in connection with the complaints which had been raised against her by the Claimant. There was no meeting in respect of those matters but RW replied to the points that the Claimant had raised about her in his grievance and provided Lynn Coulby with the necessary information from her perspective.

405. On the same day, Lynn Coulby also wrote to AL. He too of course had now been included in the scope of the expanded grievance. Lynn Coulby indicated that there was in her view sufficient to discharge the complaint without there having to be a meeting but she invited AL to let her know if there was anything else that he would like her to consider. That was an email in the same or similar terms as that sent to RW where there was also no meeting.

406. The Claimant is critical of that position because he says that he did not have the opportunity to meet again with Lynn Coulby after she had concluded her deliberations. He contends that both that position and her actions in writing to AL and RW in the terms that she did suggested that

Ms. Coulby's decision to reject his grievances had already been predetermined.

407. The Claimant quite rightly points to the fact that under the Respondent's Grievance Procedure he would have had the opportunity for a meeting with the decision maker after they had been passed the findings of the investigating officer and therefore he would have had the option at that stage to comment on those findings before a decision was taken. We can well see that it would have been more sensible for Lynn Coulby to have met again with the Claimant after she reached her initial findings but before she took a final decision on the grievance outcome. That would clearly have been the more appropriate way forward so as to give the Claimant the opportunity to comment on the documents collated during the investigation and Ms. Coulby's findings.

408. However, we accept the evidence of Lynn Coulby that she did not take that step because she did not feel the need to do so given that she was both the investigation manager and the decision maker and she had already engaged with the Claimant twice during telephone meetings as part of her investigations. She was therefore comfortable that she had sufficient information and detail from the Claimant to conclude the process without offering a further opportunity for a meeting or discussion with him.

409. We do not consider that there was anything woefully amiss in Lynn Coulby giving an opportunity for anything further to be said by RW or AL in the emails to which we have referred above. It may be viewed as Emma Spear (who later dealt with matters at the appeal stage) described it as a shortcoming. Lynn Coulby had made her position clear that she considered that she had sufficient to deal with the matter but was simply giving a further opportunity for RW or AL to add anything that had been overlooked. Unlike the Claimant, she had of course not met with them.

410. Lynn Coulby also contacted Tim Bowes with regard to the investigation of the Claimant's grievances. Those complaints related to what the Claimant had termed as the refusal to consider his grievances and refusal to operate the 20 day mandatory guidance in relation to HRACC1 investigations.

411. Mr. Bowes responded to Lynn Coulby providing information about the Claimant's complaints on 2nd and 3rd February 2017. It is those emails which form the basis of complaint 48 in these proceedings. We do not need to rehearse all of the content of the responses from Mr. Bowes to Lynn Coulby here, only the parts of which the Claimant complains (or has previously complained).

412. The first issue was that on 2nd February 2017, Mr. Bowes commented in his email to Lynn Coulby that the Claimant had had a PCS Representative in attendance during a telephone conference which he had held with him and that that PCS Representative had confirmed at that stage that the

conversation was fair, reasonable and supportive and that Mr. Bowes had handled the issues raised correctly.

413. The Claimant contended originally as part of these proceedings before us that Tim Bowes had "deliberately sought to mislead" Lynn Coulby in relation to that particular comment. However, the Claimant withdrew that allegation in the course of the proceedings when taken to the content of the minutes of that particular telephone conference which quite clearly recorded that that is precisely what the PCS Representative had said. The Claimant accepted that during the course of the evidence before us that that comment was made (despite having previously alleged that Mr. Bowes had manufactured it in order to mislead the investigation) but changed his stance to a comment that his position was that he had not agreed with the PCS Representative's observations.

414. We raise this matter again here as an indication of the somewhat scattergun approach taken to these proceedings by the Claimant. He was of course present at that particular telephone conference and would have known that that was what the PCS Representative had said even if he had not recently read the subsequent minutes which were sent to him both at the time and during the course of disclosure in these proceedings. It is of concern to us that the Claimant had raised a serious allegation not only that Mr. Bowes had told a deliberate untruth but also that he had done so to discriminate against him when in fact the Claimant accepted that what Mr. Bowes had said was in fact entirely correct. Again, that is indicative of the lack of thought which the Claimant appears to have given to the serious allegations which he levels against individuals in the course of these proceedings and the impact which such allegations may have. It is perhaps a similar approach to that adopted towards RW and others during the latter part of the Claimant's employment.

415. Suffice it to say, however, that it is clear that Mr. Bowes did not mislead anybody in relation to the content of that particular comment. It was entirely factually accurate.

416. The comment which the Claimant does continue to take issue with is, however, the fact that in his second email to Lynn Coulby, Tim Bowes said this:

"…*Finally, the reason why Adrian seems to have raised a grievance against* [HP] *in the first place was down to the fact that we put a WAP in place and wanted at the review period to make sure it fitted with his needs and allowed fair and reasonable adjustments to support + evaluate performance. …"*

417. Again, the Claimant contends that that was deliberately misleading. We do not agree. It was clear from Mr. Bowes's evidence (which we accepted) that he believed that the request from HP to the Claimant to provide medical evidence as to his condition had been the catalyst for all that was

later to come and for the grievance against HP, himself and others. That was in the circumstances not an unreasonable assumption to have made and one which we might easily have reached ourselves on the facts known to Mr. Bowes. We acknowledge that the Claimant does not agree with the opinion of Mr. Bowes but that is all that this boils down to. There can be no reasonable suggestion that Mr. Bowes was deliberately misleading anyone. He was simply expressing what his genuine opinion was and that is the opinion that he still held before us. He cannot reasonably be criticised for that.

418. On 6th February 2017, Lynn Coulby wrote to Jamie Gracie by email attaching a number of documents, including her grievance decision. She had been receiving ongoing support and guidance from Jamie Gracie in relation to dealing with the grievance outcome. Again, we accept her evidence that the decision was hers alone to take but that she took support and guidance from Human Resources where appropriate. That is in our experience, and from the evidence that we have heard in these proceedings, not unusual. That is all the more so given that Ms. Coulby was not particularly experienced in dealing with grievances and, indeed, the Claimant had had to draw to her attention the issues surrounding training and the 40 day review. However, once he had done so she had actioned those matters and we are satisfied that whilst there were shortcomings, she did her best and had the proper intentions.

419. Ultimately, Lynn Coulby did not uphold any of the Claimant's grievances and she set out in detail in a deliberation document the reasons why she had reached the conclusions that she had. Those were careful considerations based on the evidence which she had collated during the course of her investigations and, although we accept and acknowledge that the Claimant vehemently disagrees with the outcome, the conclusions reached were ones that were certainly open to Lynn Coulby on the evidence before her and were not unreasonable given the circumstances in which the grievance had been raised and the evidence collated during the investigation.

420. Lynn Coulby not unreasonably concluded that there was simply a disagreement about interpretation of the events and the intentions of those who were subject to the grievance. The summary conclusions reached by Lynn Coulby are set out at page 1032 of the hearing bundle and said this:

"In summary, I am unable to uphold the grievance.

Evidence demonstrates that Mr Teague's managers have made every reasonable effort to provide a safe and supportive environment in the workplace. Actions taken have been designed to mitigate any negative impacts on Mr Teague's wellbeing.

Mr Teague has viewed these actions as creating further stress or as bullying, harassment, discrimination or victimisation. This is clearly a case

of perception and individual interpretation of actions and intentions designed to provide support.

The recommendations below are focused on further improving manager and staff knowledge and capability in handling sick absence due to a mental health condition or stress related absence; investigating grievances and HRACC1 reports. There is no suggestion that the guidance has not been followed in this case."

421. The recommendations largely concern managers and staff re-familiarising themselves with policies and procedures relating to those with mental health conditions, investigation of grievances and complaints and investigations of HRACC1 forms.

422. The Claimant was provided with details of his right of appeal and how he was able to exercise the same. The Claimant duly appealed against the grievance outcome.

423. We deal separately below with the appeal which was determined by Emma Spear.

Complaint to Jennie Granger regarding Mary Aiston

424. On 17th January 2017, the Claimant wrote a long letter of complaint to Jennie Granger. At that time she was the Director General of Customer Compliance with the Respondent and Mary Aiston's direct Line Manager. As part of the complaint the Claimant forwarded on correspondence from Mary Aiston and indicated that he wished to raise a formal complaint against her and others. The Claimant requested that Ms. Granger personally deal with the matter. He indicated that he would forward further information when he was able to do so but requested that action was immediately taken to "*end the attempts to force [*him*] to commit suicide*".

425. The matter was picked up by Gary Gatter who was a member of Jennie Granger's private office. We accept the evidence of Mr. Gatter that at the material time, Jennie Granger was on a period of sick leave. That evidence is supported by a later email from Dan Coughlin, Human Resources Director for Customer Compliance Group within the Respondent to which we shall come in due course.

426. Mr. Gatter asked for a "steer" from Dan Coughlin as to how the matter would be best processed. That was an obvious course to take given the absence of Ms. Granger on sick leave. Dan Coughlin passed the matter to Melanie Clare and Jamie Gracie to consider.

427. On 18th January 2017, Gary Gatter replied to the Claimant's email. This was followed by a further email from the Claimant on the same date forwarding further email communications between himself and Mary Aiston.

428. The email from Mr. Gatter said this:

> "*Dear Mr Teague*
>
> *Thank you for your email. I am sorry to hear that you wish to make a complaint about your treatment by HMRC.*
>
> *Jennie Granger is currently away from the office and is not expected back until the beginning of next month. I have asked Dan Coughlin, as the HR Director for the Customer Compliance Group, to review your email so that he can ensure your comments are progressed as necessary.*
>
> *May I also ask you to consider HMRC's Employee Assistance Programme – Workplace Wellness.*
>
> *…*"

429. Mr. Gatter also set out in his email the contact details in relation to Workplace Wellness. The Claimant thanked Mr. Gatter for his email and indicated that he looked forward to contact from Mr. Coughlin.

430. Despite that the Claimant makes an allegation of discrimination in these proceedings to say that Jennie Granger refused to respond to the complaints that he was raising. That is a matter which was completely inaccurate. It chimes with other instances – such as that we have referred to with RW above – where the Claimant unfairly characterises something as a refusal when in fact there has been no such refusal.

431. In this instance, Jennie Granger did not refuse to deal with the Claimant's further grievance against Mary Aiston it is quite obvious that she was simply not available to do so because she was on sick leave and was not in the business at the time. It was made clear by Mr. Gatter that Jennie Granger was away from the business until the following month and that the matter was being passed to Dan Coughlin. The Claimant was clearly well aware of that given that he himself had said that he looked forward to hearing from Mr. Coughlin.

432. On 27th February 2017, the Claimant wrote again to Jennie Granger requesting an update of what action had been taken in relation to his formal grievance. Again, that was despite the fact that he was aware that she was not in the business at the time. He complained again in general terms about victimisation and discrimination, including with regard to arrangements for a single point of contact which had by that time been put in place (and which we deal with further below) and his opinion that he was still being given no option by the Respondent except to commit suicide.

433. He requested that if Jennie Granger had taken no action in respect of his grievance, then his email should be forwarded to her manager as a formal complaint. Again, that represented a further escalation of the Claimant's various complaints and should also be viewed against that background that he was well aware that Jennie Granger was not at work and could not therefore be taking action on his complaints. He also referenced the fact that he was putting together a claim to the Employment Tribunal. That email was forwarded by Gary Gatter to Sarah-Jayne Williams, who had by that stage been appointed as the aforementioned single point of contact, who replied to the Claimant to confirm that the "multiple complaints" were being collated and reviewed and that a response would be issued to the Claimant in due course. It was indicated to Mr. Gatter that there was no action for Jennie Granger's office to take.

434. Mr. Coughlin issued a response, as we shall come to below, and therefore it is unsurprising that there was no direct reply from Jennie Granger either at the time or when she eventually returned to work.

The Case Review

435. As we have already set out above, Melanie Clare was preparing a case brief or review for Dan Coughlin as to the options moving forward for dealing with communications with the Claimant. She had initially identified those as the allocation of an alternative KIT manager or having a central Single Point of Contact ("SPOC") within Human Resources to deal with all of the Claimant's emails and correspondence.

436. A case review and next steps document was prepared and sent to Dan Coughlin by Melanie Clare on 23rd January 2017 (see page 972 of the hearing bundle). We understand the case review document to be that which features at pages 973 – 976 of the hearing bundle, although we note from the attachments section on Melanie Clare's email that there had been three versions and certainly there is at least one other version which features in the bundle at page 2027.

437. There is some confusion as to who it was that penned that case review document or at least the majority of it. Melanie Clare's email refers to it having been undertaken by herself and Jamie Gracie. Jamie Gracie's evidence was that the document was prepared by Sheldon Whatmough and that he had only viewed the document on Mr. Whatmough's computer screen, that he had never had a copy and so he did not believe that he had had much, if any, input into it. Mr. Whatmough's evidence was that he had little recollection of the case review and next steps document, which is perhaps unsurprising given the passage of time. He said that he did not think he had penned significant amounts of it.

438. The Claimant places some degree of emphasis on the differing evidence in this regard. However, we remind ourselves that by the time this hearing came round and the three individuals concerned were giving evidence, some two and a half years had passed. We do not consider that this is a

credibility issue but one where the passage of time has simply affected the memories of those concerned. As we understand matters, it is not unusual for case review documents of this nature to be prepared by Human Resources officers in complex cases and therefore it is understandable that there is a lack of recollection about the point.

439. In order to seek to get to the bottom of that matter we asked Mr. Beever to obtain a screenshot of the "properties" section of the document given that it was created in Word. This showed that it was created by Sheldon Whatmough and subsequently modified by Melanie Clare. That document cannot assist on whether Mr. Gracie had any greater input than he recalls as the modified part of the document would only record the last person to make any amendment and that was Melanie Clare. That would of course make sense as she was the one to forward it to Dan Coughlin.

440. The case review document also provided for a suggested response from Mr. Coughlin. We accept that it is a standard practice for Human Resources to draft responses of that nature and we accept Mr. Coughlin's evidence that he would nevertheless take a view as to whether the proposed response represented the stance that he wanted to take having regard to all the circumstances of the matter from the case review documentation. Based on that case review, we accept that Mr. Coughlin determined that it was appropriate to send the response which, as we shall come to, included putting in place a single point of contact or "SPOC" arrangement. That, of course, is an arrangement that the Claimant had previously requested from Mary Aiston and we observe here that a number of his items of correspondence referred to the stressful effects of receiving multiple emails from multiple different sources.

441. The case review document set out the background to the matter, including the grievances that the Claimant had raised. One aspect of the information in the document was incorrect in that it referred to the Claimant's first grievance not being appealed when that in fact had taken place and a finding had been made in the Claimant's favour (see page C46 of the Claimant's disclosure bundle). That, however, was in relation to the Birmingham grievance and did not impact upon any of the individuals within Nottingham who were the subject of the Claimant's existing complaints.

442. The case review document also set out that RW had been the Claimant's KIT manager/contact but that she was no longer prepared to undertake that role and that she felt bullied and was becoming increasingly upset. That, of course, accorded with what RW had told Melanie Clare and the content of her email to Jamie Gracie to which we have referred above. The document also set out that the Claimant remained absent on sick leave and set out the four options that had been provided to him (as communicated via RW) with regard to a return to work and that he continued to refuse to engage with an Occupational Health referral. That was an accurate assessment of the position.

443. The case review report set out the following with regard to the Claimant's behaviour:

> "***Unacceptable Behaviour***
>
> *Whilst some frustration with the perceived lack of progress is understandable, the jobholder is now openly hostile and subjecting the KIT Manager to unacceptable communications, as was the case with the Manager previously[19]. We obviously have to be equally aware of our duty of care to the managers handling the case. He has been warned that his behaviour is considered unacceptable by his KIT Manager and we need to consider if misconduct applies once the outcome of his grievances are known.*
>
> ***Escalating Complaints***
>
> *Not atypical of a case like this the jobholder is increasing escalating the level to which his complaints are directed in direct correlation to his sense of frustration of his concerns not being addressed to his satisfaction. He has previously emailed Mary Aiston who also directed him to work with his KIT manager and await the outcome of his grievances. AT is now pushing for Mary (amongst others) to be the subject of an additional complaint alongside his other perceived issues as AT has recently escalated to Jennie Granger. As Jennie is on leave, this has been forwarded to Dan Coughlin to review.*
>
> *…*"

444. The review document also noted that the Respondent had had "great success" in dealing with "these types of cases" when all communication has been channelled through one conduit. We accept that the reference to "these type of cases" was a reference to complex cases with a number of strands. There was an indication within the report that a further KIT manager could be identified but preferably a named SPOC in Human Resources. It was indicated that Jan Beasley had been approached and had suggested that Sarah-Jayne Williams would be able to fulfil the SPOC role and co-ordinate all correspondence to manage further escalation and what was referred to as the Claimant's "scattergun" approach.

445. As to the prognosis in respect of matters, the report said this:

> "***Prognosis***
>
> *We continue to be vulnerable in a number of areas until the two outstanding grievances are concluded and remain unaddressed. It has therefore been prudent to cover off these risks before proceeding with any formal action. That said there was a clear breakdown in the working relationship and unless there is a considerable shift in the*

[19] This is not a reference to a previous KIT manager but to HP as the Claimant's Line Manager.

jobholders attitude and actions, a full and effective return to the workplace in a reasonable timescale looks highly unlikely and current corrective actions should put managers in a position to adopt formal procedures once the Complaints 2 and 3 are concluded, providing of course they are (sic) *find no evidence of Bullying or Harassment.*

It must be stated that local managers remain fully committed to working with the jobholder to facilitate a return to work for the jobholder and that outcome is absolutely within the jobholder's gift.

…"

446. We accept in that regard that the priority of the Respondent was to arrange a return to work and remind ourselves of the documentation to which we have already referred in relation to offering the Claimant a number of options to seek to bring about that return, including the creation of an entirely new post for him. We accept the evidence of Melanie Clare that the reference to continuing to be "vulnerable" until the grievances were resolved was a reference to the delay with regard to those matters being concluded and that the Respondent wanted to conclude the grievance process before considering any action under the Attendance Management Policy. That is entirely understandable given the circumstances and also accords with the ACAS Code of Practice on Disciplinary and Grievance Procedures. We therefore find it unsurprising that the Respondent dealt with matters in that way.

447. At the end of the review document, there was an Annex A which was entitled "*Suggested response from Dan*" (that of course being a reference to Dan Coughlin to who the report was directed). As we have already touched upon above, we accept the evidence of Melanie Clare that it is not unusual in circumstances such as these for a report to include a draft response in line with the recommendations made within the review report.

448. However, we accept that they were recommendations only and as we have also touched upon above we accept the evidence of Dan Coughlin that he accepted the suggestion because he considered it to be the right thing to do. Had he not agreed with that course of action, it was entirely open to him to reach a different conclusion and to write to the Claimant in entirely different terms and we accept that he would have done so.

449. Although based on a recommendation by Human Resources, we fully accept that the decision to put in place the SPOC was one made by Dan Coughlin alone. We also note and accept his evidence that he had had experience of those arrangements working well in the past, including with a member of staff who was not suffering from a disability.

450. Melanie Clare sent the email to Dan Coughlin on 27th January 2017 (see page 972 of the hearing bundle) and made reference to the agreed window of communication with the Claimant which, at that time and as we have

already observed in the context of communications from RW, had been set to 10.00 a.m. to 2.00 p.m. on a Tuesday.

451. Mr. Coughlin sent the email to the Claimant the following day. The terms of the letter were in the form that had been proposed by the review document. The letter made clear that Mr. Coughlin was replying on behalf of Jennie Granger because she was on leave. The Claimant's allegation that Jennie Granger refused to deal with or in some way ignored his correspondence was therefore inaccurate and the Claimant would have been aware of that position from his reading of the letter from Mr. Coughlin and from his earlier communications with Gary Gatter which we have already referred to above.

452. The email from Mr. Coughlin set out that Lynn Coulby would continue to investigate the Claimant's grievance and also set out the SPOC arrangements which he had determined should be put in place. The relevant part of the email in respect of those arrangements said this:

> "*…*
>
> *Your KIT Manager has expressed that she does not wish to continue to correspond with you and I am putting in place a single point of contact (SPOC) for you going forward which will be Sarah-Jayne Williams, a G7[20] in CS HR Casework. Sarah-Jayne will respond to any outstanding emails received by colleagues in HMRC and I would ask that you direct all correspondence to her in future.*
>
> *…"*

453. Sarah-Jayne Williams' contact email address was provided for the Claimant and it was confirmed that she would seek input from grievance managers, Human Resources, the Claimant's line management and KIT arrangements as necessary.

454. The Claimant replied to Mr Coughlin the same day in a fairly lengthy email. The relevant part of the email for our purposes relates to the putting in place of the SPOC arrangements. The relevant part of the email in this regard said this:

> *"…*
>
> *I am pleased that a SPOC has now been appointed but note that this is only done to support* [RW] *(KIT Manager) and not to support me. It should also be noted that the appointment of a SPOC was something I requested of Mary Aiston many months ago but was refused.*
>
> *…*"

[20] A reference to a Grade 7 member of staff.

455. As part of these proceedings before us, the Claimant now complains about what he terms as the imposition of the SPOC and that this had removed all his basic rights. Given that the Claimant had asked for a SPOC arrangement in the first place and then expressed in his email that he was pleased that that had been arranged, that is a somewhat peculiar position. It appears to us that the basis of his complaint about this issue is that the action was not taken at his specific suggestion and his erroneous belief that it was done to support RW. That was of course not the case on the basis that RW was no longer going to have any interaction with the Claimant whatever the position with appointing a SPOC had been because she had decided not to continue as his KIT contact. As we shall come to, she was replaced in that role by Monique Deveaux.

456. We are satisfied that the putting in place of the SPOC arrangements was to assist both the Claimant and other staff who had to deal with his voluminous and often intemperate correspondence. Whilst the Claimant consistently overlooks the impact of his actions on others, we accept that the Respondent also had a duty to those individuals and the imposition of a SPOC arrangement was an appropriate way of dealing with both matters and for the benefit of all parties.

457. Moreover, the Claimant had of course requested communication within a small window and we accept that the Respondent could not reasonably be expected to notify everybody with whom the Claimant might escalate matters that they should only correspond with him during a four hour window on one particular day of the week.

458. It was therefore entirely sensible to channel matters in this way and had it been the case that the Respondent was seeking to discriminate against the Claimant as he suggests, it would be unusual that they would do so by way of putting in place an arrangement which the Claimant himself had asked for some time previously. Mr. Coughlin could not of course have known against that background that the Claimant would later find the arrangements to be objectionable.

459. Undeterred by Mr, Coughlin's response to him the Claimant forwarded a copy of his reply to Gary Gatter the same day indicating that he wanted to know when Jennie Granger would return so that he could prepare a further formal grievance. Again, that was a continuation of the escalation of every action with which the Claimant did not agree into a formal grievance. Mr. Gatter responded to the further emails from the Claimant setting out that those would be responded to by Sarah-Jayne Williams in line with the new SPOC arrangements and that she would contact him the following week.

460. Later that same evening, the Claimant emailed Sarah-Jayne Williams. The Claimant forwarded a number of items of email communication to her indicating that he viewed them as "blatant discrimination" and asking her

to confirm that she agreed. That agreement was said to be required on the basis that communication was to be in an appropriate manner, including openness and transparency (see page 983 of the hearing bundle).

461. The Claimant made complaint in his email to Sarah-Jayne Williams about the way that he perceived that RW had dealt with matters and the fact that he was now on half pay. He complained that RW had not dealt with all of his points and requested that Sarah-Jayne Williams provide him with a full response to all open points or let him know when he could expect to receive one. He agreed in that regard to her contacting him outside the framework of the four hour window when he could be contacted on a Tuesday. The Claimant also asked for support to be provided as soon as possible.

462. Sarah-Jayne Williams replied to the Claimant's email on 31st January 2017 (see pages 997 – 999 of the hearing bundle). The email dealt not only with her role as a SPOC but also dealt with the points the Claimant had requested clarification upon, including matters relating to his pay, requests for annual leave and details of contact for the Disability Champion and the Respondent's whistleblowing lead. The email also referred to the Claimant's absence from work and that she hoped that he was feeling better. There was nothing wrong with the content or tone of that particular communication.

463. The Claimant nevertheless wrote back in what again can only be described as rather challenging terms (see pages 996 – 997 of the hearing bundle). It did not set a happy tone for a positive relationship with Sarah-Jayne Williams. The Claimant raised a further number of complaints or points and requested a reply in full the same day or the following day. The Claimant thereafter sent a further email to Sarah-Jayne Williams the following day, which ran to some three and a half pages. Again, the content of that correspondence was challenging in the extreme. It referred to the fact, amongst other things, that the Claimant alleged that Sarah-Jayne Williams had personally significantly damaged his health. It is difficult to see the basis upon which that could reasonably be asserted given that she had sent him one perfectly friendly and measured email replying to his own communications and dealing with some of the outstanding issues.

464. The Claimant also suggested that he had been threatened with disciplinary action (which as we have set out above he had not), made further references to suicide and the fact that he was asserting that the Respondent was trying to make him kill himself.

465. The Claimant also forwarded a copy of the email and further complaint to Gary Gatter. Mr. Gatter, in accordance with the SPOC arrangements, forwarded that email to Sarah-Jayne Williams to compile the appropriate response.

New KIT contact arrangements

466. In or around late January 2017, the Claimant was given a new KIT contact. That was on the basis that RW had said that she no longer wished to deal with the Claimant.

467. Instead, Monique Deveaux (Monique Bruce at the time) was identified as the new KIT contact. The Claimant takes issue with the fact that Monique Deveaux was based in City Centre House in Birmingham where of course the Claimant had been based prior to the matters which had seen his transfer to Nottingham.

468. The Claimant appears to suggest that there was something sinister about that and/or that that was outside the scope of the Workplace Adjustment Passport. However, it is clear that there was no embargo within the Workplace Adjustment Passport ("WAP") to the Claimant having dealings with anyone from City Centre House who was entirely unrelated to the grievances and complaints which he had raised. The arrangements in the WAP related only to the Claimant having to work or attend training at City Centre House. Monique Deveaux was not one of the individuals involved in the Claimant's first or second grievances and there was nothing in her being appointed as a replacement KIT contact that went against the requirements of the WAP.

469. We are also satisfied that her appointment as a manager from Birmingham was not done for any other improper motive. Indeed, it is clear from a contemporaneous email at page 1001 of the hearing bundle that the reason for selection of Monique Deveaux to carry out the role was because she had dealt with several difficult cases during a period of earlier employment at the Ministry of Justice and being relatively new to the Respondent and within a different team to the Claimant; would be impartial and would unlikely to have had contact with him previously.

470. It would appear both from the content of that email and also from the evidence given to us by Monique Deveaux at the hearing that she was provided with very little by way of detail about the Claimant other than the fact that he was absent on the grounds of ill health. It would clearly have been much more beneficial in the circumstances, as indeed the email at page 1001 envisaged, for a greater degree of understanding and detail to be provided to Monique Deveaux before she commenced the KIT process.

471. It would also have been of benefit ultimately to the Claimant that there was a full understanding around his condition; the amount of time that he had been away from the workplace and the reasons for that and also the history of complaints and grievances which surrounded the process. If a greater degree of briefing had been given, it would have been of benefit both to the Claimant and Monique Deveaux although we are satisfied that it would not have made any difference to matters in the long run as by that stage the Claimant's view of the Respondent organisation and everyone who interacted with him was deeply and negatively entrenched.

472. The Claimant continued to press Gary Gatter in relation to his complaints, although he was of course aware from earlier communications that Mr. Gatter was directing all of those matters via Sarah-Jayne Williams in light of the SPOC arrangements. Mr. Gatter made it clear that he expected all of the Claimant's communications as forwarded to Sarah-Jayne Williams to be considered and for appropriate action and response taken (see for example page 1005 of the hearing bundle).

473. On 6th February 2017, Monique Deveaux sent an email to Sarah-Jayne Williams to be forwarded to the Claimant. This set out her position as KIT manager and that she would contact him via the existing SPOC arrangements on a Tuesday, that being the designated day for contact with the Claimant. The email also set out that Ms. Deveaux was looking forward to working with the Claimant and exploring the possibility of a return to work and made enquiries about whether he was to submit another Fit Note. There was nothing untoward in relation to the content of that particular email. It also set out details of Monique Deveaux's base location and the team in which she worked. As we have already observed, that was the team in which the Claimant had previously worked while he was based at City Centre House in Birmingham. However, we accept Monique Deveaux's evidence that she had had no particular interaction with any of the individuals who had been involved in the Claimant's earlier grievances and we have already set out the rationale for the Respondent appointing her in place of RW above.

474. On 7th February 2017, Sarah-Jayne Williams sent a detailed email to the Claimant in reply to emails that he had sent to her since her initial SPOC contact with him. The Claimant is highly critical of the tone and content of that particular correspondence. It is a long and extremely detailed email and so we do not set it out here in full. However, it is clear that Sarah-Jayne Williams had the Claimant's wellbeing at the forefront of her mind despite his suggestions to the contrary. She was concerned, not unreasonably, by his references to suicide and sought to reassure him that there was nothing untoward as to the Respondent's actions in that regard. She also understandably provided him with details of the Samaritans and made reference to Workplace Wellness. She also sought to engage the Claimant with regard to an occupational health referral.

475. In addition to that, the letter set out responses to all of the remaining points which the Claimant had referred to as open points in his earlier correspondence. It is clear that Sarah-Jayne Williams had been at pains to deal all of the matters that the Claimant had raised. We accept her evidence, which is clear from the document itself, that she had spent some considerable time constructing the email so as to cover off on all of these matters and deal with the issues that the Claimant had raised.

476. The Claimant is critical of the length of the email and said that this had caused him unnecessary stress. However, it is ultimately difficult to see what else Sarah-Jayne Williams could have been expected to do. The Claimant had made it clear that he wanted an immediate response to all of what he referred to as "open points".

477. That is precisely what Sarah-Jayne Williams did. It remains unclear to us how else the Claimant suggests that Sarah-Jayne Williams should have dealt with this matter. If she had sent him lots of separate emails, each dealing with one topic at a time, we have no doubt at all that the complaint from the Claimant would have been that she had sent him a barrage of emails and that that too was stressful. We remind ourselves of course in this regard that the Claimant had previously complained about being "bombarded" with emails from the Respondent.

478. Whilst the Claimant suggests that a call could have been arranged, and Ms. Williams accepted in cross examination that that would have been a possibility, there was ultimately no right or wrong way to deal with this matter and we are satisfied that Sarah-Jayne Williams did the best that she could in very difficult circumstances where, whatever action was taken, was likely to result in a complaint from the Claimant.

479. Her email reiterated the options for a return to work that had been mooted by RW on 17th January and forwarded on the email from Monique Deveaux as KIT contact to which we have referred above. Although Sarah-Jayne Williams referred to Monique Deveaux as a change of line manager, this was in fact an error as the Claimant's line manager at all times remained HP with Monique Deveaux simply taking up the role of KIT manager which had been left vacant after RW's decision that she no longer wished to have continued involvement with the Claimant.

480. Sarah-Jayne Williams also provided updates in relation to the two outstanding grievances which had been dealt with by SE and Lynn Coulby and she attached to the email the relevant documents that the Claimant needed to see in that regard. Again, the Claimant is critical of the volume of attachments and that this would cause him stress but, again, there was in reality little other alternative open to Sarah-Jayne Williams. The Claimant clearly needed to see those documents so as to understand the decisions made. Sarah-Jayne Williams could only contact him by email within a specified window of time one day a week. The Claimant had previously complained to RW about a change in the method of contact to letter and therefore it is unclear how else it is said that Sarah-Jayne Williams should have gone about providing the information and the documentation to the Claimant. We accept her evidence that she believed that she was doing the best that she could.

481. However, that email from Sarah-Jayne Williams prompted the Claimant to seek to raise what he referred to as a further formal grievance against her (see page 1044 of the hearing bundle).

482. We pause there to remind ourselves that in addition to the nine people named in the grievance about pension contributions, the Claimant had now raised or sought to raise additional grievances about HP, Tim Bowes, AL, DF, AG, RW, Mary Aiston, anyone else whose identity he was not aware of who may be involved in matters and now Sarah-Jayne Williams. As we have already observed, it is difficult not to see the force in Mr. Beever's submission that it is difficult to identify anyone that had had any material involvement with the Claimant who he had not sought to raise a formal grievance about.

483. The Claimant replied to Sarah-Jayne Williams' email raising complaints about, amongst other things, the fact that he did not accept the SPOC arrangements. He maintained that those arrangements were simply a means of facilitating further victimisation. This was of course something of a departure from the position taken in his email to Dan Coughlin where he had welcomed the appointment of a SPOC and, indeed, his position as set out to Mary Aiston where he had specifically asked for SPOC arrangements to be put in place.

484. On 9th February 2017, the Claimant wrote to Monique Deveaux following her email which had been forwarded by Sarah-Jayne Williams. Again, it was a long email taking issue, amongst other things, with the requirement to communicate via Sarah-Jayne Williams. Within the email the Claimant made a request for Monique Deveaux to communicate directly with him (see page 1046 of the hearing bundle).

485. We accept the evidence of Monique Deveaux that the direction given to her, which are consistent with the advice set out to others such as Gary Gatter, was that she should continue to utilise the single point of contact arrangements and therefore communicate only via Sarah-Jayne Williams. It is unsurprising therefore that the Claimant's request in that regard was not agreed to. We should observe that the SPOC arrangements extended only to written communications which were to be channelled through Sarah-Jayne Williams and not to meetings or telephone discussions.

486. The Claimant's email also said that he required Monique Deveaux to confirm that no return to work options had been provided to him. That of course was not correct given the position that RW had outlined to him some time previously. Again, the Claimant used a somewhat standard phrase that he hoped that the email was not confrontational, but in fact it is a somewhat challenging piece of communication as had become the norm by that stage.

487. Monique Deveaux replied to the Claimant on 14th February 2017. She apologised for the delay in replying to him, which had been caused by a period of annual leave. She asked the Claimant to again consider an Occupational Health referral and provided him with a copy of the previous email regarding options available for a return to work.

488. She indicated that if the Claimant was not intending to return to work at the expiration of his Fit Note, that she would like to arrange for a formal meeting to explore possible reasonable adjustments and support for a return. She also made it clear that the grievance process was ongoing and would be dealt with separately and in relation to a number of questions that she was unable to deal with, that she would forward those to Sarah-Jayne Williams as the SPOC.

489. The Claimant replied the following day to arrange a KIT call and provided details of his availability for the same along with a number of items of guidance that he said that he required Monique Deveaux to familiarise herself with prior to the conversation.

490. The Claimant has been at pains to press upon us that that KIT call had to be requested by him rather than being offered by Monique Deveaux. However, it is clear from her previous email of course that she had suggested a meeting with the Claimant and it is therefore clear that she was seeking to engage with him as to return to work options in terms of both that proposed meeting itself and also providing email options. She also readily agreed to the Claimant's suggestion that a KIT call take place.

491. The KIT call duly took place on 17th February 2017. Prior to that point, the Claimant was sent a large document, around 162 pages, which comprised the Respondent's Attendance Management Policy ("AMP"). The Claimant contends that that was stressful and, it seems, designed in some way to cause him upset or anxiety.

492. Again, this is a similar situation to the position which Sarah-Jayne Williams found herself. Ms. Deveaux has been the subject of criticism for providing the whole of the AMP document to the Claimant before the KIT call but we have little doubt that if he had been sent only extracts or nothing at all, he would have complained about that as well and said that the KIT call was not as productive as it could be because he had not seen the guidance or only selective extracts from it. There was no possibility of sending that documentation to the Claimant any earlier because he wanted to have the KIT conversation that week. Indeed, it took place only two days after he had requested the KIT call be held.

493. If Monique Deveaux had selected only parts of the AMP document that she considered to be relevant, again we have little doubt that the Claimant would have complained about that and that he was only being provided with selective sections of the documentation. Again, that is an issue that has also manifested itself during the course of these particular proceedings with the Claimant requesting by way of specific disclosure during the course of the hearings swathes of policy documents, very few of which he actually referred to during the course of any evidence.

494. The notes of the KIT call are at pages 1121 to 1126 of the hearing bundle. It was clear that Monique Deveaux was taking a supportive stance as, despite the Claimant's contention that he had never been asked how he was feeling, that was one of her opening comments in the discussion to ask him how he was doing. She also made it clear that her priority was to discuss absence and bring about a return to work.

495. By that time, Monique Deveaux had also written to the Claimant in connection with the AMP process to seek to arrange the formal meeting which her email had referred to. The Claimant spent much of the KIT conversation complaining about the way that that had been dealt with and various other matters, such as the imposition of the SPOC.

496. Monique Deveaux asked the Claimant if he would be attending the meeting, which he indicated that he was not prepared to do because it would require a three hour round trip to Nottingham. Monique Deveaux agreed that she would look to see whether the meeting could be arranged at a closer location to the Claimant given his preference for it to be held near to his home town. Monique Deveaux also confirmed to the Claimant that his line management chain remained the same and that she was simply his KIT contact. That of course would have addressed the confusion in Sarah-Jayne Williams's earlier email to the Claimant where it was suggested that Monique Deveaux was now his line manager. She also explained the rationale about sending the AMP document.

497. Monique Deveaux asked the Claimant if he would consider an Occupational Health referral for support with his return to work. The Claimant expressed some dissatisfaction about having to deal with those matters again and he cited an agreement that he said that he had with RW that he would agree to an Occupational Health referral upon a return to work.

498. We pause there to reflect that RW had not agreed with the Claimant that that was the appropriate way forward but that was the only position that she had been able to reach to get him to agree to some sort of Occupational Health referral at all.

499. Unfortunately, the Claimant appeared to miss the point, and continues to miss the point, about the Occupational Health referral. That was required so that the Respondent could consider what reasonable adjustments needed to be put in place to facilitate a return to work and see what support the Claimant needed to deal with that. By that stage, he had of course been absent for a protracted period of time and matters had become significantly entrenched in terms of his escalating grievances.

500. Whilst the Claimant maintains that the removal of the workplace stress, i.e. the removal of HP in some, way, shape or form would have resolved matters it is clear that there were a whole host of other issues, grievances and escalations since that point and that suitable return to work options

needed to be considered and agreed to. Occupational Health input would have been invaluable and a perfectly expected course in those circumstances. Matters could therefore be taken no further forward in terms of an Occupational Health referral at that time.

501. Monique Deveaux also sought to discuss with the Claimant the options for a return to work which had previously been set out in the email from RW and reiterated in her own correspondence. The first option as outlined by RW was discussed. The Claimant said that that option did not address the causes of the workplace stress and that nothing had been done about that. However, the matter had of course been investigated by Lynn Coulby and the Claimant would by that point have been in receipt of her decision, albeit that he did not agree and continues to disagree with it.

502. Monique Deveaux asked the Claimant what could be done in relation to option one to facilitate a return to work and the Claimant replied that it was not an appropriate option because it did not deal with the causes of the workplace stress and expected him to return to the same attitudes and behaviours that he said had caused his ill health.

503. Monique Deveaux therefore understandably asked the Claimant if he had considered the other options which would not require him to have any contact with HP. The Claimant took an intransigent stance in relation to those matters and said that he should not be expected to have to apply for another role when he considered that the Respondent had not addressed the issues. The position in that regard became somewhat circular.

504. Monique Deveaux clearly attempted to persuade the Claimant to consider those matters by way of facilitating a return to work given that otherwise, if he was not prepared to return to his previous role with HP in an arm's length capacity, there did not seem to be any other realistic option. That was particularly the case given that we accept that HP's team was a niche one and which would not be able to see her being moved out of that particular position. In all events, Lynn Coulby's grievance outcome had determined that she had done nothing wrong and that it was a matter of differing interpretations.

505. The Claimant concluded the discussion in relation to options for a return to work by stating that he did not think any of the alternative roles suggested were suitable (see page 1125 of the hearing bundle).

506. Monique Deveaux had of course indicated that she would look at other places for the first attendance meeting under the AMP to be held. We accept her evidence that there were no appropriate premises of the Respondent in Burton upon Trent, which was the Claimant's preference and therefore she arranged a room within the Respondent's premises in Stoke on Trent. She wrote to the Claimant by way of a letter of 17th February 2017 setting out the details of the meeting. That pointed out that the Claimant had now been absent for 213 calendar days and that she

wanted to meet with him to discuss progress and what could be done to assist him with a return to work.

507. She made clear that she could not find any suitable meeting rooms in Burton upon Trent but as an alternative she could book Norfolk House in Birmingham. This was not City Centre House where she was based and where the Claimant had previously been based and might have difficulties in attending. She also attached sections of the AMP and noted that the Claimant already had the full copy, which he had previously complained had been provided to him inappropriately.

508. That communication came directly from Monique Deveaux given that Sarah-Jayne Williams was not in the office that day and so she indicated that she could not provide an immediate answer to all of the Claimant's queries (see page 1098 of the hearing bundle). A note of the KIT contact discussion was also attached for the Claimant's consideration.

509. The Claimant replied the same day. He said that he could not travel to Stoke and that the arrangements for the meeting and, particularly, the time that he had been given to prepare were not acceptable. He wrote the same day, having looked at the AMP guidance, to raise issues as to whether he was being invited to a formal unsatisfactory attendance meeting; asking for details of when he had reached the trigger point and why the guidance had not been followed previously. He also sought information as to why Monique Deveaux was taking action when she was not his line manager and he had not been provided with details of what was to be discussed at the meeting.

510. The Claimant sent a further email two days later to say that there should be no further action in relation to arranging a meeting until the points he had raised had been appropriately considered; that the procedure that was being applied was not appropriate; that there were no issues about his attendance because he was on disability related sickness absence; that the Respondent had not taken steps to address the causes of the workplace absence and that Monique Deveaux should not "waste time" trying to arrange a meeting which he did not believe was appropriate.

511. Again, he also referred to the suggestion that the Respondent had not provided a supportive contact. We do not accept that that was a fair assessment of the situation given attempts made by RW and Sarah-Jayne Williams to offer support to the Claimant and seek to bring about arrangements for a return to work.

512. Monique Deveaux replied to the Claimant on 21st February 2017 providing details of the points that she was able to answer, including the purpose of the meeting. She said that the other points which she was unable to deal with would be addressed by Sarah-Jayne Williams (see pages 1102 to 1103 of the hearing bundle). That reply was sent to the Claimant by Sarah-Jane Williams in accordance with the SPOC arrangements. In addition to

the option of a face to face meeting, Ms. Deveaux also gave the Claimant the option of having the attendance meeting dealt with over the telephone and asked him to let her know how he wanted to proceed. There was an indication that if the Claimant did not get in touch, it would be assumed that the meeting would take place as originally scheduled in Nottingham. The Claimant did not reply to Monique Deveaux.

513. At the same time as sending a copy of Monique Deveraux's letter to the Claimant, Sarah-Jayne Williams also wrote to him to deal with other outstanding matters which he had raised in correspondence with Monique Deveaux and Lynn Coulby in connection with his grievance appeal. That referred to the SPOC arrangements and the fact that it was acknowledged that the Claimant did not feel that they were appropriate but that his line management and Human Resources maintained that the arrangements were appropriate and that the matter had been reviewed by Head of Human Resources Casework and Advice, Jan Beasley, who had said that they should remain in place.

514. We are satisfied that the rationale for continuing with the SPOC arrangements remained the same as the original reasons for putting them in place. That was to assist the Claimant and others who were communicating with him and also to deal with the increasing issue of escalation and the number of people who had become involved in the matter. Sarah-Jayne Williams also set out further details as to how the Claimant should deal with his appeal against the outcome of Lynn Coulby's grievance decision.

515. The Claimant replied in again rather strident terms. He maintained that Sarah-Jayne Williams was refusing his request for a reasonable adjustment in relation to taking away the SPOC arrangements and that he considered her emails to be "abusive". We cannot find anything within any of the items of correspondence penned by Sarah-Jayne Williams, or indeed others, which gave a hint of any abusive nature towards the Claimant or indeed any inappropriateness. That position can perhaps be contrasted with the Claimant's correspondence which regularly made unfounded accusations of impropriety. Moreover, removal of the SPOC arrangements was not something in Sarah-Jayne Williams' gift.

516. The Claimant copied his email to Jan Beasley with a direct request for her to *"immediately take action to bring this disgraceful business to an end".*

517. The Claimant also forwarded a further email to Sarah-Jayne Williams for onward transmission to SE (who was dealing with his appeal against the pension contributions issue) on 21st February 2017. We do not rehearse that in its entirety but merely the relevant part of it which the Claimant contends amounts to a protected act. That part said this:

> "*Please also note that the refusal to allow me direct access to you is being done as an extreme form of victimisation and one for which there*

is no basis whatsoever. Reasonable adjustments (including being dealt with appropriately and in the same manner as every other HMRC employee) have been refused and even when an RA was agreed it was simply ignored in direct contravention of the Equality Act 2010.

…" (see page 1111 of the hearing bundle).

518. The following day, 22nd February 2017, the Claimant also sent a long email to Jan Beasley. That was outside of the SPOC arrangements which had already been put in place whereby that item of correspondence should of course have been sent to Sarah-Jayne Williams. Again, it was a very lengthy email and we do not set out the content in full here but, in short, there were complaints about the actions of Sarah-Jayne Williams and the imposition of the SPOC arrangements. It made a complaint in respect of Sarah-Jayne Williams for what the Claimant referred as *"discrimination, victimisation, bullying and harassment".* It also made reference to the fact that the Claimant intended to prepare a case for the Employment Tribunal claiming discrimination under the Equality Act 2010 and for harassment under the Protection from Harassment Act 1997.

519. The last paragraph of the Claimant's email said this:

"*Please do not ignore this email as I am literally begging you to end what I believe is a campaign to push me to killing myself.*"

520. Jan Beasley did not reply to that correspondence. We accept her evidence that that was on the basis that the SPOC arrangements were in place and the issues raised by the Claimant were going to be dealt with in accordance with that process. She was overseeing that with Sarah-Jayne Williams and therefore understood that all of the points that the Claimant was raising, the main one of which she understood to be a complaint about the SPOC arrangements, were to be dealt with imminently. We accept that she therefore considered that there was no specific action that she needed to take.

521. Jan Beasley accepted in her evidence that in hindsight a better approach would have been to have acknowledged the Claimant's correspondence and have explained that he would receive a full reply though the SPOC arrangements so that he did not feel that she had ignored his email and to provide a more personal touch. We are satisfied that that showed insight from Jan Beasley though as to how she would handle matters differently in the future and in the context of having gone through these particular proceedings.

522. The Claimant wrote to Monique Deveaux again by email on 22nd February 2017. Again, that was a lengthy email dealing with a good many points but the main matters of concern for us surrounded the issue of attending an attendance management meeting as Monique Deveaux had requested. The Claimant's position on that was again set out in strident terms. Amongst other things, it complained of the Claimant's view that Monique

Deveaux was not carrying out her KIT contact role because she had refused to communicate directly with the Claimant. She had of course not refused to communicate directly as she was simply following the SPOC arrangements as she had been directed by the Respondent in respect of channelling written communication. She had also directly held a KIT discussion with the Claimant and had sought to arrange a meeting with him under the AMP process.

523. The email also accused Monique Deveaux of "victimising, discriminating, bullying and harassing" the Claimant and that her "aggressive insistence" to attend a formal meeting was direct discrimination. It was, in many ways, similar to the unfounded allegations levelled at RW and more recently at Sarah-Jayne Williams.

524. We pause here to reflect that all that Monique Deveaux had asked the Claimant to do was to attend a meeting under the AMP and had sought to make appropriate arrangements to enable that to take place. The focus of that meeting was to discuss the possibility of a return to work. There had been no insistence that the Claimant attend the meeting, let alone "aggressive insistence".

525. The Claimant's email also set out that he was not well enough to attend a formal meeting and that he required the name and email address of Monique Deveaux's manager so that he could make a formal complaint against her. This was therefore the second KIT contact that the Claimant had had against whom he had also sought to make a formal complaint alleging discrimination, victimisation, bullying and harassment. It again represented further escalation of complaints.

526. On 28th February 2017, Monique Deveaux wrote again to the Claimant to try to re-arrange the attendance meeting for 7th March 2017 in Nottingham. She again offered to conduct the meeting by telephone if the Claimant preferred.

527. On the same day the Claimant wrote to Sarah-Jayne Williams. He again complained about the SPOC arrangements and set out an assertion that it would be a reasonable adjustment to end that arrangement. We agree entirely with Mr Beever's assessment that the Claimant has a fundamental misunderstanding of the reasonable adjustment process – both at this stage and indeed at the hearing before us. He appears to equate the duty to make reasonable adjustments to a requirement to put anything in place that he requests or remove any arrangement that he considers to be in some way objectionable. That is, of course, not the duty to make reasonable adjustments.

528. The Claimant's email also referred to the fact that the SPOC arrangements constituted "illegal activity" and that Sarah-Jayne Williams should report the situation to Internal Governance.

529. On 3rd March 2017, Sarah-Jayne Williams forwarded to the Claimant a letter from SE regarding his appeal on the pension contributions issue. That letter set out that it was being sent outside the times which had previously been stipulated by the Claimant for contact (i.e. between 10.00 a.m. to 2.00 p.m. on a Tuesday) because that had been agreed.

530. The Claimant wrote back in again what could best be seen as extremely strident terms, denying that was the case. In that regard, he said this:

"*Furthermore, you state that "I am advised you have agreed for correspondence relating to this matter to be sent to you outside the times you have previously stated". This is discrimination and also yet again demonstrates your totally unacceptable approach.*"

531. In fact, the Claimant had expressly set out to SE that he wanted to be communicated with outside those times (see page 1158 of the hearing bundle). What Sarah-Jayne Williams had said therefore was plainly correct.

532. Again, the email from the Claimant is not only wrong in that regard but it is extremely confrontational in approach. It referred amongst other things to alleged criminal activity, of the Claimant being forced to commit suicide and referred to Sarah-Jayne Williams herself as being *"tantamount to a playground bully"*.

533. Sarah-Jayne Williams responded the following day in perfectly measured tones. She began by saying that she hoped that the Claimant was feeling better and that she was worried by the tone and content of his emails and his references to suicide and mental cruelty. She suggested that it may be helpful for the Respondent to contact the Claimant's General Practitioner and asked if he would like them to take that step. Her email in reply also set out responses in relation to a number of further queries that the Claimant had raised and also dealt with the SPOC arrangements, which the Claimant continued to dispute as being legitimate, by indicating as follows:

> "*I acknowledge your repeated requests for your SPOC arrangements to cease. I have responded each time to confirm that your line management chain and HR believe that it is appropriate for these to remain at this time.*
>
> *We have an obligation to protect the welfare of all of our staff. This arrangement was put in place in consideration of the interests of all parties involved. The continued volume and tone of your correspondence to numerous people over recent months means that the Department does not think it is appropriate to alter these arrangements at this time."*
>
> (See page 1190 of the hearing bundle).

534. We can fully appreciate, given the extracts which we have set out above and, particularly, the tone of correspondence to RW, Monique Deveaux and Sarah-Jayne Williams, why that decision was reached. The letter also set out that the Claimant had failed to contact Monique Deveaux about the attendance management meeting and that as per her previous letter, she had held the meeting as planned in Nottingham on the assumption that the Claimant was going to be in attendance but had found that he was not (see page 1192 of the hearing bundle).

535. The Claimant responded, having apparently only read a portion of the letter as he indicated that he was not able to read it in full, to request that Sarah-Jayne Williams had no further contact with him and that a new "supportive contact" should be put in place to email him to arrange a call to discuss the contents of the letter (see page 1195 of the hearing bundle).

536. Following the failure of the Claimant to attend the meeting with Monique Deveaux, Melanie Clare emailed Dan Coughlin with a case update. She noted that the Claimant had not attended the formal attendance meeting nor had he attended the meeting which Monique Deveaux had sought to arrange previously and so the next steps would be to send the case to a decision maker.

537. The email from Ms. Clare set out that Sir Jon Thompson's office had been made aware of the situation in case there was an escalation of the complaint (given that the Claimant had already referred matters to Sir Jon Thompson previously) and that he had also contacted Mike Potter, the Respondent's Disability Champion, with further complaints. Ms. Clare set out that Sarah-Jayne Williams would be able to offer assistance with any responses to be made.

538. On 13th March 2017, Monique Deveaux wrote to the Claimant via Sarah-Jayne Williams. She pointed out that she had been unable to meet with the Claimant as planned on 24th February and 7th March 2017 and that in the absence of those formal meetings she had reviewed the information available to her and had decided to refer the matter to a decision maker. That decision maker was to be Mr. Tom Oatley and it was explained to the Claimant that he would decide whether the Claimant should be dismissed or downgraded or whether the sickness absence level could continue to be supported at that time. It was indicated that Mr. Oatley would write separately to provide an invitation to the meeting and we deal with the referral to Tom Oatley and his decision separately below.

539. We accept that by that time there was little alternative course open to Monique Deveaux but to make a reference to a decision maker given that:

a. The Claimant had eschewed options for a return to work which had been offered to him by RW and by Ms. Deveaux herself;

b. The Claimant had refused to engage with repeated requests for an Occupational Health referral until a point after he returned to work. As we have observed, that was obviously too late and, in all events, no progress could be made with the Claimant to facilitate a return;

c. The Claimant had refused or failed to attend the meetings which Ms. Deveaux had sought to set up under the AMP process so as to discuss and seek to bring about a return to work; and

d. The Claimant had by that stage been absent for a protracted period of time and, in view of the above, there did not appear to be any realistic prospect of a timely return to work.

540. Sarah-Jayne Williams provided the letter from Ms. Deveaux to the Claimant under cover of a letter of 16th March 2017 (see pages 1213 to 1232 of the hearing bundle). At the same time, she also provided him with an update in relation to other matters in respect of outstanding grievances and a copy of a letter from Mary Aiston's setting out her decision in relation to the application of the Respondent's Vexatious Complaint Policy to the Claimant. We deal further with that decision below.

541. The letter of 16th March 2017 was sent to the Claimant by post given that by that stage he had made it clear that he no longer wanted Sarah-Jayne Williams to communicate with him by email (see page 1195 of the hearing bundle).

542. During the time up to the termination of the Claimant's employment correspondence continued between him and Sarah-Jayne Williams in accordance with the SPOC arrangements. We need not set all of that correspondence out here but we are satisfied that Sarah-Jayne Williams did her best to address the issues that the Claimant was raising, and which he sometimes did repeatedly and in not entirely appropriate terms (see for example page 1410 of the hearing bundle where the Claimant accused Sarah-Jayne Williams of intending to cause him harm and distress and referred to his view of that constituting a criminal offence and a disability hate crime).

<u>Application of the Vexatious Complaints Policy</u>

543. By this stage, matters had again been referred to Mary Aiston who wrote to the Claimant on 7th March 2017. Her letter referred the Claimant to the Respondent's policy entitled "HR20509: Grievance: How to Recognise and Deal with vexatious or malicious complaints" "The Vexatious Complaints Policy". A copy of that policy was enclosed for the Claimant.

544. The relevant parts of Mary Aiston's letter said this:

> "*Following recent email correspondence, a review has been undertaken of the history of your correspondence with the department since your first formal grievance dated 5th June 2014. I should begin*

by saying that your two grievances which are currently in progress (being dealt with by Samantha Edwards and on appeal to Emma Spear respectively) will continue to be progressed to a conclusion and the contents of this letter will not affect these processes in any way. However, it is noted that since 5th June 2014 you have made complaints or indicated an intention to make complaints in 37 instances and against at least 24 different individuals.

It has also been noted that the tone of your correspondence has become increasingly difficult to reconcile with the need to maintain a professional relationship with those who are dealing with the matters you raise. HMRC understands that you advise you have a mental health condition and is sympathetic to this but it is also necessary to be mindful of the duty of care it has to all of its staff.

HMRC considers that your emails show a tendency to prolong contact by continually raising further concerns or questions whilst your two acknowledged complaints are being addressed. It has also been noted that the nature and frequency of the contact hinders consideration of your own and other employees' complaints and is extremely time consuming to manage. Recently we believe that you have been making unjustified complaints about employees who are trying to deal with issues and seeking to have them replaced.

Having considered the fact of your mental illness, HMRC feels that prolonging this correspondence is not beneficial to your recovery and nor does it fully mitigate the effects on the department outlined above. Therefore, a decision has been taken not to accept any of your complaints other than the two currently in progress. This decision will be kept under review and may be re-visited but at the moment we would suggest that for the benefit of all parties our correspondence with you is limited to dealing with the attendance management process and supporting you back to work, progressing any CSIBS[21] application which you decide to make and pursuing the two grievances already in progress to a conclusion.

We appreciate that this will be unwelcome news to you and genuinely regret any distress you may feel. However, we do feel that this decision is justified and will not enter into any further discussion regarding it.

…"

545. Mary Aiston went on to provide details of the Samaritans given the Claimant's continued reference to being forced to commit suicide.

546. The relevant policy which was enclosed for the Claimant is in the bundle before us at pages 1706 to 1708. We have heard from Mary Aiston in relation to the Vexatious Complaints Policy and why she felt it applicable to the circumstances of the Claimant at that time. The policy defines a

[21] A reference to the Civil Service Injury Benefit Scheme.

vexatious complaint as one that is *"pursued, regardless of its merits, solely to harass, annoy or subdue somebody; something that is unreasonable, without foundation, frivolous, repetitive, burdensome, deceitful, threatening or unwarranted"*.

547. The policy further sets out that a complainant may be regarded as vexatious where the employee seeks to prolong contact by continually changing the substance of a complaint or by continually raising further concerns or questions whilst the complaint is being addressed and also one which makes excessive contact with the manager or seeks to impose unreasonable demands or expectations on resources, such as responses being provided more urgently than is reasonable or necessary.

548. The policy also covers what is referred to as an "unreasonable persistent complaint". That is defined at paragraph 9 of the policy, which provides as follows:

> "*An unreasonable persistent complaint is a complaint that, because of the nature or frequency of the contact, hinders consideration of the employees own, or other people's complaints. The difficulty arises from unreasonable, persistent behaviour that is time consuming to manage and interferes with proper consideration of the complaint.*"

549. We accept the evidence of Mary Aiston that her view was that the Claimant's complaints fell into the category of complaints described above. Particularly, she considered them to be repetitive and burdensome (see paragraph 4 of the policy) and that the Claimant was seeking to prolong contact by continually raising further concerns or questions whilst the complaint was being addressed (see paragraph 6 of the policy) and also made excessive contact and sought to impose unreasonable demands or expectations on resources (see again paragraph 6 of the policy). She also considered that the correspondence fell within the definition of an unreasonable persistent complaint within paragraph 9 which we have set out above.

550. We accepted Ms. Aiston's evidence that she would welcome challenge where it was appropriate but her concerns in this regard were for the impact on other members of staff and also to the fact that the escalation and continued escalation of matters was having the result of losing sight of the wood for the trees in respect of the original grievances and that this was simply delaying an outcome in relation to grievances which were in train. By continually raising new matters, the concern of Mary Aiston was that the original grievances would never be able to reach a conclusion and that was not of benefit to the Claimant either because it could also negatively impact the ability of the Respondent to support him in a return to work.

551. We also accept that Mary Aiston also had in mind the stress that the Claimant was saying that email and correspondence with the Respondent was having upon him. She also, quite rightly in our view, considered the

impact that his communications were having upon others. We remind ourselves in this regard that RW had been caused clear distress by the Claimant's emails and allegations against her in circumstances where she had only been trying to assist him and that that had led to her expressing that she no longer wanted to have contact with him or perform the KIT manager role. We also accept that Monique Deveaux had been reduced to tears by correspondence that she had received from the Claimant.

552. We are satisfied that the conclusion of Mary Aiston that the Claimant's behaviour fell within the scope of the Vexatious Complaints Policy was, in the circumstances, entirely reasonable. As we have already observed, the Claimant had taken to communicating in aggressive and intemperate tone and making serious and unfounded accusations against almost everyone who came into any form of material contact with him.

553. It appears likely from the evidence before us that the letter from Mary Aiston was originally drafted by Sheldon Whatmough of Human Resources in much the same way as the letter from Dan Coughlin to which we have already referred, was also drafted by someone from HR. However, that was entirely in keeping with the approach of Human Resources to draft documentation on behalf of senior managers and directors. We are satisfied that Mary Aiston took the decision for herself in relation to implementation of the Vexatious Complaints Policy and that she did so having obtained Human Resources input and guidance. That is the way in which the Respondent operates and it is not unusual in the circumstances. We also note and accept her evidence before us that she would make the same decision in respect of anyone who had sent correspondence of the tone and content that the Claimant did, irrespective of whether they were suffering from a mental health disability or otherwise.

554. The Claimant appeared to contend before us that if his correspondence was as upsetting and concerning as the Respondent made out, that disciplinary action should have been taken against him. The Claimant's written submissions seek to stress that he was not suggesting that that should have taken place, but that is effectively what we infer from a number of questions asked by the Claimant during cross-examination and, indeed, the way in which allegation 79 in these proceedings is phrased.

555. Under the Vexatious Complaints Policy, that was certainly an option open to the Respondent but it is clear that they simply elected to take a more proportionate approach given the circumstances and to raise the Claimant's behaviour with him with a clear marker that both parties should concentrate on the extant grievance complaints.

556. We would observe here that if, as the Claimant contends, the Respondent was set on a course that saw them determined to dismiss him then we can see no reason why they would not have taken the opportunity to put in train disciplinary action as a result of the application of the Vexatious Complaints Policy to his communications.

Complaint to Phillip Rutnam

557. In an email dated 1st March 2017, the Claimant wrote to Philip Rutnam (the then Permanent Secretary to the Department of Transport) setting out various complaints in relation to the Respondent including reference to the SPOC arrangements. This is relied upon by the Claimant as a protected act. We do not set out that email in its entirety as, again, it was of considerable length and rehearses many of the issues which we have already set out elsewhere in this Judgment. A copy of the email can be found at see pages 1161 – 1163 of the hearing bundle.

558. Mr. Rutnam replied to indicate that he was unable to get involved in individual cases but was happy to forward the matter to Michael Potter, the Respondent's Disability Champion, if the Claimant was content for that to happen. The Claimant consented to that position and the required action was subsequently taken shortly thereafter (see page 1160 of the hearing bundle) with confirmation that that had taken place being given to the Claimant (see page 1164 of the hearing bundle).

559. Mr. Potter responded to the Claimant to say that he was unable to intervene in individual cases and drew his attention to the Respondent's Grievance Procedure.

560. The Claimant replied to Mr. Potter on 10th March 2017. His email was headed "*Urgent request for discrimination help".* The Claimant expressed disappointment that Mr. Potter could not become involved and raised further issues regarding receipt of the grievance decision and the appeal process; that the Respondent would only communicate through what he described as "confrontational" emails; that there was a refusal to investigate HRACC1 forms and the causes of workplace stress; that he had been pushed to considering suicide as a direct result of a "vicious campaign of victimisation" and he requested again that Mr. Potter become involved to bring about provision of an "appropriate supportive contact" to speak to him and end what he described as discriminatory behaviour.

Complaint to Internal Governance

561. On 7th March 2017, the Claimant made a complaint by email to Internal Governance ("IG"). That followed an earlier conversation with a member of staff from the IG Department. We do not set out the totality of that email here as it is extremely lengthy and runs to over four pages of closely typed text. The main themes of the email, however, were as follows:

(a) That the Respondent had failed to implement reasonable adjustments;

(b) That there had been a refusal by the Respondent to apply health and safety legislation – this largely related to the HRACC1 forms and the failure to investigate within 20 working days;

(c) That the Claimant had been subject to demands for payment – this related to the issues investigated by Steve Billington and SE in respect of pension contributions;

(d) That a potential hate crime had been committed – the Claimant referred to a campaign of victimisation, discrimination, bullying and harassment and that he was considering contacting the police to discuss a formal complaint; and

(e) Complained about the alleged actions of Sarah-Jayne Williams and Monique Deveaux and an assertion that the Respondent was preventing him from making a return to work.

562. The email also referred to the Claimant's belief that the Respondent was actively trying to force him to commit suicide (see page 1208 of the hearing bundle).

563. At the close of his email the Claimant set out that he trusted that the confidential nature of the matters reported would be respected. That was reflected in an email from MH of IG who had picked up the matter. It was referred to LP of Human Resources by email on 9th March 2017 with an indication that confidentiality had been requested by the Claimant.

564. It is clear that MH took a great deal of time to understand the complaints made by the Claimant and he set those out in the form of a detailed table breaking down each of the issues and providing his initial view or comments, including how those matters should be progressed (see page 1213 to 1217 of the hearing bundle). Those comments largely fell either into the category that the issues raised were in fact a grievance or that there had been allegations made but without any specifics. There was, therefore, no "refusal" to consider the matter as the Claimant alleges.

565. Before sending any details to Human Resources (which as above was to LP on 9th March 2017) MH referred the matter to EH who was a Senior Officer within IG for guidance. EH replied, again before MH took any action to refer the matter to LP, to say that the issues raised by the Claimant did not fall into the category of a "relevant concern" to be investigated by IG and that, if anything, they came under the grievance process which it was noted was already being followed (see page 1204 of the hearing bundle).

566. The opinion of IG, therefore, was that the issues raised by the Claimant were not matters which should be dealt with within the Respondent's Whistleblowing Policy (for which IG was ultimately responsible) as they were personal matters or were the Claimant's opinion on procedures, policies, terms of employment and departmental activity. It was indicated, not unreasonably, that the matters of which the Claimant complained to IG were on that basis more likely to be considered as grievances and that the

complaint document related to matters which were already under grievance investigation or the claimed mishandling of those procedures.

567. However, EH had identified a matter of concern to him with regard to the potential threats of self harm, which was a further reference by the Claimant in the complaint to matters of suicide. The relevant part of EH's email in that regard said this:

"However, I am concerned about the potential threats to self-harm.

Therefore, can you contact CSHR to see if they have a record of this chap/grievance and advise we have concerns regarding threats to self-harm. Also ask them to review the issues and come back to us if there are any concerns.

Once CSHR have been contacted respond to the individual stating that unfortunately following a detailed review we do not believe his concerns meet the WB[22] criteria but we have flagged them up with CSHR who will review how his grievances/concerns are being handled".

568. There was therefore a request for someone from Civil Service Human Resources ("CSHR") to review the situation and the most appropriate way forward and that if conduct or whistleblowing issues were to become apparent, then the matter could be referred back to IG.

569. The Claimant complains that his confidentiality in this regard was breached. That was a matter that was later to become the subject of further complaint by the Claimant.

570. However, we accept from the clear evidence before us that the reason why the matter was referred to CSHR was because of the fact that the Claimant had made reference in his complaint document to being forced to commit suicide. That is clear from the contemporaneous email from EH to MH.

571. It is clear in that regard from the email from EH, a Senior Officer in IG, that the potential threat to self-harm (i.e. the Claimant's reference to suicide) were uppermost on the minds of IG when the matter was referred to CSHR (see page 1204 of the hearing bundle) and it was that for reason that the reference was made by MH to LP.

572. Moreover, the complaints were not investigated further by IG directly because the matters raised did not appear to fall under the Whistleblowing Policy. CSHR were best placed to deal with those matters (particularly the references to suicide) and they were also involved in the current dealings with the Claimant's existing complaints and grievances. As such, we do

[22] A reference to Whistleblowing.

not find it unusual that CSHR were consulted about the complaint that the Claimant had made to IG.

573. The Claimant contends that the disclosure of his complaint to CSHR by IG fell foul of the commitment given by Sir Jon Thompson in connection with the Respondent's Whistleblowing Policy as to the preservation of confidentiality or being kept informed if that was not possible (see page 1905A of the hearing bundle). However, it is important to note here that IG did not consider that the complaints raised by the Claimant were issues that needed to be considered under the Whistleblowing Policy for the reasons that we have already set out above.

574. We also accept the evidence of Wayne Vernon that it had not been possible for MH to contact the Claimant prior to referring matters to CSHR to discuss that with him because IG were not permitted to communicate via personal email addresses (which was the only contact detail that they had for him) and that they could not have successfully reached him via his email address with the Respondent because he was absent on sick leave.

575. On 23rd March 2017, in accordance with the direction of EH, MH of IG wrote to the Claimant via Sarah-Jayne Williams indicating that his complaints did not fall within the scope of the Whistleblowing Policy because they related to personal matters or represented his particular views but that they had been referred to the CSHR casework team to consider and that no further action would be taken on them at that time because the substance of the complaints were part of ongoing formal investigations or matters which had already concluded via the formal process (see page 1257 of the hearing bundle).

576. On 27th March 2017, the Claimant submitted another formal complaint. This time, this was in relation to the actions of IG with regard to his email to them. This complaint related to the allegation that IG had ignored his concerns and preferred the account of the people complained about and had accepted explanations which the Claimant said that he could demonstrate were untrue.

577. The Claimant raised the issue of why his confidentiality had been ignored and why, if it was felt that action could not be taken without him being identified, was he not informed of that and given the option not to proceed. The Claimant referred in relation to that latter point to confirmation from Sir Jon Thompson that whistleblowing matters which were reported would be treated confidentially. We have already remarked on that issue above.

578. The Claimant's complaint was forwarded to Wayne Vernon and later to Julie Digby, from whom we have heard in the course of these proceedings.

579. We accept the evidence of Mr. Vernon that he agreed that the Claimant's confidentiality as requested had been breached. Again, the Respondent's witnesses were prepared to make appropriate concessions in that regard

but those matters had to be referred to CSHR, not least in relation to the Claimant's assertions that the Respondent was seeking to force him to commit suicide.

580. CSHR were of course the experts in respect of such matters and it is understandable that there would have been a concern within IG about such a statement being made by the Claimant such that it was necessary to take actions in respect of the same.

581. On 4th May 2017, Mr Vernon wrote to the Claimant with regard to the complaint that he had raised about a breach of his confidentiality. That set out an explanation which was entirely consistent with the evidence which Mr. Vernon gave to us during these proceedings as to why IG had referred the matter to CSHR. In this regard, it was confirmed that the statements made by the Claimant, including an issue about the Respondent actively attempting to force him to commit suicide, meant that there had to be an assessment of the risk to the Claimant's personal safety. As a result, CSHR were contacted to discuss the situation. Mr. Vernon set out that he believed that the actions taken by the Respondent were reasonable considering the information that was available at the time and that contact with HR was limited to senior managers to review and assist in responding to the complaint (see page 1358B of the hearing bundle).

582. The Claimant was advised how he could address the matter if he was unhappy with the response. The Claimant subsequently did progress the matter and requested that it was considered further. It was thereafter referred to Julie Digby. Ms. Digby reviewed the matter and wrote to the Claimant on 24th May 2017 setting out her decision in relation to the complaint. The relevant part of the letter said this:

"*… as explained in the previous response, HMRC's whistleblowing policy states that a request for confidentiality will be met "as far as possible" but is not guaranteed if the circumstances behind the concern raised means it is not possible to do so. However, the policy does not cover personal complaints or grievances, including complaints of bullying and harassment or disciplinary matters. These are proper to the grievance procedures.*

The Internal Governance (IG) officer who dealt with your e-mail sent on 7 March carefully considered all of your points raised against the whistleblowing policy, as well as your obvious distress. He concluded that, from the information provided, your concerns were proper to HMRC's grievance policy rather than whistleblowing. As the policy holders for grievance, bullying and harassment and disciplinary cases, HR advise IG on these matters, so, as the subject experts with responsibility for dealing with such issues, the officer decided a referral to CSHR was the correct course of action to take.

I acknowledge that it would have been best practice for the officer to contact you before deciding to forward your e-mail to CSHR. Unfortunately this was not possible on this occasion. As explained in the

final paragraph of Mr Vernon's previous response, we are not permitted to send sensitive e-emails to personal addresses and IG did not have a personal telephone number on which to contact you directly to discuss your concerns.

With regards to the duty of care question, again I am satisfied that the correct action was taken by the officer in trying to ensure your concerns were acted upon correctly and quickly. As the experts in dealing with grievance related issues and, as you had been allocated a Keeping in Touch Manager (albeit you say you were not content with how this was helping you), the officer felt that escalating your concerns to a senior manager within CSHR would be the best course of action.

I accept that there was a delay in you receiving a response to your e-mail, which is regrettable, but can assure you that the IG officer contracted you the day after receiving the CSHR response."

583. The content of that letter accorded with the rationale for how IG had dealt with matters as set out in the documentation to which we have already referred above and the evidence of Mr. Vernon and Ms. Digby before us.

584. The letter from Julie Digby also set out how the Claimant could continue with his complaint if he was not satisfied with her response.

Appeal against Lynn Coulby's grievance outcome decision

585. As we have already referred to above, the Claimant had been informed of his right of appeal against the decision made by Lynn Coulby on his grievance and he had exercised that right accordingly.

586. Emma Spear was tasked with considering the Claimant's appeal. She was a higher grade to Lynn Coulby and had had no previous dealings with the Claimant or any of the individuals or matters included within the grievance.

587. On 24th February 2017 Emma Spear asked Sarah-Jayne Williams to forward to the Claimant an email relating to his request for an extension of time to submit his full appeal letter. That request was ultimately refused for detailed reasons given at pages 1131 to 1132 of the hearing bundle. It was made clear by Emma Spear that the Claimant would be able to raise any matters that he wished as part of the appeal process. In point of fact, as we shall come to, Emma Spear later reviewed her decision on the Claimant's request and provided him with additional time to submit the full grounds of his appeal.

588. Her original decision was forwarded to the Claimant by Sarah-Jayne Williams on the same day. The Claimant complains that that was done outside of the arrangements which he had identified for receiving email contact, i.e. between 10.00 a.m. and 2.00 p.m. on a Tuesday.

589. However, it is clear from both the evidence of Sarah-Jayne Williams and the email itself that that was done "*exceptionally*" because of the timescales for the appeal, rather than seeking to distress the Claimant as he appears to contend. Sarah-Jayne Williams was in fact assisting him in that regard because his request for an extension of time, that being set out in his earlier email of 23rd February 2017 (see page 1134 of the hearing bundle) had been refused. It was clear that Sarah-Jayne Williams's intention was to provide the Claimant with as much time to prepare his appeal document as possible rather than leaving it for the next window of contact to tell him that no extension had been agreed.

590. The Claimant also complains that in the same email, Sarah-Jayne Williams had attached his payslip. The Claimant contends that he was therefore not provided with a confidential payslip, which was usually sent to his home address, as everyone else's was.

591. We do not find any untoward intention in that regard. This simply arose from the fact that as single point of contact, Sarah-Jayne Williams was acting as a conduit for all communications between the Respondent and the Claimant. The same is the case in relation to submission of Fit Notes and the instruction given by the Respondent that those should now be sent to Sarah-Jayne Williams rather than to the usual confidential mailbox address (see page 1082 of the hearing bundle).

592. Whilst that may not accord with the process as set out in HR27007 Absence Management Fit Note Policy (see page 1083 of the hearing bundle) that policy sets out the position for those who have regular line management arrangements without the facility for all communication to be directed via a SPOC. We remind ourselves in that regard that whilst we accept that SPOC arrangements had been used previously, those are the exception rather than the rule and it is unsurprising therefore that the policy does not specifically cater for such eventualities. We also accept that whilst Sheldon Whatmough's evidence was that he did not consider the SPOC arrangements utilised in the Claimant's case to be the normal course, there were a considerable number of issues and strands to the Claimant's circumstances which made it a complex case. We are satisfied that the SPOC arrangements put in place were designed not to cause the Claimant distress or for any other motive than seeking to support him and other employees of the Respondent.

593. After confirmation that he had not been provided with an extension of time to submit his appeal, the Claimant again wrote to Emma Spear via Sarah-Jayne Williams setting out that he required the extension of time as a reasonable adjustment and the refusal therefore amounted to discrimination. Again, it was a lengthy email and, amongst other things, the Claimant also complained that:

- He had not been corresponded with directly by Emma Spear;

- He had not been provided with the investigation report in contravention of the grievance procedure;
- He had been forced to work to the appeal deadline for no other reason than to "discriminate and victimise" him so there was no prospect of the appeal being "appropriately considered"; and
- Emma Spear should consider whether it was appropriate for her to continue as appeal manager given that she had discriminated against him and that he wanted the matter to be brought to the attention of the Respondent's Disability Champion, who should contact him directly to discuss matters.

594. The original deadline to submit the appeal had been set at 28th February 2017. Following receipt of the further email from the Claimant above, Emma Spear revisited her earlier decision and permitted the Claimant an extension of time until 3rd March 2017 to submit his full grounds of appeal.

595. Much of the first page of the lengthy appeal document submitted by the Claimant concentrated not on the appeal issues but on complaints and allegations of discrimination against Emma Spear.

596. The appeal document runs to some 13 pages and so we do not set it all out here but suffice it to say that the basis of the appeal was to raise alleged procedural errors and to challenge all of the decisions which had been made by Lynn Coulby in relation to the grievance outcome.

597. On 7th March 2017, Emma Spear wrote to the Claimant inviting him to an appeal meeting in Nottingham on 17th March 2017. That was sent via Sarah-Jayne Williams in accordance with the SPOC arrangements. The letter made it clear that if the Claimant did not want to attend the meeting in person, then a telephone call could be arranged as an alternative. The Claimant was asked to confirm his preference in that regard and that in the absence of him doing so, the appeal would proceed on the basis of the available evidence.

598. We accept the evidence of Emma Spear that the Claimant did not respond to her letter or attend the appeal meeting. As such, Emma Spear had little alternative but to proceed with the information which was in her possession from the Claimant's appeal documentation. Her letter had of course made it clear that that was the way in which she intended to proceed if she did not hear from the Claimant.

599. Emma Spear produced her appeal outcome decision in draft form and that was sent to Jamie Gracie for consideration on 17th March 2017. The draft included her decision but also set out a limited number of questions that Emma Spear had and which she asked Jamie Gracie to address (see pages 1233 – 1238 of the hearing bundle).

600. Jamie Gracie dealt with a response to those particular points. Again, given that he was providing support to Emma Spear and others as an HR point of contact, we do not consider it unusual that he had been asked to do so and we accept the evidence of Ms. Spear that the decision in relation to the appeal outcome was hers and hers alone.

601. We pause here to note that the Claimant is critical of the continued involvement of Mr. Gracie in the various aspects of his case. It is certainly true to say that he provided HR support at numerous stages including in connection with grievances, appeals and the AMP process. The Claimant's position is that Mr. Gracie should not have had that continued involvement and that if HR support was necessary, that should have been by someone different in respect of each stage of the process. Whilst we accept that the Claimant finds that position troublesome, it is clear that Mr. Gracie had volunteered to be the HR point of contact in respect of the Claimant at an early stage so as to draw all the strands together. We do not consider it unusual given the complexity of the issue that a new HR contact was not appointed at each stage of the process. Some continuity was necessary. Moreover, it is clear that the extent of Jamie Gracie's involvement was to provide HR support and guidance. We accept that the decisions in each case were those of the allocated decision maker alone and that none of them had any involvement in the earlier stages of the process such that they were able to be sufficiently independent to afford the Claimant a fair hearing.

602. Emma Spear's appeal outcome was sent to the Claimant via Sarah-Jayne Williams on 21st March 2017.

603. We are satisfied that that outcome letter dealt comprehensively with the issues which had been raised by the Claimant in his appeal, insofar as Emma Spear was able to do so given the Claimant's decision not to meet with her or have a telephone discussion to further explore the grounds of his appeal. The decision taken by Emma Spear was not to uphold the Claimant's grievance.

604. The appeal outcome letter is a lengthy one and so we have not set that out in full and include here only the salient points. Those dealt with the Claimant's specific appeal points as follows:

(i) That there had been a failure to allow the Claimant to provide input into the investigation. In short terms, the Claimant referred here to the fact that he had not been provided with an investigation report and the opportunity to meet with the decision maker before the outcome to his grievance was communicated to him. In her appeal outcome Emma Spear concluded that it was not necessary for a decision maker to complete an investigation report and that whilst that was something that needed to be considered as part of the decision making process, it was ultimately not essential to produce such a report. She set out that Lynn Coulby had decided that production of an investigation report was not necessary and there had

been no refusal to provide one as the Claimant contended. An investigation report simply did not exist and there was no breach of the guidance within the Grievance Procedure. The appeal outcome also set out that there had been an intention to have a separate fact finder but the Claimant had asked for that not to happen on the basis that that individual was deemed to be not appropriate.

(ii) That there had been a failure to investigate. Emma Spear set out in her decision that she was satisfied that the investigation was undertaken to the required standard.

(iii) That there had been a lack of impartiality. This part of the Claimant's appeal was concerned with the decision of Lynn Coulby to send emails to AL, Tim Bowes and RW giving them the opportunity to provide any additional information. Emma Spear pointed out that the Claimant had had two telephone conferences with Lynn Coulby prior to that point in addition to information already contained within the grievance itself and that Lynn Coulby's letter of 6th February 2017 clearly showed that she had considered a significant amount of evidence before making any contact with the named individuals.

(iv) That there had been a failure to respect and maintain confidentiality. Emma Spear considered that point, which centred around the SPOC arrangements, but concluded that those arrangement had been put in place following an earlier request that the Claimant had made and as a supportive measure.

(v) That Lynn Coulby had bullied, harassed, victimised and discriminated against the Claimant. Before turning to Emma Spear's conclusions on that issue, we would observe that Lynn Coulby was now a further individual who had had material contact with the Claimant who was now the subject of allegations of discrimination. Emma Spear was satisfied there was no evidence to support that. That was a reasonable conclusion to reach given that there was nothing within the information and documentation sent to Emma Spear by the Claimant that supported his allegations against Lynn Coulby.

605. Emma Spear's final conclusions in her letter said this:

> "*The grievance was dealt with under the HMRC formal procedures which is the correct course of action.*
>
> *As explained above, as Lynn did not rely on a 3rd party to carry out the investigation it was not necessary to complete an investigation report for the grievance you raised. However, Lynn Coulby's decision letter dated 6th February 2017 did provide you with a specific response on each point raised and explained the steps she had taken in reaching this decision. You have said that there is 'no evidence whatsoever of how decisions have been reached or even what information has been considered' but her letter to you contains quotes from e-mails seen,*

HMRC guidance extracts and references to meetings held with the people you have mentioned in your grievance and so I believe that sufficient evidence has been provided in this regard.

You have said that you do not believe you were provided with the name of the Disability Champion or PAP[23] details. I have checked this and can confirm that [HP] *wrote to you with the name of the Disability Champion on 29th July 2016 and then gave you an update on the PAP position on 6th October 2016.*

You have stated that Lynn Coulby refused to meet with you at the end of the investigation. However, such a meeting is not part of the grievance process; the Decision Maker should make you aware of your entitlement to appeal and this was done.

You mention in your appeal that the e-mail dated 17th June 2016 is 'clearly crucial' and ask why you have not been provided with this. This is an e-mail that you sent to [HP]*. I have seen it and can confirm that Lynn Coulby also had access to this.*

I have seen no evidence of you being denied access to information that you have requested.

Taking all of the above into consideration, I am satisfied that Lynn Coulby's original decision is correct and that she followed the correct procedures in reaching this decision."

606. Emma Spear closed the letter by referring the Claimant to Workplace Wellness given references in his appeal documentation to issues of suicide.

<u>Referral to Tom Oatley as Decision Maker under the AMP process and his decision to dismiss the Claimant</u>

607. As we have already touched upon above, Monique Deveaux had informed the Claimant in her letter dated 13th March 2017 that there was to be a referral to a decision maker, namely Tom Oatley, for the purposes of determining whether his absence could be continued to be supported by the Respondent. By that stage, the Claimant had been absent from work for a period in excess of eight months. As we have already set out above, return to work discussions had reached an impasse given that the Claimant had also refused all of the return to work options which had been explored previously by both RW and Monique Deveaux and he also still continued to refuse to undergo an Occupational Health assessment prior to a return to work.

[23] A reference to the Positive Action Pathway

608. The referral to the Decision Maker was therefore an appropriate way forward given the circumstances. It is fair to say that the AMP was not followed by the Respondent in terms of commencing the process at the point when the Claimant first met the relevant trigger points. However, it cannot be a matter of unfairness to the Claimant that the formal process was not commenced much sooner as that would have been simply likely to lead to his employment been terminated earlier than it in fact was given the circumstances to which we have referred above. We accept that the Respondent was trying to manage a difficult situation and before commencing with any formal action in respect of the Claimant, were seeking to explore options to facilitate a return to work and to obtain Occupational Health input. The only reason why that was not possible was because the Claimant was not willing to engage positively with that process and was instead focused on raising grievances against those having any material dealings with him.

609. The fact that the Respondent did not commence swifter formal action under the AMP also does not sit well with the Claimant's contention that they were focused on dismissing him because of his disability or because he had made complaints about discrimination.

610. The referral to Mr. Oatley, who had had no earlier involvement in the matter, was made by way of a report which features in the hearing bundle at pages 1258 to 1265. There were also a number of attachments to the report which included the keeping in touch discussions which had taken place with the Claimant.

611. The Claimant is critical of the decision referral in a number of areas. The first of those is that it was completed in what he described as a referral by committee, which he contends is outside the terms of the AMP process.

612. The AMP provides for a referral to the Decision Maker to be made by an employee's Line Manager. In that regard, this continued to be HP. However, as a result of difficulties with that line management arrangement to which we have already referred, HP had in practice had very little, if anything, to do with the Claimant for some considerable time during the course of his ill health absence. The people who best knew what attempts had been made to enable the Claimant to return to work were RW and Monique Deveaux, who had been his two KIT contacts. Although it appears that the majority of the decision making referral was completed by HP, that being the evidence given to us by Monique Deveaux on 22nd May 2019, it is clear that RW and Monique Deveaux also had an input into the document. That is entirely consistent with a sensible practice in these circumstances because they would be able to include the actions that had been taken by them to seek to keep in touch and to facilitate a return to work for the Claimant during his absence which HP would not be able to fully comment on because she had not been involved.

613. Whilst we accept that the Claimant takes the view that there should be adherence to every policy to the exact letter, his circumstances had an unusual facet which the policy did not deal with in that he was no longer keeping in touch with his Line Manager but with a separate KIT contact. The AMP policy cannot be expected to provide for every possible eventuality and it comes as no surprise to us against that background that RW and Monique Deveaux had some relevant input into the referral to the decision maker. We have little doubt that the Claimant would have complained if this was Monique Deveaux alone as that would have also been outside the terms of the policy because she was not his Line Manager. We also have no doubt at all that he would have complained had HP been the only individual to complete it given the antipathy that he clearly feels towards her and the fact that he had raised his fourth set of grievances about her alleged conduct.

614. The Claimant is also critical of the fact that all of the individuals completing the referral document had been the subject of formal grievances or complaints by him. However, again as we have already touched upon above it would have been difficult if not impossible to find someone with the relevant knowledge of the circumstances of the Claimant's absence and the steps taken to facilitate a return to work that he had not raised complaints or grievances against.

615. However, if the AMP had been adhered to by the Respondent to the letter in respect of completion of the referral to Mr. Oatley, then that would have left HP alone completing the document and given that she had had little, if any, interaction with the Claimant during the course of his ill health absence it ultimately could only be to his benefit that RW and Monique Deveaux were involved for the purposes of providing an up to date position on the attempts to facilitate a return to work.

616. In addition to the issue of the particular authors of the referral document, the Claimant is critical of a number of aspects of the document itself. The first of those is that he asserts that the report omitted all of the lengthy email correspondence which he had had with various employees of the Respondent. The report in this regard provided for a written summary of the case, details of action taken to date and for copies of all letters issued and notes of discussions regarding sickness absence to be provided.

617. We are satisfied that the key documents which were required to be provided to Mr. Oatley were attached. To have attached all of the voluminous emails and other correspondence that the Claimant had generated during the course of his sickness absence would have been unnecessary and indeed unmanageable.

618. Moreover, as we shall come to in due course, Mr. Oatley sought to hold a meeting with the Claimant to discuss matters and anything of importance could have been drawn to his attention at that time if the Claimant felt the need to do so.

619. The Claimant also asserts that false information was provided in the report in respect of the indication that he had completed two HRACC1 forms but those investigations were resolved as not having been founded. That information was not false at all. The matters were investigated, albeit not within the appropriate timescales, and were found to relate to grievances and not to incidents at work. Whilst the Claimant does not accept that conclusion, nevertheless it is incorrect to say that the information provided within the referral document was false.

620. The Claimant also contends that it was false to record that he had not agreed to an Occupational Health referral for additional medical professional advice on supporting him prior to his return to work. Again, that is an entirely accurate position as reflected within the referral document. The Claimant had, at best, agreed to an Occupational Health referral once he had returned to work. For the reasons that we have already set out earlier in this decision, that was of no use to the Respondent in seeking to bring about and support that particular return to the workplace.

621. The Claimant also contends that the following passages from the referral document were false:

> "*Prior to going absent in July 2016, Adrian had in place a set of agreed Reasonable Adjustments (**Appendix 5**)*[24] *which were put in place from 8 December 2015. These adjustments were being fully implemented. The line manager's intention was to revisit these adjustments once OH advice was obtained but referral for OH was not made pending conclusion of a current grievance that Adrian had made related to pension contributions and which was causing him anxiety. The expectation was that this would be quickly resolved and that the OH referral would then be made. In the event Adrian went absent and the OH referral had still not been made.*
>
> *During the 1st KIT call with MB*[25]*, Adrian requested the following reasonable adjustments whilst he was not in work:*
>
> - *Not to have a KIT manager*
> - *Not to have multiple pages of guidance issued to him via email*
> - *Not to make decisions without discussing these with him first*
> - *To only be contacted on a Tuesday.*
>
> *…*"

622. There is nothing within that information which was incorrect save as for the reference to the Claimant seeking not to have a KIT manager. In fact, that should have been a reference to not having a SPOC. There is nothing

[24] This appendix was a copy of the Reasonable Adjustment Passport or WAP.
[25] A reference to Monique Bruce as she then was.

before us to say why that particular error was of any material consequence in the context of the referral to the decision maker.

623. The Claimant also contends that the entirety of the information provided at the penultimate page of the referral document (page 1264 of the hearing bundle) was false. This related to the lack of a stress reduction plan, lack of a return to work plan and provision of sickness absence records and evidence that ill health retirement had been considered. These issues largely centred around the failure of the Claimant to attend any meetings to discuss a return to work or to agree to Occupational Health referrals. As we have already described above, those situations were in fact entirely accurate. The Claimant had failed to attend meetings and had not been prepared to consent to Occupational Health referrals. The issues that would have been set out in this part of the referral document had therefore not able to have been discussed with the Claimant given his refusal to participate in the process.

624. Whilst the Claimant asserts of course that he was ill and therefore that would prevent him from attending meetings, ultimately the situation could not go on indefinitely and nothing which was even suggestive of the Respondent being able to bring about a return to work within a reasonable period. Therefore, it was entirely understandable that the referral document was both completed and also completed in the way that it was. There was also, of course, ample evidence of the Claimant being able to engage in extensive and lengthy communications when he chose to do so despite his ill health and his absence.

625. As we have already referred to above, the referral document was sent to Tom Oatley who had been appointed as Decision Maker under the AMP process. Mr. Oatley was based in Birmingham. Again, the Claimant is critical of that on the basis of his previous grievances with staff in Birmingham which led to his transfer to Nottingham. We are entirely satisfied from the evidence before us that Mr. Oatley was independent and had no vested interest in relation to the Claimant's circumstances. It was not outside the terms of the WAP to have Mr. Oatley as decision maker given that the WAP, quite rightly, focused on the Claimant being required to attend for work or training in Birmingham. Mr. Oatley never asked the Claimant to meet him in Birmingham.

626. We are also satisfied that he took his role as Decision Maker seriously. Again, Mr. Oatley was supported in relation to his role as Decision Maker by Jamie Gracie from Human Resources.

627. Whilst the Claimant again points to the continued involvement of Jamie Gracie in the process (and indeed he also later supported the appeal officer), as we have already touched upon above we see nothing unusual in that given that the Claimant's case was a complex one and an individual caseworker familiar with all strands of the matter had been appointed in the form of Jamie Gracie. We are entirely satisfied from the evidence

before us, and particularly the evidence of Tom Oatley, that whilst he sought guidance as to the process from Jamie Gracie, the decision that he took was his own and an uninfluenced one.

628. On 12th April 2017, Tom Oatley wrote to the Claimant inviting him to attend a meeting to discuss his sickness absence and the circumstances of his case. That meeting was scheduled for 28th April 2017 in Nottingham. The Claimant was advised of his right of accompaniment and also to let Mr. Oatley know if there were any arrangements or particular accommodations that were needed to enable him to attend the meeting. Mr. Oatley recommended that the Claimant consult the Attendance Management Policy and Procedures and set out that the Claimant would have the opportunity to put forward any additional or new facts for Mr. Oatley to consider before he made his decision. He also set out that he would explore with the Claimant whether there could be a downgrading of his role as an alternative to dismissal, if that option was open to him.

629. The Claimant contends that that demonstrated that Mr. Oatley had made up his mind already about the issues. We do not accept that to be the case. This was a standard letter aimed at dealing with all possible options in a situation where there was to be a potential capability dismissal. We are satisfied that Mr. Oatley had not made up his mind in relation to the decision to dismiss the Claimant and it is clear to us that his intention was to explore all of the issues and options before he reached any decision.

630. On 21st April 2017, the Claimant sent a series of emails to Sarah-Jayne Williams to be forwarded to Tom Oatley. Those complained largely about historical matters in relation to the putting in place of the SPOC arrangements and requested that Mr. Oatley confirmed that the Claimant had been discriminated against and continued to be discriminated against, including by Mr. Oatley himself. We pause there to say that it is entirely unclear how the Claimant considered that Mr. Oatley had discriminated against him as by that stage all that he had done was ask the Claimant to attend a meeting with him under the AMP process.

631. The Claimant requested that Mr. Oatley contact him directly and raised a considerable number of queries in regard to the AMP process.

632. By this time, the Claimant had entered into early conciliation with a view to commencing Employment Tribunal proceedings (see page 1346 of the hearing bundle). Not unreasonably given the circumstances, Sarah-Jayne Williams wrote a long email to the Claimant dealing with a significant number of points that he had raised in emails of 19th and 25th April 2017 (see pages 1350 to 1352 of the hearing bundle). That included issues in relation to the meeting with Tom Oatley and set out that the Claimant would have the opportunity at the meeting on 28th April to raise any matters which he considered to be outstanding. It was further confirmed that if the Claimant did not wish to meet with Mr. Oatley, then he could send

written representations to be considered as part of the decision making in advance of the meeting.

633. The Claimant replied to say, amongst other things, that he would not be attending the meeting with Tom Oatley (see page 1353A of the hearing bundle).

634. The following day, the Claimant sent a long email to Sarah-Jayne Williams. We do not rehearse that in full here as it covered much of the previous ground which had already been addressed, albeit not to the Claimant's satisfaction, by the Respondent. The relevant part in relation to the meeting with Tom Oatley, however, said this:

> "*I have been told that the meeting is to consider terminating my employment despite the fact that **I have done nothing wrong**. The refusal by Tom to even respond to specific points that have been left unanswered for two months is harassment and demonstrates HMRC's refusal to allow me to engage with this process. What possible explanation can there be to ignore the points I've raised, including the previous HR advice that this process was not appropriate?*
>
> *I do want to provide written evidence to Tom but request that this process is suspended pending the outcome of the ET[26]. I have already explained how I am constantly denied an opportunity to submit a CSIBS[27] claim and prepare my case for the ET by having to deal with confrontational communications such as this one. I will be working on my ET submission all next week and will not be available to deal with other matters.*
>
> *I would also like to point out that this process is being undertaken specifically to victimise me as any outcome will be subject to consideration of the ET and may be overturned. What possible advantage can there be to taking this action now (note the refusal to respond on the question of 'trigger points') when the decision may be overturned and this action may itself cause substantial damage to HMRC's reputation?"* (see page 1356 of the hearing bundle).

635. There are a number of issues that arise from that. Firstly, there is the reference to confrontational correspondence from Sarah-Jayne Williams. Having considered the correspondence for ourselves, we see nothing by way of any confrontation in that communication or, indeed, any other emanating from Sarah-Jayne Williams or others within the Respondent.

636. Secondly, there had been no "refusal" by Tom Oatley to respond to the Claimant's points. He had been clearly told by Sarah-Jayne Williams that he could raise whatever points he wished to in the meeting with Tom Oatley. Unfortunately, it has become the Claimant's practice to categorise

[26] By that point, the Claimant had already entered into early conciliation via ACAS having previously raised his intention to commence Employment Tribunal proceedings on a number of occasions.
[27] A reference to the Civil Service Injury Benefit Scheme.

things as a refusal even where there has been none. In cases where the Claimant did not immediately receive an answer, or more accurately the answer that he wanted, his position was to assert that there has been a refusal to provide information. We have already touched on other earlier instances of that above and, particularly, in respect of a "refusal" to provide the details for the Respondent's Disability Champion which the Claimant wrongly continued to assert had never been provided to him.

637. The AMP process was not, as the Claimant had requested, suspended pending the outcome of the proposed Employment Tribunal proceedings. We are entirely unsurprised by that. There is no obligation upon an employer to place internal processes on hold pending the outcome of threatened litigation. The Claimant had by this point been absent for a considerable period of time with no clear prospect of a return to work. We are therefore entirely unsurprised that the Respondent took the step of pressing ahead with the managing attendance process. Indeed, had they not done so the AMP would still not have progressed any further to date and that would not have been to the benefit of either party given that the emphasis still remained on seeking to secure a return to work for the Claimant if that was possible.

638. Mr. Oatley did take advice on the issue of suspending the process from Jamie Gracie (see page 1358 of the hearing bundle) and proceeded therefore on the basis of the information available to him at the time. The Claimant, as per his email to Sarah-Jayne Williams, elected not to make any written representations.

639. The Claimant did not attend the meeting with Mr. Oatley and, like Emma Spear, Mr. Oatley had little alternative but to proceed to make his decision in accordance with the information that he already had to hand.

640. On 9th May 2017, Tom Oatley wrote to the Claimant with his decision, which was ultimately to terminate the Claimant's employment on capability grounds. By that stage, the Claimant had been absent from work for almost 14 months and, as the decision letter pointed out, Mr. Oatley could not see that he had provided any indication of when he might be able to return to work.

641. The letter from Mr. Oatley set out in detail why he had chosen to make the decision that he had. The key points, which were consistent with the evidence which he gave to us, were this:

(a) The Claimant had refused to consent to an Occupational Health referral until after there had been a return to work. Mr. Oatley pointed out that that significantly and directly complicated and undermined the ability of the Respondent to understand what health issues were affecting him and obstructed the implementation of any possible measures to facilitate a return to work. We have already set out our

views on that earlier in this Judgment but it was an entirely reasonable conclusion for Mr. Oatley to have drawn;

(b) That as a result, it had not been possible for the Respondent to ascertain the state of the Claimant's health and what measures might be put in place to facilitate a return to work as a result of the Claimant's unwillingness to engage with the process;

(c) The Claimant did not attend any meetings with Monique Deveaux, either in person or by telephone, to explore reasonable adjustments and a facilitation of a return to work. Mr. Oatley did not accept that it had been impossible for the Claimant to attend a single meeting in Nottingham and noted that an option to attend by telephone had been provided for;

(d) The Claimant had not engaged with Mr. Oatley's attempts to meet with him to explore the possibility of a return to work and whether that could be achieved within a reasonable period. It set out that Mr. Oatley did not believe that the Claimant had sufficiently engaged in the process of managing his attendance during his absence;

(e) That the Claimant had been invited to make written representations if he was unwilling to attend a meeting but that he had been unwilling to do so until the outcome and future date of an Employment Tribunal case. It was pointed out by Mr. Oatley that the Respondent could not wait until an indeterminate future date to accept written representations when there was no evidence or reasoning to suggest that the Claimant could not make them at that stage; and

(f) That the Claimant had provided no explanation as to why he could not deal with the matter at that time.

642. In relation to the Claimant's point that the Respondent was preventing a return to work and issues of workplace stress, Mr. Oatley said this:

"*I note you have referred to your workplace stress and your belief that HMRC are preventing your return to work. I reiterate here that:*

a) You have been unwilling to meet with me to enable me to address any underlying causes of any stress in the workplace. You have been unwilling to meet with your previous KIT manager, either face to face or over the telephone, for a formal attendance meeting.

b) You have been unwilling to meet with me to address any disability/disabilities and required reasonable adjustments.

c) You have been unwilling to follow the OH referral process to enable the department to consider what reasonable adjustments may be appropriate in your circumstances.

d) You have been unwilling to send me any written representations within any reasonable (or defined) time period." (see pages 1366 – 1367 of the hearing bundle).

643. Mr. Oatley set out that the issues in relation to HP had been dealt with under the formal grievance procedure and the complaint had not been upheld and that he was satisfied that the Respondent had taken all reasonable steps to address these issues before making a decision.

644. It was further set out that the referral to Mr. Oatley had indicated that the Claimant had been offered his existing role and alternative roles, all of which had been declined. That was of course entirely correct.

645. The conclusions reached in relation to the decision to dismiss by Mr. Oatley said this:

> "*The question that remains is whether there is evidence available to suggest that you will return to work in a reasonable period of time. The most recent evidential indicator of this is that you have submitted another fit note which states that you are unfit to work for the period 28/04/17 – 15/06/17. When taken together with the evidence outlined above, this is indicative of a low likelihood of you returning to work within a reasonable period of time.*
>
> *After considering all the relevant factors, I have decided to terminate your employment with HMRC because you have been unable to return to work within a timescale that I consider reasonable.*
>
> *I considered downgrading before this decision but do not believe this would affect your ability to return to work in a reasonable timescale.*"

646. The letter set out the Claimant's right of appeal and his entitlement to notice, which would mean that his date of dismissal would be with effect from 8th August 2017.

Award of nil compensation and the Civil Service Appeal Board

647. Mr. Oatley's dismissal letter also indicated his intention to make a recommendation to the HR Director (that is Dan Coughlin) that the Claimant not be paid compensation under the Civil Service Compensation Scheme.

648. The reasons for that were set out to be as follows:

- "*I cannot be satisfied based on your lack of information and cooperation that your unsatisfactory attendance is, in whole or*

in part, beyond your control. You have been wholly unwilling to meet in person to discuss your health issues.

- *I cannot be satisfied that you have made any significant effort to comply with HMRC's attendance management policy or cooperated with OH service requirements.*
- *I cannot be satisfied that you have attempted to return to work, for the reasons outline above.*
- *I cannot be satisfied that you have demonstrated a positive attitude or commitment work where possible."* (see page 1368 of the hearing bundle.)

649. The letter set out the Claimant's right of appeal to the Civil Service Appeal Board against the level of compensation awarded and made it clear that any appeal should be submitted within 21 days of the effective date of dismissal. That dismissal date had been spelled out for the Claimant in the very next paragraph that that would be with effect from 8th August 2017. We are therefore satisfied that the Claimant was clearly told about his right of appeal against any award of nil compensation and the date on which that needed to be submitted.

650. Mr. Oatley sent his recommendation in relation to no compensation to Dan Coughlin on 17th May 2017 (see page 1384 of the hearing bundle). It was Mr. Coughlin's role as HR Director to make a determination as to whether any compensation should be paid to the Claimant under the Civil Service Compensation Scheme. Mr. Oatley set out his views in a detailed recommendation form (see pages 1385 – 1394 of the hearing bundle). That largely set out the same issues as had been included within the dismissal letter when Mr. Oatley had told the Claimant that he was making a recommendation of nil compensation.

651. On 31st May 2017, the Claimant was notified by letter from Mr. Oatley that Dan Coughlin had agreed with his recommendation to award no compensation and set out his right of appeal to the Civil Service Appeal Board (see page 1419A of the hearing bundle). We accept the evidence of Mr. Coughlin that he agreed with the rationale and recommendations of Mr. Oatley – although we accept that it was entirely open to him if he had seen fit to disagree - and therefore determined that the Claimant should be awarded nil compensation.

652. The Claimant appealed against the decision of Mr. Coughlin and that was passed to Dan Goad to consider. Mr. Goad dealt with that appeal in his capacity as HR Director for CEO Group and Chief People Officer within the Respondent. By the time that Mr. Goad came to consider the matter he had with him the decision of Ian Marshall in respect of the Claimant's appeal against the decision of Tom Oatley to dismiss him. We deal separately with the issue of the appeal below.

653. Mr. Goad wrote to the Claimant, having reviewed matters, and sought further information from HP in relation to earlier Occupational Health input relating to previous spells of ill health absence that the Claimant had taken.

654. He communicated his decision to the Claimant on 23rd October 2017 (see pages 1685 – 1686 of the hearing bundle) in which he confirmed the decision to award nil compensation. We accept that the basis on which he reached that decision was that whilst he accepted that the Claimant had kept in touch, he did not consider that he had shown a sufficiently positive attitude or co-operation with Occupational Health services. Mr. Goad set out that the Claimant had a right of appeal to the Civil Service Appeal Board ("CSAB") and that any such appeal would need to be lodged within 21 days of the date of his dismissal. That particular paragraph regarding the appeal process is part of the Respondent's standard outcome letter.

655. The Claimant's dismissal was, of course, effective from 8th August 2017 and as such by the time of Mr. Goad's letter to him 21 days after that date had long since passed. The Claimant complains that Mr. Goad had effectively denied him the right of appeal. That is not the case, however, on the basis that it was open to the Claimant to lodge an earlier appeal rather than await Mr. Goad's outcome and, indeed, he had been notified clearly by Mr. Oatley about how to deal with that and the time limits for submitting such an appeal as we have already set out above.

656. Mr. Goad could not have dealt with his determination of the appeal against the compensation level any earlier because he needed the appeal outcome from Mr. Marshall to enable him to do that. As we set out below, there were delays in that appeal being concluded but in the circumstances, they were not unreasonable delays.

657. We are satisfied that Mr. Goad did not, therefore, deny the Claimant the right of appeal and that the Claimant was already well aware of his right to appeal to the CSAB and the time limit for such an appeal from the information provided to him by Mr. Oatley.

<u>Appeal against dismissal</u>

658. The Claimant communicated his intention to appeal against the decision to dismiss him on 18th May 2017 (see page 1395 of the hearing bundle). He said he was unable to formulate the grounds of his appeal due to what he referred to as the Respondent's continued refusal to provide essential documentation. It remains unclear as to what that documentation was.

659. The original appeal manager was to be KF. However, KF was unable to deal with the matter as there were health issues which prevented her from doing so. The matter was therefore passed to Mike Rhodes to deal with the appeal. Whilst she was still dealing with the matter, KF agreed to extend the appeal timeframe for the Claimant to submit his grounds of appeal to 2nd June 2017 (see pages 1401 of the hearing bundle).

660. On 1st June 2017, the Claimant asked KF for a further extension of time to 9th June 2017. The Claimant asserted that that was necessary as a result of what he referred to as the Respondent's continued discriminatory behaviour resulting in him being unable to concentrate on the appeal.

661. KF replied the following day (see page 1423 of the hearing bundle) indicating that her view was that he had had sufficient time to submit an appeal given that the decision of Mr. Oatley had been sent to him on 10th May and an extension until 2nd June provided.

662. The Claimant subsequently forwarded his appeal later that same day, along with a number of other emails that he said that he wanted KF to consider. We do not set out the contents of the appeal letter in its entirety given that it is a very lengthy document running to some 11 pages of closely typed text. However, the headline points in relation to the appeal grounds were that:

- There had been procedural issues or deficiencies;
- That the decision was not supported by the information/evidence available to Mr. Oatley;
- That there had been a refusal to make reasonable adjustments; and
- That the Claimant indicated that he believed that it was clear that Mr. Oatley's decision was incorrect.

663. The Claimant set out his view that there was no need for an appeal meeting but that if one was deemed to be necessary, then that should take place by way of a telephone call.

664. The Claimant also sent further communications for the attention of KF again referencing, in strident terms, issues relating to suicide (see page 1455 of the hearing bundle).

665. KF wrote to the Claimant on 12th June 2017. That email was sent via Jamie Gracie, who at that point had taken up the mantle of SPOC in the absence of Sarah-Jayne Williams who had gone to work on a separate project in a different part of the Respondent business. The email set out arrangements for a telephone meeting on 19th June 2017, although that did not in fact take place as a result of the issues which we have referred to above and the replacement of KF as appeal manager as a result of her ill health.

666. During the time that Mr. Gracie replaced Sarah-Jayne Williams as SPOC during her absence on project work, he also dealt with requests for information and documentation that the Claimant made over CSIB paperwork and relating to annual leave issues. Although there was some

confusion about those matters, and in relation certainly to the provision of the correct CSIB information and paperwork, we are satisfied from the evidence of Mr. Gracie and the contemporaneous documentation before us that there was nothing unusual or untoward about any of that.

667. The Claimant was advised of the appointment of Mike Rhodes as a replacement appeal officer by Jamie Gracie on 29th June 2017 (see page 1501 of the hearing bundle). He told the Claimant that Mr. Rhodes would be in touch with him. Mr. Rhodes wrote to the Claimant on 4th July 2017 (see pages 1503 to 1504 of the hearing bundle) and sought to arrange a meeting on 17th July 2017 to discuss the appeal further. He also offered the option of a telephone meeting.

668. The Claimant responded via Jamie Gracie on 7th July 2017 (see page 1513 of the hearing bundle). He requested an email address for Mr. Rhodes so that there could be direct dialogue. Again, that sought to bypass the SPOC arrangements which still remained in place at that time, albeit now via Jamie Gracie rather than Sarah-Jayne Williams.

669. Mr. Rhodes advised Mr. Gracie that he was happy to correspond directly with the Claimant (see page 1512 of the hearing bundle) but Mr. Gracie confirmed that correspondence should continue to be via the SPOC arrangements. That was of course consistent with the approach which had been decided and on which we have already commented above and which had been reviewed by Jan Beasley who had determined that the arrangements should remain in place.

670. Jamie Gracie also made further enquiries of the Claimant on 13th July as to whether he wanted a face to face meeting or a telephone conference with Mr. Rhodes for the purposes of dealing with an appeal hearing. The Claimant replied directly to Mr. Rhodes on the same day to say that the meeting should take place by telephone on 20th July 2017 at 10:30 am. The Claimant's mobile telephone number was provided to facilitate the call.

671. Despite the indication from Mr. Gracie that they should continue to communicate in accordance with the SPOC arrangements, Mr. Rhodes replied directly to the Claimant and confirmed that he would correspond with him and agreed the proposed date and time for the telephone conference (see page 1532 of the hearing bundle).

672. The Claimant subsequently copied Mr. Rhodes into further communications with Jamie Gracie regarding various complaints he had with regard to his CSIB appeal and complaints in relation to the way in which a subject access request had been handled.

673. Mr. Rhodes wrote to the Clamant by email to say he had noted the information provided by the Claimant but could only deal with his appeal against Mr. Oatley's decision (see page 1530 of the hearing bundle).

674. The telephone conference between Mr Rhodes and the Claimant took place on 20th July 2017 as arranged. The minutes of that meeting are at pages 1542 - 1548 of the hearing bundle. They are incorrectly dated 29th July 2017 but it is agreed by all parties that the discussion took place on 20th July 2017.

675. During the discussion the Claimant set out the grounds of his appeal and was asked if he would be able to return to a different post with a different manager. The Claimant said that he could not set a specific time but could guarantee that would come back within what he termed a "reasonable time".

676. Mr. Rhodes made it clear that he was not able to state what his decision would be but that he needed to take a view of all of the evidence. A copy of the notes of the discussion were sent to Jamie Gracie shortly after the meeting.

677. Mr. Gracie subsequently expressed concerns to Melanie Clare that Mr. Rhodes was not dealing with the appeal in the way that he was required to under the terms of the Respondent's appeal policy – that is that he was conducting a re-hearing and not a review of the decision of Mr. Oatley - and that he was not listening to guidance from HR. He was, of course, corresponding with the Claimant outside of the terms of the SPOC arrangements that he had been asked to adhere to. Those concerns were reported by Melanie Clare to Dan Coughlin who took the decision to replace Mr. Rhodes as appeal manager. Mr. Coughlin telephoned Mr Rhodes to advise him of that particular position.

678. Whilst Mr. Rhodes' evidence was that he felt pressured by Mr. Gracie, he accepted in cross examination by Mr. Beever that he was inexperienced in dealing with appeals such as this and that there were shortcomings in his approach. It was also clear that he was effectively conducting a re-hearing when, as we shall come to below, the matter should have proceeded as a review of the decision taken by Mr. Oatley. We are satisfied that there were legitimate concerns about how Mr. Rhodes was conducting the process and that he was not listening to guidance from HR. That raised concerns as to a consistency of approach and we accept that it was for those reasons (and not as the Claimant says that Mr. Rhodes was due to reinstate him on appeal) that led to his removal as appeal manager by Mr. Coughlin.

679. Prior to his removal as appeal manager, Mr. Rhodes telephoned the Claimant on 31st July 2017. The Claimant raised a complaint about that despite having specifically requested that Mr. Rhodes contact him directly and he said that he had been left extremely stressed, anxious, upset, angry and frustrated by the call (see page 1561 of the hearing bundle). The Claimant later forwarded his note of the telephone conference to Mr. Rhodes (see page 1563 of the hearing bundle).

680. A new appeal manager, Ian Marshall, was subsequently appointed to deal with the Claimant's appeal against dismissal. There was some issue that we have considered carefully as to whether Mr. Marshall was in fact also dealing with matters by way of a re-hearing and, indeed, that was referenced in his witness statement. We are satisfied, however, from the evidence of Mr. Marshall that he was approaching matters as a review of the decision of Mr. Oatley in that he was not "stepping into his shoes" and not deciding the appeal from his own perspective but whether the decision that Mr. Oatley had taken was fair and in accordance with the AMP. We were also assisted on the re-hearing/review issue by the supplemental evidence of Sarah-Jayne Williams, which we accept, as to the correct policy in place at the time.

681. The Claimant was informed of the appointment of a new appeal manager by Sarah-Jayne Williams on 2nd August 2017 and he pointed out in reply that he wished to have a telephone conversation with Mr. Marshall (see page 1557 of the hearing bundle). By that stage, Sarah-Jayne Williams had re-joined the CSHR team from the specific project on which she had been working and she had therefore again taken up the mantle of SPOC. She told the Claimant that she had forwarded to Mr. Marshall a copy of his grounds of appeal as previously sent to Mr. Rhodes and a copy of the notes of the earlier appeal hearing. The other documentation relating to the dismissal was passed directly to Mr. Marshall by Jamie Gracie in his capacity as HR caseworker and point of support to the appeal manager.

682. At that stage, Sarah-Jayne Williams asked the Claimant, amongst other things, to moderate the tone of his communications. Again, given the content of the emails which we have seen that was not an unreasonable request for her to have made.

683. Sarah-Jayne Williams continued thereafter to deal with the Claimant's communications and the numerous points raised. That included notifying Ian Marshall that the Claimant was on holiday between 10th and 29th August 2017 and that he would therefore not be available to discuss the appeal during that time (see page 1581 of the hearing bundle).

684. On 10th August 2017 Mr. Marshall forwarded on an email to be sent to the Claimant asking him to provide any further information relevant to the appeal by 1st September 2017. That was sent to him by Sarah-Jayne Williams the following day in accordance with the SPOC arrangements. The Claimant replied pointing out that he would be on holiday and that it was unacceptable to allow only two days to provide his response. The deadline was later extended by Mr. Marshall and also giving the Claimant the opportunity to submit information even after the appeal hearing.

685. On 5th September 2017, Mr. Marshall wrote to the Claimant again to arrange a call to deal with the appeal and he proposed that that take place on 13th September 2017 (see page 1586 of the hearing bundle). The

Claimant replied to say that he was unavailable and proposed either 14th or 19th September for the call to take place. Mr. Marshall was unable to accommodate the dates and times suggested by the Claimant (see page 1589 of the hearing bundle) and accordingly wrote to him on 14th September proposing a revised date of 27th September 2017 (see page 1592 of the hearing bundle).

686. This communication was forwarded to the Claimant by Sarah-Jayne Williams on 18th September 2017. By that stage, the Claimant had communicated to the Respondent that he would no longer accept emails and therefore matters proceeded after that stage by any communication being sent by post only. Sarah-Jayne Williams also noted to the Claimant in a covering letter that communication in respect of the appeal would be dealt with by way of the existing SPOC arrangements. She acknowledged recent communications sent to Mr. Marshall by the Claimant directly and notified him that the rescheduled appeal hearing would be his final opportunity to provide the details and evidence for his appeal. She also supplied the Decision Manager's guidance and Appeal Manager's guidance that had been requested by the Claimant.

687. Mr. Marshall subsequently sought to rearrange the call due to unforeseen circumstances and proposed moving the time of the meeting from the afternoon to 10.00 a.m. (see page 1623 of the hearing bundle). The Claimant replied indicating that he would be available on 4th October 2017 to deal with the telephone conference. That date was agreed by Mr. Marshall. In the same correspondence the Claimant also took the opportunity to again express his continuing dissatisfaction over the SPOC arrangements. In keeping with earlier communications, the Claimant did so in fairly strident terms.

688. The appeal hearing took place by telephone on 4th October 2017 and notes of that meeting are at pages 1639 to 1644 of the hearing bundle. The hearing was clearly a lengthy one, lasting some one and a half hours. We are satisfied from the evidence before us that Mr. Marshall dealt with the appeal meeting fairly and reasonably and clearly took time to listen to everything that the Claimant had to say. He also agreed to allow the Claimant some additional time after the meeting to submit further comments and those comments were subsequently sent by the Claimant to Mr. Marshall on 13th October 2017 (see page 1662 of the hearing bundle). It is clear to us that Mr. Marshall was taking the steps to allow the Claimant to advance all points and evidence that he wanted to be considered as part of the appeal process and allowed him some latitude to do that by providing additional time after the appeal hearing to submit further information. That is not indicative of Mr. Marshall having already determined not to uphold his appeal (or following direction from the Respondent to do so) as the Claimant contends.

689. The Claimant subsequently complained on 16th October 2017 as to a delay in dealing with his appeal (see page 1664 of the hearing bundle). We note in that regard that there was of course a delay between the appeal being raised by the Claimant on 18th May 2017 and the eventual determination of that appeal by Mr. Marshall. However, we take into account in this regard the fact that there had to be two changes of appeal officer; there were delays on both sides in arranging the appeal hearing as set out above; Mr. Marshall allowed the Claimant extra time after the hearing to provide additional information or evidence and the case was a far from straightforward one with a considerable number of documents to consider. The delay in dealing with the appeal, whilst regrettable, was nevertheless not unreasonable.

690. On 20th October 2017 Mr. Marshall wrote to the Claimant with his appeal outcome. That was a brief letter confirming that the appeal was not upheld (see page 1670 of the hearing bundle). However, it was accompanied by a detailed deliberation document fully setting out the reasons for his decision.

691. Mr. Marshall set out within that deliberation document that he had not conducted a rehearing of the case (again reinforcing his evidence that he conducted a review) but that his role had been to look at the procedural aspects of the decision; whether the facts and evidence had been properly considered and any new evidence presented; the consistency of the decision in line with departmental policies and whether the decision was proportionate (see page 1671 of the hearing bundle). We are satisfied that that is what Mr. Marshall was required to do in his capacity of appeal officer.

692. It is clear from the deliberation document itself and the evidence given before us at the hearing that Mr. Marshall engaged with all of the issues that the Claimant had raised as part of his appeal. The deliberation document is a lengthy one and so we do not set it out in full here but the key points were these:

a. That managers involved in the case had found it difficult to engage with the Claimant which had resulted in some of the delay to the process being concluded;
b. That managers had attempted to discuss the Claimant's absence with him but had been met with claims of harassment, bullying and victimisation;
c. That referrals to Occupational Health had been discussed but the Claimant had withdrawn his consent to that course;
d. That options for a return to work had been presented to the Claimant on 6th January 2017 but that he had concluded that none were acceptable to him;
e. That those attempting to engage with the Claimant in respect of a return to work had been subject to complaints and put under considerable

pressure such that RW had said that she no longer wished to deal with him;

f. That alternative KIT arrangements and a SPOC had been put in place but that the Claimant had failed to attend meetings arranged by Monique Bruce under the AMP process;
g. That the Claimant had refused to attend the formal meeting with Mr. Oatley on 28th April 2017 as part of the decision making process and that Mr. Oatley took his decision in the absence of there being any further information from the Claimant;
h. That although some steps under the AMP took place after they should have done, the Claimant had been given the opportunity to discuss the steps needed to facilitate a return to work but had failed to take those up;
i. That he did not accept the Claimant's position as set out at the appeal hearing that his numerous emails demonstrated that he was fully engaged in the process and attempting to return to work because he had provided no indication of a return to work date and had refused to consent to an Occupational Health referral which might have informed that issue and so his managers were unable to ascertain when or if the Claimant might return to work;
j. That emails alleging bullying, harassment and victimisation did not evidence engagement with the AMP process;
k. That as there was no clear indication of a return to work or a return to work date or that that could be facilitated within a reasonable timeframe, the decision taken by Mr. Oatley fell within the AMP guidance; and
l. Mr. Oatley had not predetermined the decision to dismiss the Claimant by asking him about downgrading as that was specifically provided for at paragraph 106 of the AMP guidance.

693. Mr. Marshall set out his general conclusion as follows:

"*Having reviewed the case and the representations AT has made in his letter of Appeal, meeting with Mike Rhodes and his Appeal meeting I have decided that the appeal from AT is not upheld and that the original decision of 9 May 2017 to dismiss should stand. There is no evidence to suggest that the Department's Attendance Management procedures have not been followed. There is evidence to suggest that the various KIT Managers have tried to implement a number of reasonable adjustments (see list at Appendix 2) but none have been acceptable to AT and as such there is no evidence of a return to work being achievable within a reasonable time frame.*

The Decision Maker recommended that dismissal should be with 0% Efficiency Compensation. Throughout the appeal process AT has not provided any additional information or evidence to show that he cooperated with the Department as part of the Attendance management process so my recommendation is that the level of Efficiency Compensation should remain 0%."

694. Appendix 1 to the deliberation document set out a timeline of events, including attempts to facilitate a return to work by way of offers of meetings and options for a return to work. Appendix 2 was the list of reasonable adjustments that had been put in place. Those included the SPOC arrangements; appointment of an alternative KIT contact so that the Claimant did not have to keep in touch with HP; the WAP; attempts to obtain Occupational Health input; offering alternative work roles and locations and limiting of contact to certain designated times.

695. By this stage, it should be noted that the Claimant had already commenced these Employment Tribunal proceedings. The evidence of Mr. Marshall, which we accept, was that whilst he was aware of the claim he had not seen the Claim Form and had no idea what the substance of the Employment Tribunal claim was (and, particularly, that he did not know that it contained complaints of discrimination) until such time as he was asked to prepare a witness statement for the purposes of these proceedings. That post-dated by some considerable margin his involvement in the Claimant's appeal and his decision in respect of the same.

696. After receipt of the appeal outcome the Claimant wrote to Ian Marshall to complain about the decision and to request a meeting with the HR Director to deal with the appeal against nil compensation. Sarah-Jayne Williams subsequently confirmed to the Claimant that the process in relation to appealing against awards of compensation were not subject to appeal processes and therefore there would not be any meeting. In essence, the appeal against compensation amounts is dealt with by the Respondent as a paper based exercise. We have already dealt above with the decision taken by Dan Goad in respect of the confirmation of the nil award of compensation.

CONCLUSIONS

697. Insofar as we have not already done so, we now set out conclusions in relation to the remaining complaints before us.

Protected Acts

698. We begin with determining whether the protected acts relied upon by the Claimant, insofar as it is not conceded by the Respondent, are in fact protected acts within the meaning of Section 27 EqA 2010.

699. Before embarking on the exercise of considering whether the documents relied on by the Claimant amount to protected acts, we have reminded ourselves of the guidance set out in **Durrani** above.

700. The first of the documents relied upon by the Claimant was his first grievance dated 5th June 2014. The Respondent does not concede that that amounted to a protected act. The main thrust of that grievance was to set out a time line of events. Close to the conclusion of the grievance

the Claimant set out that his complaints included what he termed as "bullying, harassment and victimisation". It is clear that those references were set out in the colloquial sense and not in the specific way that Employment Tribunals use the terms harassment and victimisation. There is nothing within the grievance document either individually or when read as a whole which could provide any explicit or implicit suggestion that it was a complaint to which, at least potentially, the EqA 2010 applied. The nearest that the grievance gets to that is a reference at paragraph 4 of the document to the Claimant's mental health and passing references elsewhere to stress. The Claimant was not linking those issues with the treatment of which he complained within the grievance and, in the colloquial sense that the Claimant was using the terms harassment and victimisation, such treatment can arise in the absence of any relevant protected characteristic and for a whole host of reasons. That is what can reasonably be inferred from this complaint at the time.

701. Therefore, when read in context, the complaints raised by the Claimant do not come close to hinting at the fact that he was raising an allegation or allegations to which the EqA 2010 might apply. We are therefore not satisfied that the Claimant's first grievance amounted to a protected act within the meaning of Section 27 EqA 2010.

702. The second document relied on by the Claimant is his second grievance dated 12th October 2014. As we have already observed above, we have not been provided with a copy of the original grievance and we have only a management precis setting out the complaints that the Claimant was raising. We considered during our deliberations issuing a request to the parties to provide a copy of the original grievance but we ultimately concluded that it was not necessary for us to do that. No one has raised before this point that that document was not before us and the Claimant particularly has had many months to go through the evidence and he must have looked at the documents surrounding the second grievance when considering the protected acts set out in the List of Issues. We also considered that such a request would have been likely to lead to further representations and given the time that this claim has occupied, we feel that there must be a sense of proportion about any additional issues being raised.

703. We have therefore considered this grievance against the details of the complaint set out in the Grievance Manager's review document at page 122 of the hearing bundle. The information set out within that document sets out the factual background and makes it plain that the Claimant is complaining of bullying and being bullied and intimidated. There is nothing within the document that makes reference to the Claimant's mental health, to disability or to discrimination. There are simply references to bullying and intimidation and on no reasonable reading could it be inferred that the Claimant was making a complaint or raising an allegation or allegations to which the EqA 2010 might apply. We are therefore not satisfied that the

Claimant's second grievance amounted to a protected act within the meaning of Section 27 EqA 2010.

704. The third document relied upon by the Claimant is the Mental Health Action Plan which he put together in February 2016. We can deal with this in short terms as the Respondent concedes that that document would amount to a protected act within the meaning of Section 27 EqA 2010.

705. However, we would observe here that the Claimant has no idea who he sent that document to other than "a number of managers in Large Business". He did not put to the Respondent's witnesses that it had been sent to any of them or that they must have seen it and as such it is impossible to conclude that that protected act could possibly have had any effect on the Respondent's treatment of him.

706. The fourth and fifth documents relied upon by the Claimant are his third grievance dated 4th May 2016 and his email to HP on 17th June 2016. The Respondent concedes that both of those documents would amount to a protected act within the meaning of Section 27 EqA 2010.

707. The sixth document relied upon by the Claimant as being a protected act is the first of his HRACC1 Forms dated 28th June 2016. The relevant parts of that document are sections five and six which appear at page 725 of the hearing bundle. Whilst the Claimant does make reference within this HRACC1 form to his disability, that is not linked to the treatment of which he complains from HP. Instead, the focus is on the fact that the actions of HP have resulted in a triggering or exacerbation of the symptoms of his disability resulting in him having to take ill health absence. Given that the focus of an HRACC1 form is to report workplace accidents or injuries, that would of course be the focus but there is nothing when reading the document as a whole where it could be said that the Claimant was raising an allegation or allegations to which the EqA 2010 might apply. We are therefore again not satisfied that this document amounted to a protected act within the meaning of Section 27 EqA 2010.

708. The seventh protected act relied on by the Claimant is his second HRACC1 Form dated 15th July 2016. The Respondent concedes that that document would amount to a protected act within the meaning of Section 27 EqA 2010 and therefore we need say no more about it.

709. The eighth protected act relied on in these proceedings is a text message sent by the Claimant to Tim Bowes on 20th July 2016. That features at page 337 of the hearing bundle. This short message simply refers to "ongoing victimisation". It does not reference the Claimant's disability, any earlier protected act which he contended that he was being subjected to detriment for raising or anything else which could lead us to deduce that the Claimant was using the term "victimisation" in anything other than the colloquial sense. There is certainly nothing within that short text message from which it could be reasonably concluded that the Claimant was raising

an allegation or allegations to which the EqA 2010 might apply. We are therefore again not satisfied that this document amounted to a protected act within the meaning of Section 27 EqA 2010.

710. We turn then to the ninth act relied upon by the Claimant which is a conversation that he had with HP on 22nd July 2016. There is a note of that conversation prepared by HP at pages 342 and 343 of the hearing bundle. Whilst the Claimant disputed in evidence on 20th September 2019 that that note was a true reflection of that discussion, there are also elements where he accepted that he could not recall if matters had been said or not. We also do not have his account, either contemporaneously or within a witness statement, as to the content of that discussion. We therefore assume that the note as prepared by HP is correct for these purposes.

711. The only references of note within this discussion was a reference to victimisation which was raised in the context of HP asking about the comment that the Claimant had made in his text message to Mr. Bowes to which we have already referred above. The Claimant did not proffer anything further other than the details were already in the HRACC1 forms. He did not specify which HRACC1 form he was talking about and there is nothing to suggest again that the Claimant was using the term victimisation in anything other than a colloquial sense. Whilst the Claimant did reference being advised to take legal action, no specifics of that were given and ultimately there is nothing on a reasonable reading from which it could be concluded that he was referencing a complaint or potential for a complaint under the EqA 2010. Again, therefore there is nothing from which we could reasonably conclude that the Claimant was raising an allegation or allegations to which the EqA 2010 might apply. We are therefore again not satisfied that this discussion amounted to a protected act within the meaning of Section 27 EqA 2010.

712. The tenth document relied upon by the Claimant for the purposes of the victimisation complaints is an email that he sent to HP dated 2nd August 2016. This is a long email and so we have not set it out in full but we are satisfied that it does amount to a protected act within the meaning of Section 27 EqA 2010. Specifically, whilst making general allegations of bullying, harassment and victimisation, the Claimant does link those matters to having been advised to take action under the Equality Act 2010 (see page 358 of the hearing bundle). It is therefore clear from that that the Claimant was making an allegation or allegations to which he is contending that the EqA 2010 would apply. We are therefore satisfied that in doing so, the Claimant did a protected act within the meaning of Section 27 EqA 2010.

713. The eleventh document relied upon by the Claimant is an email that he sent to AL dated 3rd August 2016 and which appears at page 365 of the hearing bundle. The email again references bullying but there is nothing within the content to suggest that the Claimant was linking that to his

disability. He also made reference to wishing to be *"appropriately supported (in line with the social model of disability that HMRC subscribes to) with a view to facilitating a return to work"*. Whilst the Claimant made reference to the issue of disability, that was not in the context of allegations made against the Respondent or others and there is nothing within that section or the email as a whole which in our view could reasonably suggest that the Claimant was raising an allegation or allegations to which the EqA 2010 might apply. We are therefore again not satisfied that this discussion amounted to a protected act within the meaning of Section 27 EqA 2010.

714. The twelfth document relied upon by the Claimant is a further email that he sent to AL dated 3rd August 2016 and which appears at pages 366 to 369 of the hearing bundle. Again, that is a long email and so we do not set it out in full within this Reserved Judgment. We are satisfied, however, that that email does contain material which would constitute a protected act. Whilst the Claimant's email talks in general terms about bullying, harassment, victimisation and discrimination, he makes it clear within the fourth paragraph of the same that he considers that his disability is the cause of that bullying of which he at that stage complained. We consider that on a reasonable reading of that email, it would be clear that whilst the Claimant has not expressly referenced the EqA 2010, he is making plain that he is raising allegations of disability discrimination which would amount to an allegation of a breach of the EqA 2010. We are therefore satisfied that in doing so, the Claimant did a protected act within the meaning of Section 27 EqA 2010.

715. The thirteenth document relied upon by the Claimant in the context of the victimisation complaints is also an email which he sent to AL but on 12th August 2016. That email appears at pages 375 to 377 of the hearing bundle. Again, that is a lengthy email and so we have not set it out in full within this Judgment. However, it is clear to us from reading the third paragraph on page 376 of the hearing bundle that the Claimant was alleging that "as a direct result" of the fact that he had made an earlier complaint of victimisation, discrimination and harassment, the Respondent had not actioned the HRACC1 forms and that that was "evidence of further victimisation". Although the Claimant did not expressly set out that he was alleging that that was a breach of the provisions of the EqA 2010 he need of course not go that far. It is sufficient that on a reasonable reading here it is clear that the Claimant was raising an allegation to which the EqA 2010 might apply. We are therefore satisfied that in doing so, the Claimant did a protected act within the meaning of Section 27 EqA 2010.

716. The next document relied on by the Claimant as being a protected act is his fourth grievance dated 6th September 2016. This appears in the hearing bundle at pages 403 and 404. Again, it is a relatively lengthy email and so we do not set it out in full here. However, the email in reality does no more than make vague reference to bullying, harassment, discrimination and victimisation. There is nothing within the email that links those issues to the Claimant's disability or provides any indication

that he is using the terms in anything other than a colloquial sense. Whilst there is a reference to "relevant legislation", there is nothing to suggest that he is alleging anything that could represent a breach of the provisions of the EqA 2010 and as such we are not satisfied that this email is sufficient to constitute a protected act within the meaning of Section 27 EqA 2010.

717. The fifteenth document relied upon by the Claimant as constituting a protected act is an email from the Claimant to RW dated 15th September 2016. We have already set out the text of that email in our findings of fact above. It referenced victimisation, discrimination, harassment and bullying but, again, that was in nothing other than a colloquial sense. Whilst the email did go on to make reference to *"continued attempts to focus on* [his] *disability to excuse the unacceptable behaviour"* that he said that he had been exposed to, we do not consider that that was such as to link the alleged discrimination with his disability. The Claimant was clearly suggesting that the Respondent was trying to detract from their alleged actions by focusing on his disability; not that his disability was the root cause of that treatment. We do not therefore consider that on a proper reading of that email it would be sufficient to show anything that could represent a breach of the provisions of the EqA 2010 and as such we are not satisfied that this email is sufficient to constitute a protected act within the meaning of Section 27 EqA 2010.

718. The next document identified by the Claimant and relied upon as a protected act is said to be an email to Mary Aiston dated 16th September 2016. Within Mr. Beever's closing submissions that was identified to be a document appearing at page 404 of the hearing bundle. That is, in fact, however an email which is dated 6th September 2016 and we consider it more likely that the email should in fact be the one which appears at page 468 of the hearing bundle which bears the same date as the email identified by the Claimant. Again, that is a lengthy email and we have not therefore set out the entire content. However, the Claimant clearly made reference to mental health and linked that to discrimination within the seventh paragraph of his email. He also made reference to his disability and that he had been advised by ACAS to commence proceedings against the Respondent under the Equality Act. We consider that on a reasonable reading of this email it is clear that the Claimant was raising an allegation to which the EqA 2010 might apply. We are therefore satisfied that in doing so, the Claimant did a protected act within the meaning of Section 27 EqA 2010.

719. The next document relied upon by the Claimant is an email to RW dated 4th October 2016 which appears in the hearing bundle at pages 539 and 540. This email referred only to alleged victimisation and the Claimant's unspecified contention that the request for an Occupational Health report was being used to victimise him. That was clearly in a colloquial sense and there was nothing to suggest that the Claimant was referencing the doing of earlier protected acts and an assertion that those were the reason for the proposed involvement of Occupational Health. Therefore, on a reasonable reading there is nothing from which it could be concluded that

he was referencing a complaint or potential complaint under the EqA 2010. We are therefore not satisfied that this email amounted to a protected act within the meaning of Section 27 EqA 2010.

720. The next document relied upon by the Claimant is an email to RW dated 11th October 2016 (timed at 10.56) which appears in the hearing bundle at page 586. This email again referred only to alleged and unspecified "ongoing victimisation". Again, that term was clearly being in a colloquial sense and there was nothing to suggest that the Claimant was referencing earlier protected acts and an assertion that those were the reason for the alleged ongoing state of affairs of which he complained. On a reasonable reading there is again nothing from which it could be concluded that he was referencing a complaint under the EqA 2010 and we are therefore not satisfied that this email amounted to a protected act within the meaning of Section 27 EqA 2010.

721. The next document relied upon by the Claimant is a further email to RW dated 11th October 2016 (this time timed at 14.46) which appears in the hearing bundle at pages 584 and 585. This email again referred only to alleged and unspecified "victimisation and discrimination". On a reasonable reading there is again nothing from which it could be concluded that he was referencing a complaint under the EqA 2010 and we are therefore again not satisfied that this particular email amounted to a protected act within the meaning of Section 27 EqA 2010.

722. The Claimant next relies upon an email to AG and DF dated 18th October 2016 timed at 16.00. That email appears in the hearing bundle at pages 673 and 674. Although again this email made rather vague and somewhat confusing references to discrimination and victimisation, the Claimant did make reasonably plain in the second paragraph of his email that he was linking those matters to his disability. We consider that despite the somewhat confusing nature of what was being said, it is possible to discern that the Claimant was raising an allegation or allegations to which the EqA 2010 might apply. We are therefore satisfied that this email amounted to the doing of a protected act within the meaning of Section 27 EqA 2010.

723. The next document relied upon by the Claimant is a further email to AG and DF dated 18th October 2016. That email appears in the hearing bundle at page 610. It is in fact the same email as that referenced above and the Respondent concedes that it is sufficient to amount to a protected act[28].

724. The twenty second document relied upon by the Claimant is a further email to RW dated 21st October 2016 which appears at page 650 of the hearing bundle. Again, it is a lengthy email and so we do not set it out in full here.

[28] We would observe that it is therefore perhaps somewhat curious why they did not concede that the twentieth document relied upon also constituted a protected act because it appears to be the exact same email but that is an observation only and is not material to our decision.

Whilst the email again sets out in relatively general terms allegations of harassment, discrimination and victimisation it does go on to repeat the Claimant's position that he had been advised by ACAS to commence proceedings against the Respondent under the Equality Act. We therefore consider that on a reasonable reading of this email it is clear that the Claimant was raising an allegation to which the EqA 2010 might apply as he was linking the allegations of discrimination specifically to proceedings under that legislation. We are therefore satisfied that in doing so, the Claimant did a protected act within the meaning of Section 27 EqA 2010.

725. The next document relied upon by the Claimant is the first in a series of emails sent to Sir Jon Thompson dated 25th October 2016. That email appears in the hearing bundle at page 667. It is conceded by the Respondent that what was said in that email was sufficient to amount to a protected act and therefore we need say no more about it in that context.

726. The Claimant also relies upon three further emails to Sir Jon Thompson of the same date as being protected acts. The first of those appears at page 667 of the hearing bundle. That email forwarded a number of documents but that included the two HRACC1 forms (which are themselves at pages 723 and 732 of the hearing bundle). Whilst the email itself said very little and clearly was insufficient to constitute a protected act, that has to be viewed in the context of the material that the Claimant was forwarding within it. As the Respondent has conceded that the second of the HRACC1 forms constituted a protected act, we are satisfied that to that extent the email to Sir Jon Thompson did of itself constitute a protected act because of the content of that particular attachment.

727. The Claimant also relies on a further email to Sir Jon Thompson at page 680 to 683 of the hearing bundle. Again, that was the forwarding of earlier emails which had been sent to and from others within the Respondent organisation. That was a chain of emails between the Claimant and AL. There is nothing in those emails or the email to Sir John Thompson itself (which was blank as it simply equated to forwarding other messages) which could possibly constitute a protected act. Those emails between the Claimant and AL simply referenced and recorded their discussions on 10th August 2016. At that stage, there was not even a reference to discrimination made by the Claimant less so anything that could sensibly be seen as a complaint or allegation to which the EqA 2010 might apply. Therefore, we are not satisfied that this particular email amounted to a protected act within the meaning of Section 27 EqA 2010.

728. Finally, in the context of emails to Sir John Thompson, the Claimant relies on a further email dated 25th October 2016 which appears at pages 684 to 689 of the hearing bundle. Again, there is nothing in the actual email to Sir John Thompson itself because the Claimant was simply forwarding on a chain of emails between himself and AL relating to the HRACC1 process. The only email of any real substance in that regard was one dated 12th August 2016 to AL from the Claimant and timed at 14.54. That

was the eleventh document relied on by the Claimant as a protected act. We have already concluded above that that email was not a protected act and so it follows that the forwarding of it to Sir Jon Thompson did not constitute the doing of a protected act either.

729. The next document relied upon by the Claimant is a further email to RW dated 28th October 2016 which appears in the hearing bundle at pages 693 and 694. This email again referred only to alleged harassment, victimisation and discrimination. Those were bland assertions only with nothing to link them to the Claimant's disability or otherwise expressly or implicitly reference how any of the provisions of the EqA 2010 might engage. Therefore, there is nothing from which it could be concluded that the Claimant was referencing a complaint under the EqA 2010 and we are not satisfied that this particular email amounted to a protected act within the meaning of Section 27 EqA 2010.

730. The next document relied upon by the Claimant as being a protected act is a further email to RW dated 11th November 2016 which appears in the hearing bundle at pages 746 to 748. It is conceded by the Respondent that what was said in that email was sufficient to amount to a protected act and therefore we need say no more about it in that context.

731. The next document relied upon by the Claimant as being a protected act is an email to Mary Aiston dated 13th December 2016 which appears in the hearing bundle at pages 862 to 863. It is conceded by the Respondent that what was said in that email was sufficient to amount to a protected act and therefore we need say no more about it here.

732. The Claimant also relies upon a further email to Mary Aiston dated 10th January 2017 (see pages 926 to 927 of the hearing bundle) as the next protected act for the purposes of the victimisation complaints. Again, it is conceded by the Respondent that what was said in that email was sufficient to amount to a protected act and therefore we need say no more about it here.

733. The next document relied upon by the Claimant is an email to Sarah-Jayne Williams dated 21st February 2017 which is at pages 1111 and 1112 of the hearing bundle. Again, it is conceded by the Respondent that what was said in that email was sufficient to amount to a protected act and therefore we need say no more about it.

734. The thirty second document relied on by the Claimant as amounting to a protected act is an email that he sent to Jan Beasley dated 22nd February 2017. That email appears in the hearing bundle at pages 1113 to 1136. Amongst other things, that email referred to a "blatant breach" of the Equality Act 2010; referenced discrimination under the same Act and a failure to make reasonable adjustments. On that basis, there was clearly not only a potential complaint but an actual complaint under the EqA 2010

and as such we are satisfied that that email amounted to a protected act for the purposes of the victimisation claim.

735. The next document relied upon by the Claimant is an email to Philip Rutman, Permanent Secretary of the Department for Transport, dated 1st March 2017 (see page 1161 to 1163 of the hearing bundle). It is conceded by the Respondent that what was said in that email was sufficient to amount to a protected act and therefore we need say no more about it here.

736. The next document relied on by the Claimant is an email to Internal Governance dated 7th March 2017 which features in the hearing bundle at pages 1208 to 1212. Again, it is a lengthy document and so we have not set it out in full. However, we are satisfied that that document does amount to the Claimant having done a protected act. Particularly, the Claimant makes reference at paragraph 6 of his email to having been subjected to discrimination and harassment following the disclosure of his mental health condition. That contention was such as to link the treatment complained of to a relevant protected characteristic under the EqA 2010. In the same paragraph, the Claimant also contends that his attempts to "appropriately challenge" that position equated to victimisation. The Claimant there was clearly referencing a potential complaint under Section 27 EqA 2010 and set out the generic basis for that.

737. Moreover, within the same document the Claimant also made specific reference to what he termed "potential illegal activity" with regard to an assertion that the Respondent had failed to make reasonable adjustments. He referred directly in that regard to the Equality Act. We therefore consider that it is clear that the Claimant was raising allegations to which the EqA 2010 might apply. We are therefore satisfied that in doing so, the Claimant did a protected act within the meaning of Section 27 EqA 2010.

738. The Claimant also relies upon an email which he sent to Michael Potter, Disability Champion within the Respondent, dated 10th March 2017 (see pages 1223 to 1224 of the hearing bundle). It is conceded by the Respondent that what was said in that email was sufficient to amount to a protected act and therefore we need say no more about it at this point.

739. Finally, the last protected act relied upon by the Claimant is presenting these Employment Tribunal proceedings on 9th May 2017. The Respondent naturally concedes that this amounted to the doing of a protected act.

<u>The specific allegations made by the Claimant in these proceedings</u>

740. Before turning to our conclusions in respect of the complaint of discrimination, we deal with the unfair dismissal claim given that many of the same issues or general contentions arise.

<u>Unfair dismissal</u>

741. We begin by considering whether we are persuaded by the Respondent that there was a potentially fair reason to dismiss the Claimant by reason of capability. We stress here for the Claimant's benefit that capability dismissals do not only relate to situations where an employee is not performing well in their role or essentially are not up to the job. There is no suggestion of that here and we have no doubt that that is important to the Claimant given his considerable skills and experience and sense of professional pride. However, capability situations can also arise where an employee is incapacitated by illness or ill health from performing their role. That is the situation which arises here.

742. We are entirely satisfied from the evidence before us that the reason in the mind of Mr. Oatley for terminating the Claimant's employment was the Claimant's ill health. The Claimant had been absent for a protracted period of time and Mr. Oatley had been tasked with considering the situation under the AMP process. We accepted the evidence of Mr. Oatley that the decision to dismiss was his alone and it was those considerations, and no others, which led him to decide to terminate the Claimant's employment and as such we are entirely satisfied that the Respondent has made out a potentially fair reason for dismissal and that that was capability.

743. However, that is not the end of the matter as we must go on to consider whether the Claimant's dismissal was fair or unfair having regard to the provisions of Section 98(4) Employment Rights Act 1996.

744. We need to consider in this context the picture that was before Mr. Oatley at the time that he took his decision to dismiss the Claimant.

745. We have firstly considered in that context the position that the AMP process was not followed to the letter and, indeed, was considerably delayed before Monique Deveaux sought to engage with the Claimant in respect of it. However, it is necessary to consider the reason why that happened when considering the position on fairness.

746. The Respondent sought in the first instance to try to facilitate a return to work for the Claimant on an informal level. That had begun with AL on 10th August 2016, shortly after the Claimant first commenced his ill health absence, seeking to agree the issues with the Claimant with a view to facilitating a return to work. That had stalled when the Claimant submitted the second HRACC1 forms complaining about the actions of AL who thereafter did not have further involvement. Given that the Claimant did not want to have any contact with HP, RW was then involved as his KIT contact. RW sought to engage with the Claimant to bring about a return to work without having to invoke the formal AMP process. She sought to obtain a referral to Occupational Health which would have been a sensible first step but that process stalled because the Claimant would not consent to that before he had actually returned to work. That then became a circular argument as the Respondent could not consider the Claimant's

prognosis or what reasonable adjustments needed to be put in place for a return to work without Occupational Health input but the Claimant would not consent to that input before he had actually returned to the workplace.

747. Monique Deveaux also sought to engage with the Claimant on an informal basis but that too stalled because the Claimant was not willing to participate in that process after the initial KIT call that had been arranged at his request. It was only at that stage, when all other avenues had been explored and dead ends reached, that the Respondent had no reasonable alternative but to invoke the formal AMP process.

748. Moreover, time was taken investigating and determining the Claimant's grievances regarding HP, Tim Bowes and AL (and then others) which he said had caused his ill health absence and therefore which needed to be concluded before the Respondent could move to consider any formal action under the AMP process. That was itself delayed as a result of issues on both sides but that included the Claimant with regard to his additions to the initial grievance.

749. It cannot be realistically said to be to the Claimant's disadvantage that the AMP process was not commenced earlier. If it had been, there is absolutely nothing to say that the outcome would not have been exactly as it was but much earlier on in the process. There did not come a point later in the process when the Claimant refused to engage. He did not react well to being asked for medical evidence from HP from the outset to consider the WAP requirements; he did not engage with the Occupational Health process with RW or with Monique Deveaux and from a very early stage the Claimant was making complaints about almost everyone who had any involvement with him.

750. Whilst that escalated over time, that was only as a result of the number of people who became involved as the matter progressed. There can be no reasonable suggestion that had the Respondent invoked the AMP process at an earlier point that that would have resulted in the Claimant being able to return to work. In short terms, it appears to us that unless the Respondent was in some way prepared to remove or discipline HP, that was never likely to come to fruition. It was not reasonable to expect them to do that given the findings and conclusions of Lynne Coulby in respect of the fourth grievance. As such, the delay in commencing the formal stage of the AMP process did not cause any unfairness to the Claimant. In fact, it gave him further time to seek to recover and for grievances to be determined, albeit they were not resolved to his satisfaction.

751. That brings us then to the picture that was before Tom Oatley when he made his decision to dismiss the Claimant. That picture was that:

a. There was no Occupational Health advice about the Claimant's prognosis or ability to return to work either at all or within a reasonable timescale;

b. The Claimant had submitted a further Fit Note until 15th June 2017;
c. The Claimant would not consent to an Occupational Health referral to assist with that position;
d. The Claimant refused to engage with RW or Monique Deveaux with regard to a return to work;
e. The Claimant had eschewed the options identified by RW and put again by Monique Deveaux for a return to work, including in other roles;
f. The Claimant had refused to attend the capability hearing with Mr. Oatley to explore any options for a return to work; and
g. The Claimant had by that stage been absent for almost ten months and there was no indication that he was going to be able to return within any specific or reasonable timescale.

752. The Respondent had of course sought to consult with the Claimant but he had refused meetings and even the option of telephone meetings. There could be no medical investigation because the Claimant would not engage with a referral to Occupational Health either at all or prior to a return to work. The options for redeployment had not resulted in a return to work because the Claimant refused all options advanced, including creation of a role that did not otherwise exist, and the Respondent was not able to consider adjustments to working arrangements or ill health retirement without engagement from the Claimant and the input of Occupational Health. The Respondent was therefore somewhat stymied in that regard and we are satisfied that they did all that was reasonable and that they were able to achieve given the circumstances. Indeed, the offer to create a specific alternative role for the Claimant is demonstrative of the lengths that the Respondent went to in order to try to facilitate a return to work.

753. With all of those matters in mind, we have little hesitation in concluding given the length of absence and the lack of any information regarding a prospect of a return to work, let alone one within a reasonable timeframe, it was reasonable of Mr. Oatley to conclude that the Respondent could no longer continue to support the Claimant's absence. That was not a decision that could be said to fall outside the band of reasonable responses open to a reasonable employer.

754. We have taken into account in reaching that decision the fact that the Claimant had been employed by the Respondent for a considerable period of time but that is not such as to take the decision to dismiss in those circumstances outside the band of reasonable responses where the Claimant was failing to engage in the process of a return to work; had refused Occupational Health input at an appropriate stage; had eschewed options for a return, including alternative employment, and there was no indication that that state of affairs was going to alter and no evident prospect of a return to work within a reasonable period. We accept that it was not a decision that Mr. Oatley took lightly but it was in reality a decision which he was perfectly entitled to come to and which sat squarely within the band of reasonable responses.

755. We turn then to the appeal process. The main issue with regard to that process is the removal of Mr. Rhodes as appeal manager. Ultimately, we are satisfied that that decision was one which fell within the band of reasonable responses given that there were concerns that Mr. Rhodes was not following the appeal process in his role of Appeal Manager (and was essentially re-hearing the matter from scratch rather than considering the reasonableness of the decision made by Tom Oatley and the procedural aspects) and that that was of concern in respect of matters of consistency of treatment. In all events, we are satisfied that the Claimant had an independent and impartial review by Mr. Marshall who replaced Mr. Rhodes as Appeal Manager and that included the opportunity to have a telephone or face to face discussion and to put additional points after the meeting. We are satisfied from what we have already said above that Mr. Marshall did not have any agenda, had not formed a view on the appeal before he had considered all of the evidence and took his own decision uninfluenced by anyone else and on the basis of the evidence before him. The Claimant therefore had a fair appeal hearing.

756. Moreover, to any extent that we might have concluded that the decision to replace Mr. Rhodes was unfair (and for the avoidance of doubt that is not our conclusion) then it is far from certain that that would have made any difference to the eventual outcome of confirming the Claimant's dismissal. Whilst the Claimant contends that Mr. Rhodes was replaced because he was on the cusp of reinstating him, we remind ourselves of Mr. Rhodes' evidence that he had made no decision and his considerations were revolving around the recommendation of an award of something other than nil compensation. Even with a different recommendation, that matter was ultimately a decision for Dan Goad.

757. It follows from all that we have said above that the claim of unfair dismissal fails and is dismissed.

<u>Discrimination complaints</u>

758. We turn then to consider the specific allegations of direct discrimination and victimisation made by the Claimant. In reaching our conclusions in respect of the claim before us we have considered the whole picture of the matter but deal with each individual act complained of separately. We have retained the numbering system adopted by the Claimant in the table which appears at Schedule Two for ease of reference. The reason that those do not run sequentially arises from the decision of Employment Judge Hutchinson to strike out parts of the claim and from the withdrawal of some of the others by the Claimant. Where allegations are brought both as complaints of direct discrimination and victimisation, we shall deal with our conclusions on those allegations separately because different tests apply.

759. We begin on a general point, however, with consideration of the question of disclosure. We begin with that as it has been a consistent theme throughout the course of the hearing. Putting matters in their simplest

form, the Claimant contends that there has been inadequate disclosure from the Respondent and that they have not complied with their disclosure obligations. It is certainly the case that there have been a number of applications or requests for specific disclosure before us and that a number of additional documents have been provided by the Respondent during the course of the hearing time. We have considered that point and had indicated to the Claimant that we would determine whether, either alone or cumulatively, that was sufficient to reverse the burden of proof in respect of the discrimination claim and allow us to draw an adverse inference.

760. We have considered the point very carefully and we are satisfied that it does not. We say that on the basis that whilst it is clear that there were a number of other documents which could and should have been disclosed, the failure to do so appears to us on the evidence to hand to arise from a failure on the part of the Government Legal Department in properly coordinating the disclosure exercise. That matter was largely left to Jamie Gracie to deal with and he made requests for documents from those who he thought would hold relevant information. Witnesses appeared not to have been fully appraised of their disclosure obligations from questions that we asked them about that and it is clear that things were overlooked.

761. However, once the Claimant asked for documents during the course of the hearing before us they were readily provided via Mr. Beever where possible. As we had observed to the Claimant on a number of occasions during the hearing, if there was a document or documents which had not been disclosed or which had been redacted in terms which were clearly damaging to the Respondent's case (as we termed it "a smoking gun") then that may well be sufficient to reverse the burden of proof. We invited the Claimant to draw our attention to those documents and recorded those issues in Case Management Orders. We understood the Claimant's position to be that he had many such documents to draw to our attention in his submissions but as it was, nothing of any substance at all emerged in that regard. Particularly, with regard to the redacted documents those related only to names of certain individuals within Human Resources which we understand and accept are redacted as a matter of course in respect of Subject Access Requests. Clearly, the unredacted documents should have been disclosed for the purposes of these proceedings but none of the redactions had any material impact upon the issues in the claim once the identities of those whose names had not previously been seen was revealed.

762. We also take into account that this was a very document heavy case. Whilst regrettable, in our experience it is not unusual for additional documents to come to light during the course of a hearing and particularly as a result of witness evidence given. Moreover, we recognise of course that there is a continuing duty of disclosure and that it is not unusual for requests or applications for specific disclosure to be made after standard disclosure has taken place. That did not happen in this case because, as

we have already observed, the Claimant had not read the bundle prior to the commencement of the hearing and therefore did not know what was included and what was not. Furthermore, the Respondent was at some difficulties in understanding the basis of much of the claim as the Claimant had not been able to prepare a witness statement either. Had there been a witness statement, it may have been clearer that there might be additional documents of relevance that needed to be provided ahead of the hearing.

763. In addition, many of the documents requested by the Claimant were policy documents which, once disclosed, in fact had very little if any part to play in the proceedings. There were many such documents to which we were either not taken in evidence at all or they only featured extremely briefly. It was not clear until the Claimant commenced cross examination and began to refer to various policies that those had any relevance at all to the issues and thus it is unsurprising that they were not disclosed earlier in the proceedings.

764. We should also say a word here before moving onto the specific allegations that much of the Claimant's direct discrimination claim is framed against a general assertion that the Respondent had what he termed a rigorously enforced culture of discrimination, harassment and victimisation and that the treatment of which he complains was part of that culture.

765. The general problem with much of the Claimant's complaints of direct discrimination is his reliance simply on assertions that someone else would have been treated differently if not suffering from his mental health disability but without any thought to the facts on which those assertions were actually based. We had of course asked him to set out in the table at Schedule Two the facts and matters relied upon so as to understand his case – particularly absent a witness statement – and to assist him in focusing on what essential matters would need to be put in cross examination. Unfortunately, that did not materially assist other than to generally reiterate common themes or bare assertions.

766. Similarly, a significant plank of the Claimant's case, as can also be seen within his comments at Schedule Two, is that the Respondent's culture was such that any attempt to challenge discrimination, harassment or victimisation was automatically met with *"a vicious response to any attempt to undertake a protected act"*.

767. Whilst we have no doubt that the Claimant genuinely believes that both that and the fact that there is a "culture of discrimination" is true, nevertheless that belief is not rooted in any form of fact or reality.

768. Other than the Claimant's repeated assertion that that was the case, there is no evidence whatsoever of a culture of discrimination, bullying or victimisation either against those with mental health disabilities or otherwise. Of particular note in that regard are the following issues:

a. The Respondent has in place a number of policies procedures aimed at dealing with mental health issues in the workplace;

b. The Claimant was supported significantly in terms of his mental health after the conclusion of his grievances in Birmingham including putting in place buddy support and the Reasonable Adjustment Passport;

c. The Claimant was asked for input into the development of the Mental Health Action Plan;

d. The Respondent participated in and had placed the Claimant (who they knew at the time had a mental health disability) onto the Positive Action Pathway and had in place a Disability Champion. Developing and participating in such initiatives is not consistent with an organisation in which discrimination - particularly of those with mental health conditions - and victimisation is endemic and encouraged as the Claimant contends;

e. As part of the Reasonable Adjustment Passport the Claimant was permitted time to work on grievances in working hours. As the Claimant contends that those grievances were protected acts, that is not indicative of an employer who, in the Claimant's words, wanted to "stop at all costs" any protected acts being done; and

f. The Claimant's own evidence before us was not that anyone raising complaints of discrimination would be closed down by the Respondent and therefore it is difficult to see how that could be squared with his contention that the Respondent "*does not allow attempts to undertake protected acts and uses an extremely aggressive, damaging response …….. to any attempt to do so"* (see his comments at Schedule Two).

769. Quite simply, there is no evidential basis to support the Claimant's contention of some form of institutional discrimination against those with mental health disabilities or any negative stance against staff who raise complaints of or otherwise challenge discrimination.

770. That brings us then to each of the individual allegations of direct discrimination and victimisation which remain live before us.

<u>Allegation 77 – direct Discrimination</u>

771. The first of the remaining allegations of direct discrimination is that it is said that Lynn Coulby refused to appropriately investigate and consider the Claimant's grievance. That is, on the facts as we have found them to be above, an inaccurate assertion. Lynn Coulby clearly investigated the

Claimant's grievance. That included two discussions with the Claimant and seeking information from all of those relevant to the issues contained within it. That included HP, Tim Bowes, AL and RW.

772. The issue as we see it in relation to this investigation is that Lynn Coulby did not uphold the Claimant's grievance. The Claimant believes essentially that the points that he made were so strong that it was obvious that Lynn Coulby should have resolved matters entirely in his favour.

773. It is perhaps fair to say that there were deficiencies – or as Emma Spear termed it "shortcomings" - in the way in which the grievance was initially dealt with in that Ms. Coulby did not have all of the required training and there was a delay in holding the 40 day review. However, as soon as those matters were pointed out by the Claimant they were rectified by Ms. Coulby. Whilst we agree with the Claimant's position that it was not his responsibility to point those matters out, we are satisfied that those shortcomings were caused by inexperience and unfamiliarity by Lynn Coulby with the relevant processes.

774. We also consider that it would have been preferable for the Claimant to have had a further meeting with Lynn Coulby after she had undertaken the initial investigation. We agree that it would have been unnecessary for Ms. Coulby to prepare an investigation report as the purpose of that would be to set out findings for the Decision Manager, which was of course also Lynn Coulby, but it would have been better practice for her to have met with the Claimant to share those findings with him before concluding her decision on the grievance. However, that was not done because of anything to do with the Claimant's disability. It was done because he complained about the involvement of Steve Billington and as he had also complained about delay, the advice of HR to Ms. Coulby was to undertake both roles herself. The contemporaneous documentation is clear on that point. Whilst there were therefore shortcomings, there is nothing at all to even begin to suggest that those had anything at all to do with the Claimant's disability. Indeed, even unfair or unreasonable treatment is not sufficient alone to amount to discrimination and the shortcomings here are a step well removed from unfairness or unreasonableness.

775. Moreover, although the Claimant's focus in cross examination was the process adopted rather than conclusion reached, we have also considered the conclusion itself. The conclusion that Lynn Coulby reached that the issues raised by the Claimant amounted to differing interpretations was an entirely reasonable one to have reached in the circumstances. There is absolutely nothing to begin to suggest that she was motivated, either consciously or subconsciously, by the fact that the Claimant has a mental health disability or that anyone else in not materially different circumstances – that is without the Claimant's mental health disability but who had raised the same complaints and in respect of which the same evidence had been gathered – would have received a different outcome. The reason why Ms. Coulby reached the conclusions that she did was

because that was her genuine view on the basis of the material before her. The Claimant has adduced nothing other than his general assertion to that effect that his disability had anything to do with the matter.

776. We have also considered the concern that Ms. Coulby raised that the Claimant was "becoming vexatious". The Claimant's case in respect of this issue is somewhat confusing. The Claimant sets out within his comments at Schedule Two that it is the *"recognised effects of the Claimant's disability and, therefore, the disability itself that has been directly used to present the claimant as an aggressive bully and serial, malicious complainer"*. The Claimant appears to confuse here, and we have raised this with him a number of times and provided guidance on the difference, a complaint of direct discrimination with a complaint of discrimination arising from disability. That latter complaint does not feature in these proceedings. The question is whether Ms. Coulby would have formed that view of someone who was communicating in the same way as the Claimant was but who did not have a mental health disability. We have no doubt that she would. Lynn Coulby's concerns in this regard was the Claimant seeking to widen the scope of his grievances to include anyone who might come to his attention as having had an involvement in matters.

777. There is nothing at all to suggest that Lynn Coulby was in any way motivated, either consciously or unconsciously, in the process adopted to deal with the grievance or the conclusions that she reached by the fact that the Claimant had a mental health disability and we are satisfied that in the same circumstances, someone without that disability would have been subject to the same process and the same outcome. Therefore, this complaint of direct discrimination fails and is dismissed.

<u>Allegation 78 – direct discrimination</u>

778. The second remaining allegation of direct discrimination is that the Claimant contends that Jennie Granger refused to accept his formal grievance, to even correspond with him and passed the grievance to the people complained about to deal with.

779. We would observe that this was initially also a complaint levelled against Mr. Gatter but that suggestion was withdrawn by the Claimant after cross examination of that particular witness. That must of course of itself assume that the Claimant accepted the truth of the account given by Mr. Gatter.

780. The Claimant again relies on a hypothetical comparator and sets out in his completed schedule of allegations that the reason why he says that the matters complained of amount to direct discrimination is because his *"mental health disability is the reason why* [he was] *not entitled to the protection and redress afforded to all staff without a mental health disability"*.

781. We can deal with relative brevity given the evidence before us with this allegation. There was no refusal by Jennie Granger to accept the Claimant's grievance nor any refusal to correspond with him. Jennie Granger was not at work during the period of time with which this complaint is concerned and the Claimant would of course have been aware of that position from correspondence that was sent to him at the time and to which we have referred in our findings of fact above. That was confirmed by Mr. Gatter's evidence at the hearing. As such, Mr. Gatter passed the matter onto Human Resources in accordance with the advice that he received. It is not entirely clear what else the Claimant could reasonably expect Ms. Granger to do in circumstances where there has been no challenge to the evidence that she was absent from the Respondent organisation.

782. There is no evidence, or indeed anything else at all, to suggest that a different approach would have been taken if a member of staff without a mental health disability had written to Ms. Granger in the same terms as the Claimant at a time when she was away from the office. The matter was passed on by Mr. Gatter to be actioned during Ms. Granger's absence and again there is nothing to suggest, other than the Claimant's assertion to that effect, that the precise same action would not have been taken for someone in the same circumstances as the Claimant but without his mental health disability. Therefore, this complaint of direct discrimination also fails and is dismissed.

Allegation 79 – direct discrimination

783. The next act of direct discrimination complained of is a lengthy one but it can be summarised as the fact that the Claimant alleges that he was portrayed as a danger to other staff without any evidence being produced in order to justify the "removal of all basic rights under the Respondent's policy and guidance and the law". The Claimant cites as examples the content of an email from Sarah-Jayne Williams of 7th March 2017; a letter from Mary Aiston on 8th March 2017; submissions made to Tom Oatley (by RW, HP and Monique Deveaux) and in Mr. Oatley's conclusions in the dismissal letter. A further facet of the complaint is that the Claimant contends that he was denied the opportunity to challenge that alleged portrayal as a result of the Respondent not taking formal action against him.

784. In respect of this complaint, the Claimant relies upon an actual comparator or, in the alternative, a hypothetical comparator.

785. In respect of the issue of the actual comparator, as can be seen from the Claimant's schedule of allegations, he refers to a male member of staff who he contends made allegations to stab a female manager. That was developed further in his cross examination as a member of staff in Birmingham who had made such threats and had kept a baseball bat or similar in or around his desk. The Claimant has not disclosed the identity of that individual for the Respondent to make any enquiries and none of the witnesses had any idea who or what the Claimant was referring to.

786. There was no documentary or other evidence to support his position but, in all events, it is clear that the Claimant is comparing apples with oranges. Even if there had been such an issue with the member of staff in question (and on the basis of the only evidence being the Claimant's suggestion in cross examination of witnesses we cannot make any finding to that effect) the circumstances are materially different to the Claimant. The issue with the Claimant's correspondence was the fact that it was confrontational, challenging (in the sense of being difficult rather than being "an appropriate challenge to discrimination"), had the capacity to be viewed as aggressive and clearly upset people – not least RW.

787. The Respondent acted perfectly reasonably in asking the Claimant to moderate his tone of communications and that is all that was done here. He was not portrayed as a danger to other members of staff as he contends. The only issue arising there was that decisions were taken – most notably the introduction of the SPOC arrangements and the application of the Vexatious Complaints Policy – taking into account the duties that the Respondent also owed to others as well as the Claimant. Given the circumstances with RW, that is entirely unsurprising.

788. There was nothing within any of the specific correspondence referred to by the Claimant or any of the communications that we have seen that suggest an unreasonable or unfair approach to him because of his mental health condition. The Respondent was entitled to ask the Claimant to desist in sending the type of inflammatory communications that he was generating.

789. We have no doubt – and we particularly have in mind the evidence of Mary Aiston to which we have referred in our findings of fact above – that anyone who had sent correspondence of the volume and tone that the Claimant did would not have been treated differently, or certainly not more favourably, and there is simply nothing to reasonably suggest to the contrary. There is no evidence, as suggested by the Claimant in his reference to a hypothetical comparator within the schedule of allegations that a stereotypical view was taken of someone with a mental health condition and that they must therefore be viewed as a "danger to others". Quite simply, the Claimant was not viewed in that way and none of the correspondence comes anywhere close to that.

790. Whilst we note the Claimant's position that he was not taken through a disciplinary process, that cannot be reasonably said to have been detrimental to him by any stretch. He would clearly have found such a process very stressful and he could well have faced a disciplinary sanction as a result. Asking him to cease in his actions as an alternative to disciplinary action and limiting consideration of his grievances to those already in train so as to bring them to a conclusion cannot therefore possibly be a detriment to the Claimant and we have little doubt that had

any formal disciplinary action been taken, that too would have been an allegation within these proceedings.

791. The Claimant confuses within these proceedings, and this aspect of the claim particularly, a complaint of direct discrimination and one of discrimination arising from disability and it is not sufficient that his mental health disability *might* (and we place it no higher than that given the lack of evidence on the point) have caused or contributed to the content of his correspondence. The question is whether someone generating the same volume and tone of correspondence but without a mental health disability would have been treated more favourably and there is absolutely nothing other than the Claimant's assertion to that effect that they would.

792. It follows that this aspect of the claim also fails and is dismissed.

Allegation 80 – direct discrimination

793. As can be seen from the schedule of allegations completed by the Claimant, this aspect of the claim relates to the putting in place of Sarah-Jayne Williams as a SPOC by Mr. Coughlin. The Claimant asserts that this was done in a "confrontational manner" and removed all of his rights to communication and confidentiality.

794. The Claimant's case here is again confused and focuses on issues which *might* (and again we place it no higher than this) feature in a claim of discrimination arising from disability. The Claimant contends in this regard that it is his disability which directly resulted in the putting in place of SPOC arrangements and therefore must amount to direct discrimination.

795. However, it was not the Claimant's disability that resulted in those arrangements. They were put in place because of the need to channel all communications through one central point for the good of the Claimant and officers of the Respondent who had previously been dealing with him. Particularly, RW no longer wanted to be the Claimant's KIT contact; the Claimant was only prepared to be sent communications at specific times and that needed to be monitored by those who were in contact with him; there were a number of ongoing processes of which there needed to be an overview; arrangements like that had worked well in complex cases in the past; the Claimant said that he felt "bombarded" by emails and found receipt of lots of different communications stressful and he had also originally requested a very similar if not identical point of contact arrangement from Mary Aiston. That was the "reason why" the SPOC arrangements were put into place and the Claimant's disability had nothing to do with the matter. Indeed, we note the evidence of Mr. Coughlin that he had previously put in place such SPOC arrangements for someone without a disability.

796. We are satisfied that anyone without that disability but with materially the same circumstances as set out above would have had the SPOC arrangements put in place. Those arrangements did not remove any rights

that the Claimant had. He simply had communications channelled through one conduit but there was nothing that he could not do with the SPOC arrangements in place that he was able to do without them.

797. There is also nothing of substance to the Claimant's suggestion that the arrangements were put in place in a "confrontational manner" or that he was denied a supportive contact. Mr. Coughlin's letter putting those arrangements into place was in perfectly reasonable terms and, indeed, the Claimant replied to say that he welcomed the arrangement. Similarly, we are entirely satisfied as we have set out above that Sarah-Jayne Williams was at all times perfectly professional and measured in tone and there is nothing in her communications with the Claimant which could be described as confrontational either. The Claimant had both Sarah-Jayne Williams and Monique Deveaux to assist him and we are satisfied that, with the exception of the Kermit Facebook post which is not material to these matters, they both dealt with him in a supportive and professional way.

798. It follows that the application of the SPOC arrangements was not because of the Claimant's disability and so this complaint also fails and is dismissed.

Allegation 81 – direct discrimination

799. This allegation of direct discrimination relates to the content of Sarah-Jayne Williams' email of 7th February 2017 which the Claimant categorises as "lengthy, hugely stressful, aggressive and at times blatantly untrue" and being accompanied by a "further 15 stressful attachments". It is the Claimant's case that anyone without his disability would not be treated in that way and/or would find the contents unacceptable.

800. As we have already set out in detail in our findings of fact above it is ultimately difficult to see what else Sarah-Jayne Williams could have been expected to do so as to deal with this particular email. The Claimant had made it plain that he wanted an immediate response to all of what he referred to as "open points" and Sarah-Jayne Williams acted in accordance with those requirements when providing answers to him on them. Again, we remind ourselves that the Claimant had previously complained about a "bombardment" of emails from the Respondent and so we cannot see how dealing with each issue in a separate piece of correspondence could possibly have assisted.

801. There was no detriment to the Claimant in receiving this email as opposed to a number of individual ones nor in gaining the answers to the "open points" that he himself had asked for (even if he did not agree with those responses).

802. Moreover, there is absolutely nothing to support the Claimant's contention that the email was sent in the way it was because of his disability or that some other approach would have been adopted in the same

circumstances for someone who was not disabled. The "reason why" the email was sent as it was, was on the basis that Sarah-Jayne Williams considered that the most appropriate way to deal with all of the open points that the Claimant had asked her to address. We are also satisfied that she spent some time and effort carefully constructing the email. We are entirely satisfied that the Claimant's disability had nothing to do with the matter and that anyone who had asked for a response on all open points from their SPOC but without a mental health disability would have received the same email reply.

803. It follows that this complaint of direct discrimination also fails and is dismissed.

Allegation 82 – direct discrimination

804. The next allegation of direct discrimination related to Monique Deveaux and essentially comprises of three parts, those being as follows:

a. That she refused to provide any support or appropriate contact;
b. That she was inappropriately involved in the Claimant's dismissal; and
c. That she provided false information to secure the Claimant's dismissal.

805. The Claimant asserts that his disability was the reason for the alleged treatment on the basis that it is said that the recognised stigma around mental health disability caused Ms. Deveaux to believe that it was appropriate to treat him in an otherwise unacceptable manner.

806. We deal with each of the strands of this complaint separately and begin with the suggestion that Ms. Deveaux refused to provide any support or appropriate contact. We are satisfied that this is an element of the complaint which should fail on the facts. Whilst we accept that it was the Claimant who had to request a telephone KIT call with Ms. Deveaux - and perhaps with hindsight it would have been more sensible for her to take the initiative and offer one - she did not decline the suggestion and held the call as requested to suit the Claimant. There is no evidence at all she thereafter failed to maintain appropriate contact and we have set out in our findings of fact above the steps that Ms. Deveaux took to assist the Claimant in that regard. We are satisfied that she tried her best in very difficult circumstances – including correspondence from the Claimant which left her upset and in tears. Whilst the Kermit the Frog incident to which we have already referred was clearly ill advised, it was not something that Ms. Deveaux directed at him nor, no doubt, ever expected that he would see. It also had nothing to do with the Claimant's mental health condition nor was it mocking or disparaging of mental health issues in general terms.

807. Moreover, whilst we observe that the Claimant did request a halt to the process and no doubt considers the pressing ahead with it as being unsupportive, we remind ourselves the purpose of the AMP was to seek to bring about a return to work not to continue to prolong sickness absence which was to the benefit of no-one concerned, including the Claimant.

808. Again, aside from the Claimant's contention that this is the case, there is nothing at all to begin to suggest that Monique Deveaux would have taken some other steps or done things differently for someone in materially the same circumstances of the Claimant but who did not suffer with his mental health disability.

809. We turn then to the suggestion that Ms. Deveaux was "inappropriately involved" in his dismissal. We understand this complaint to be that she was one of the authors of the referral to Mr. Oatley as decision maker. We have already set out above the position as to how Ms. Deveaux came to be involved in that referral and that had the matter fallen to HP alone as his then Line Manager, the Claimant would no doubt have found that objectionable. Whilst he points to the fact that the step of compiling the referral document by what he refers to as "committee" was outwith the terms of the AMP process, as we have already observed this was a relatively unusual circumstance and the policy could not be expected to provide for every eventuality.

810. As the Claimant's KIT contact, Ms. Deveaux could provide, along with RW, an oversight of the steps taken under the AMP process and with a view to seeking to secure a return to work that HP could not. We therefore do not consider it was unusual that she was involved, let alone that that involvement was "inappropriate". Whilst, the Claimant complains that the authors of the referral were people that he had raised formal grievances about, we accept the observations of Mr. Beever that by this stage it would have been very difficult to find anyone with any relevant knowledge of the Claimant's circumstances who would not have fallen into that category.

811. Again, this aspect of the complaint therefore fails on its facts given that we do not find anything inappropriate in the involvement or input that Ms. Deveaux had in the referral document. Furthermore, there is absolutely nothing to begin to suggest that a different approach would have been taken in the same circumstances for an employee without the Claimant's mental health disability who was not having KIT contact with his Line Manager but was still under their general line management and who had had two alternative KIT contacts.

812. The final aspect of this matter is that the Claimant contends that false information was provided in the referral document. Whilst that is levelled against Ms. Deveaux, we have not in reality been able to ascertain who completed what portions of the referral and so we look at the information as a whole irrespective of who provided it.

813. Again, we are satisfied that this complaint fails on its facts. We have already set out in our findings of fact above the matters with which the Claimant has taken issue within the referral document. It is clear to us that whilst there are matters where there could be considered to be errors, that is a far cry from false information being provided to secure the Claimant's dismissal. We are satisfied that the information provided to Mr. Oatley provided a fair and reasonable overview and did not contain information that could on an objective reading be described as "false".

814. Therefore, this complaint as a whole fails on the facts and there is no evidence whatsoever that things would have been done any differently had the Claimant not suffered from a mental health disability or for someone else without that disability in materially the same circumstances.

Allegation 83 – direct discrimination

815. Turning then to the next allegation of direct discrimination which is the content of an email from Sarah-Jayne Williams of 28th February 2017.

816. Again, there are a number of facets to this aspect of the claim but the main issues identified are as follows:

a. That the letter recognised the Claimant as a suicide risk but that the actions of the Respondent were the problem and those were not being considered;
b. The refusal to end the SPOC arrangements;
c. The refusal to accept a formal grievance to Ms. Granger;
d. That the Claimant was considered to be a danger to other members of staff because of his mental health disability; and
e. The removal of his confidentiality.

817. We take each of those matters in turn. The first is the reference to being viewed as a suicide risk. The reality of the position here was that the Claimant had repeatedly made reference to the Respondent attempting to make him commit suicide or that his partner was concerned to leave him alone for fear that he might take his own life. Against that background, it is entirely understandable that Sarah-Jayne Williams would have made reference to that position and suggest areas of support such as the Samaritans to whom the Claimant may wish to turn. Insofar as it is an allegation of direct discrimination, making such comment cannot possibly be said to be a detriment but furthermore, there is nothing at all to suggest that anyone without the Claimant's disability who had made such references to suicide would have been treated any differently.

818. The suggestion that the Respondent was the problem but refused to take any action to address that is simply factually inaccurate given the steps taken to investigate and deal with the Claimant's grievances and to seek to facilitate options for a return to work.

819. The second issue is the refusal to end the SPOC arrangements. Insofar as that might be said to be an act of Sarah-Jayne Williams, we are satisfied that it was not open to her to end the SPOC arrangements. The Claimant's concerns about those arrangements had been reviewed by Jan Beasley who had decided that they should remain in place. That was not an unreasonable position given the reasons for putting the arrangements in place initially and nothing had changed other than the Claimant's objection to them. It cannot be said, as the Claimant suggests, to be a reasonable adjustment to remove those arrangements because the Claimant had changed his mind about them and no longer wanted them in place.

820. There is nothing at all to begin to suggest that a hypothetical comparator in those circumstances but without the Claimant's mental health disability would have been treated any differently. The "reason why" the arrangements continued to be in place was for the same reason as they had been put in place initially. That had nothing at all to do with the Claimant's disability as we have already set out above.

821. The third issue is that there was a refusal to accept a formal grievance to Jennie Granger. We are satisfied that that is factually inaccurate for the reasons that we have already set out at allegation 78 above. Insofar as it might be suggested to be an action of Sarah-Jayne Williams, all that she was doing was updating the Claimant in her capacity as SPOC.

822. The fourth issue is the Claimant's suggestion that he was considered to be a danger to other members of staff because of his mental health disability. There was nothing at all in the communication from Sarah-Jayne Williams to which the Claimant refers in this regard that made any such suggestion and it is quite simply a factually inaccurate allegation.

823. Finally, there is the suggestion that the Claimant's confidentiality was removed. We understand that to mean that Sarah-Jayne Williams sent the Claimant a copy of his payslip (albeit under cover of a different email) rather than it being sent to him at home by post from HR Shared Services.

824. As we have set out in our findings of fact above, we do not see anything untoward in that given that Sarah-Jayne Williams was simply acting as a conduit for all communications. It is also difficult to see how it might amount to a detriment (as opposed to a general sense of injustice) for the payslip to be sent in that way but even if that was the case, there is nothing at all to begin to suggest that that was done because of the Claimant's disability. The SPOC arrangements were the "reason why" the payslip was sent in that way and there are no facts from which we could begin to infer that someone with the same SPOC arrangements but who did not suffer from a mental health disability would have been treated any differently.

825. This aspect of the claim therefore also fails and is dismissed.

Allegation 84 – direct discrimination

826. This allegation concerns the Claimant's report to IG and the fact that his confidentiality had not been maintained as he had requested. It is a matter of fact that that did not happen and that was accepted by Mr. Digby in his evidence.

827. However, the reason for that was not because the Claimant suffered from a mental health disability but because IG were concerned that the Claimant had made reference to suicide. As we have set out in our findings of fact above, that is abundantly clear from the contemporaneous email from EH directing that matters be referred to CSHR because of that reason. The matter was accordingly referred to Human Resources because they were best placed to advise in relation to those matters and, to a lesser extent, had oversight of the other ongoing processes involving the Claimant.

828. Again, this is a complaint where the Claimant has confused, both in the schedule of allegations that he completed and in cross examination, the make up of a complaint of direct discrimination. The correct hypothetical comparator would be an employee who had made a report to IG requesting confidentiality and making a reference to suicide but who did not suffer from a mental health disability. There is nothing at all to suggest that IG would not have done precisely the same in those circumstances to refer matters to Human Resources because the primary concern was the reference to suicide.

829. Insofar as this complaint also includes as allegations of direct discrimination in respect of the decisions of Mr. Vernon and Ms. Digby, as we have set out above those were reasonable decisions on the basis of the evidence before each of them. There is absolutely nothing to suggest that the Claimant's disability played any part in those matters or that a hypothetical comparator in materially the same circumstances but not suffering from a mental health disability would have been treated any differently or, more accurately, more favourably.

830. Therefore, this allegation also fails as an act of direct discrimination and it is accordingly dismissed.

Allegation 85 – direct discrimination

831. The next allegation of direct discrimination relates to the letter of 8th March 2017 from Mary Aiston to the Claimant. This was of course the letter that applied the Vexatious Complaints Policy to the Claimant; cautioned him as to the content of his correspondence and limited the consideration of complaints to those already in train.

832. The Claimant contends that this amounts to direct discrimination on the basis that his position is that Ms. Aiston "linked" her action to his mental health disability. It is difficult to ascertain the basis upon which the

Claimant reaches that conclusion. There is nothing at all within the letter in question to suggest that. The clear "reason why" that letter was written was because of the volume, content and tone of the communications that the Claimant had sent or was sending to RW and others and the impact that it was having. We have already made findings in relation to those matters above and in view of the overall nature of the Claimant's communications, we find it unsurprising that Mary Aiston wrote to him in the terms that he did.

833. Moreover, the clear concern of Ms. Aiston was also that the Claimant's continued escalation of matters would have the result that there was a danger of losing sight of the existing grievances which were being investigated and for those to be further protracted and delayed. That was not in the interests of any party. That was an understandable and legitimate concern given that the Claimant had by that stage sought to raise grievances against a significant number of individuals – both identified and unidentified – and that included almost everyone who had had any degree of significant contact with him.

834. We remind ourselves that this is a complaint of direct discrimination and the question is not, therefore, whether the Claimant's disability caused him to communicate in the way that he did (although there is no actual evidence to that effect in all events) or to escalate complaints in the manner that he did. The question is whether the letter would have been written in the terms that it was to a hypothetical employee who did not have a mental health disability but who had communicated in the same way as the Claimant with regard to volume, escalation, tone and content and had caused upset to others in doing so. The Claimant did not ask Ms. Aiston about that in cross examination and to ensure that it could not be suggested by the Respondent that his case had not been properly put, it was put by the Employment Judge on his behalf. The evidence of Ms. Aiston, which we have accepted, was that anyone in those circumstances would have seen her take the same decision. There is no evidence at all to suggest to the contrary or that the Claimant's disability had anything at all to do with the decision.

835. Accordingly, the sending of the letter of 8th March 2017 and the content of that letter were not acts of direct discrimination and this aspect of the claim also fails and is dismissed.

<u>Allegation 86 – direct discrimination</u>

836. This aspect of the claim relates to the decision made by Tom Oatley to dismiss the Claimant.

837. This aspect of the claim falls into three parts which are as follows:

a. The decision itself which the Claimant asserts was not open to Mr. Oatley under the AMP;

b. That Mr. Oatley accepted "blatantly untrue" statements in the referral document and refused to consider other documentation which "must be considered"; and

c. Challenged whether the Claimant had a disability.

838. The Claimant asserts within the schedule of allegations that a hypothetical comparator would be treated more favourably "as they would be treated in accordance with mandatory guidance and, therefore, would not be dismissed". It is perhaps noteworthy here that the Claimant again engages only with that broad proposition but not with any facts upon which he says demonstrates that that would have been the case.

839. We begin with the decision made by Mr. Oatley and whether that was an act of direct discrimination. We are satisfied that it was not. As we have already dealt with in our conclusions on the unfair dismissal claim above, we are entirely satisfied that the reason that Mr. Oatley dismissed the Claimant was because of his continued ill health absence, his failure to engage and the fact that there was no indication that there would be a return to work within a realistic time frame. Other than the Claimant's general contention to that effect, there is absolutely nothing to suggest that someone without the Claimant's disability but in otherwise materially the same circumstances would not have been dismissed.

840. We also do not accept the Claimant's position that dismissal was not open to Mr. Oatley under the AMP process. As the decision maker under the AMP process, dismissal was an outcome that was certainly open to him. It appears that the Claimant's position in respect of this matter is that there was a delay in commencing the AMP process and so that resulted in it not being open to Mr. Oatley to dismiss him. We have dealt with the delay point in the context of the unfair dismissal claim but it cannot realistically be suggested that any such delay in commencing a formal process must render it impossible for an employer to dismiss. That would result only in no informal steps being able to be taken to bring about a return to work and in turn unfairness to those who could be assisted back via such means. Accordingly, we are entirely satisfied that it was open to Mr. Oatley to dismiss the Claimant under the AMP process and that he did so not because the Claimant was disabled but because of his protracted absence and the lack of a return to work being in sight.

841. We turn then to the Claimant's contention that Mr. Oatley had accepted "blatantly untrue" statements in the referral document. We have already addressed that matter by and large above and do not accept that any of the information was "blatantly untrue". Mr. Oatley had also given the Claimant ample opportunity to meet with or discuss matters with him and therefore the Claimant could have taken that opportunity to address any information with which he took issue or to provide any other documentation or representations that he wanted Mr. Oatley to consider. However, the Claimant did not engage with the process as we have set out in our

findings of fact above. Mr. Oatley was entitled to take the view that the Claimant had actively decided not to participate rather than that he was too unwell to do so, not least as a result of the voluminous and detailed correspondence that he was otherwise able to generate at all stages of the process and the fact that he had been offered and had been able to undertake telephone meetings/calls.

842. Finally, the Claimant contends that Mr. Oatley challenged in his outcome letter whether he was in fact disabled. The letter did not challenge that the Claimant was disabled. It simply made reference to the Claimant having referred to himself as a disabled jobholder in communications to Monique Deveaux and that there was a reference within the WAP to mental health issues but that it was unclear what those were or what steps could be put in place to assist. That was an entirely reasonable assessment of the position as it was before Mr. Oatley because of the lack of Occupational Health advice as to the position at that time and the refusal of the Claimant to meet with him or submit written representations.

843. We are therefore satisfied that the decisions of Mr. Oatley were in no way influenced by the Claimant's disability and so this complaint of direct discrimination also fails and is dismissed.

Allegation 87 – direct discrimination

844. This allegation principally concerns the appointment of Jamie Gracie as what the Claimant terms a "second SPOC" against his wishes but also encompasses actions of Mr. Gracie in respect of the CSIB forms and annual leave. We agree with the assessment of Mr. Beever that this allegation still remains unclear but we have attempted to deal with it as best that we can.

845. Firstly, as to the position of a "second SPOC" that is factually inaccurate. As we have set out above, for a period of time Sarah-Jayne Williams was deployed onto a specific project by the Respondent and was unable to undertake the SPOC function. During that time, Mr. Gracie took up that position until Sarah-Jayne Williams was in a position to resume the SPOC role. The SPOC arrangements continued for the reasons that we have set out above and Mr. Gracie temporarily assuming that role in place of Sarah-Jayne Williams was no more an act of direct discrimination than allegations 80 or 83 were.

846. Insofar as the issues with regard to CSIB forms and annual leave requests were concerned, there is absolutely nothing other than the Claimant's continued assertion to that effect that his disability had anything to do with those matters or that anyone else in the same circumstances but without that disability would have been dealt with any differently.

847. It follows that this complaint of direct discrimination also fails and is dismissed.

Allegation 88 – direct discrimination

848. This allegation is the fact that the Claimant contends that Mr. Marshall "refused to appropriately consider" his appeal against dismissal. Again, that is factually inaccurate. There was no refusal to consider the appeal and as we have already observed Mr. Marshall went to considerable lengths to deal with it. That included a relatively lengthy telephone appeal meeting with the Claimant and also allowing him the opportunity thereafter to make further representations and submit additional evidence.

849. In fact, the nub of this complaint is in reality that Mr. Marshall did not uphold the Claimant's appeal. However, it is clear that Mr. Marshall took into account the attempts to engage with the Claimant and to bring about a return to work and on the basis of the evidence available to him he reached an entirely reasonable and understandable conclusion that there was and still remained no evidence of a return to work being achievable within a reasonable time frame.

850. The Claimant contends that he was denied "basic rights" by Mr. Marshall because of his "disability and the associated stigma". However, there is absolutely no evidence of that at all. We are satisfied that Mr. Marshall took his decision on the basis of the evidence before him and reached a conclusion that was certainly open to him on the facts. There is nothing to support the Claimant's contention that his disability played any part in that decision or the way in which Mr. Marshall dealt with matters or that anyone else who had had a protracted period of absence, had not engaged with the AMP process and "with no evidence of a return to work being achievable within a reasonable time frame" would have had their appeal either upheld or dealt with differently.

851. It follows therefore that this complaint of direct discrimination also fails and is dismissed.

Allegation 89

852. The final remaining allegation of direct discrimination is that the Claimant contends that he was denied the opportunity to appeal against the award of nil compensation and that Dan Goad who considered the recommendation of Mr. Marshall to award nil compensation had based his decisions on matters that he "must have known to be untrue".

853. Firstly, the Claimant was not denied a right of appeal. The matter was passed to Mr. Goad to consider whether to agree with the decision made by Mr. Coughlin or not. It is fair to say that there was no appeal hearing with Mr. Goad but we accept that the consideration of issue of an award or otherwise of compensation is a matter that is dealt with on the papers in all cases and there is no hearing or meeting with the individual concerned and the ultimate decision maker. Moreover, by the time that Mr. Goad made his decision he had before him the recommendation made by Mr. Marshall as to the appeal against dismissal and the Claimant had

had a telephone appeal hearing with the latter at which he had been able to put across his position. The Claimant was therefore treated no differently or less favourably to anyone else, whether disabled or otherwise.

854. Insofar as this allegation might relate to the fact that the Claimant contends that Mr. Goad denied him a right of appeal to the CSAB against his decision on compensation, as we have set out in our findings of fact above, that was clearly not the case. The Claimant had been notified clearly by Mr. Oatley about how to deal with an appeal to the CSAB and the time limits for submitting such an appeal.

855. There can therefore be no reasonable suggestion that the Claimant was denied either an appeal by Mr. Goad or the ability to challenge his own decision to the CSAB.

856. Again, what the nub of this complaint is really about is the fact that Mr. Goad upheld the decision of Mr. Coughlin. We are satisfied that he did not make his decision on the basis of "information that he must have known to be untrue" given that, as we have found above, there was no "untrue" information provided at any stage.

857. Mr. Goad reached his conclusions on the basis that whilst he accepted that the Claimant had kept in touch, he did not consider that he had shown a sufficiently positive attitude or co-operation with Occupational Health services. Given the background as we have already set it out above in connection with the unfair dismissal claim above, that was an entirely reasonable and understandable conclusion to have reached in the circumstances. Again, other than the Claimant's general assertion that this is the case, there is absolutely nothing to begin to suggest that his mental health disability had anything to do with the decision or that someone in materially the same circumstances but without that disability would have had a different conclusion reached.

858. This aspect of the claim of direct discrimination therefore fails and is dismissed.

<u>Victimisation contrary to Section 27 Equality Act 2010</u>

859. We turn now to consider the complaints of victimisation. Many of these complaints overlap either wholly or in part with the allegations of direct discrimination but as the relevant legal tests differ, we have naturally looked at them separately.

860. We have already set out at the start of our conclusions above which of the acts the Claimant relies upon for the purposes of the victimisation complaints we have found to be protected acts and those which we have not. We have referred to all on which the Claimant relies as "protected act" and then the relevant number for ease of reference but that is not to

detract from our findings as to whether that complaint or issue was in fact an actual protected act for the purposes of Section 27 EqA 2010.

Allegation 43 - victimisation

861. We begin with allegation 43 which is a complaint that Emma Spear "refused to appropriately consider" his appeal against the decision of Lynn Coulby in respect of his third grievance.

862. The Claimant relies on the protected acts five through to 14. As we have found above, we are satisfied that only protected acts five, seven, ten, 12 and 14 were in fact protected acts for the purposes of Section 27 EqA 2010.

863. Emma Spear accepted in her evidence that she had seen or had knowledge of protected acts five, seven, 12 and 14. The Claimant did not put to her in evidence whether she had seen his email to HP on 2nd August 2016 but we find it likely that she did on the basis that it would doubtless have formed part of the evidence sent on to her so as to review the investigation carried out and conclusions reached by Lynn Coulby.

864. We begin by considering if the Claimant was subject to any detriment as a result of the actions of Emma Spear. We are satisfied that he was not. Emma Spear did not refuse to consider his appeal as is alleged. As we have already found above she dealt as thoroughly as she could with the appeal process given that the Claimant refused her offer to meet or discuss the grounds of appeal with him. She allowed him extra time to submit information and dealt as comprehensively as was possible in the circumstances with the grounds on which the Claimant challenged the decision of Ms. Coulby.

865. The real issue is that Emma Spear did not agree with the Claimant and uphold those points of challenge. However, as we have found above the decision that she reached was a reasonable one having regard to the circumstances of the matter and so to that extent, the Claimant's position amounts to no more than an unjustified sense of grievance which, as we have set out above, is insufficient to establish that he has been subjected to detriment (see again paragraphs 9.8 and 9.9 of the EHRC Code).

866. However, even had we found that the Claimant had been subjected to detriment, it is clear to us that that had nothing at all to do with the protected acts which we have found to be made out and of which Emma Spear was actually aware. The Claimant has not been able to put anything of substance to the suggestion that Ms. Spear was somehow motivated by his complaints of discrimination other than his generic position that the Respondent and all those who had material dealings with him took any means necessary to either close down or "viciously respond" to the doing of a protected act. As we have already set out above, we do not accept that there is any evidence of a culture of the nature alleged by the Claimant and, in fact, the evidence points squarely to the contrary.

867. We fully accept the evidence of Emma Spear that she considered the appeal on its merits and determined it accordingly. We accept her evidence that she was in no way influenced by the fact that the Claimant had made complaints of discrimination (whether in the complaints that we had found to be protected acts or otherwise) and, again, there is no evidence to the contrary other than the Claimant's repeated assertion to that effect.

868. For those reasons, this complaint of victimisation fails and is dismissed.

Allegation 44 – victimisation

869. This allegation is that the Claimant contends that he was being "portrayed as a danger to other staff without any evidence whatsoever being produced". He relies again, as with allegation 79 (direct discrimination) as examples of this the content of an email from Sarah-Jayne Williams of 7th March 2017; a letter from Mary Aiston on 8th March 2017; submissions made to Tom Oatley (by RW, HP and Monique Deveaux) and in Mr. Oatley's conclusions in the dismissal letter.

870. As we have already set out in connection with allegation 79 above, the Claimant was not being "portrayed as a danger" and not one of the items of correspondence relied upon (or generally) could be reasonably read as suggesting that.

871. We do not rehearse the same conclusions on the reasonableness of the course of action of asking the Claimant to moderate the tone of his communications as we have at allegation 79 above but the precise same considerations apply.

872. We begin against that background with the question of whether the Claimant was subjected to a detriment. Again, it is difficult to reach any other conclusion given the circumstances that the Claimant's issue with the correspondence to which he refers (and that of Mary Aiston particularly) is anything other than an unjustified sense of grievance.

873. However, to any extent that we had found that it was, we would need to consider he Claimant relies on each of the 34 acts that he contended were protected acts but it is clear that it was not the fact that he had made complaints of discrimination (whether in those acts or the ones that we found to be protected acts within the meaning of Section 27 EqA 2010) that led to Mary Aiston referring to the Vexatious Complaints Procedure and the Claimant otherwise being asked to moderate his tone. The problem was the volume, tone, content and impact of those communications. By content, we mean for example the repeated assertions that various people and the Respondent generally were trying to force the Claimant to commit suicide, his escalation and the use of confrontational and unfair language and allegations.

874. We accept the evidence of the Respondent's witnesses that they were not motivated by any of the complaints of discrimination that he had made and the Claimant was not able to put any positive case to them (or generally) other than this was part of the general campaign or culture which we have already found not to exist above. There is no evidence of any conscious or subconscious motivation on their part and the actions taken were not influenced in any way (let alone to a significant extent) by the Claimant's complaints of a breach of the Equality Act 2010. It is perhaps noteworthy in this regard that the Claimant has sought to rely on all 34 claimed protected acts as motivating the treatment of which he complains without any real thought as to the logic of that in terms of knowledge of them or acts which post-date the victimisation complained of. For example, Mary Aiston, Sarah-Jayne Williams, HP, RW and Monique Deveaux cannot possibly have been motivated by the Tribunal proceedings which were only begun months after their involvement or the Mental Health Action Plan whose recipients were unknown.

875. We are therefore entirely satisfied that there is nothing at all before us which begins to suggest any influence, let alone significant influence, on any of the people referred to in this allegation of the fact that the Claimant had done a protected act or acts.

876. This allegation of victimisation therefore fails and is dismissed.

Allegation 45 - victimisation

877. This allegation concerns the email sent to the Claimant by Sir. Jon Thompson on 14th November 2016. We have not heard evidence from Sir. Jon Thompson and so we shall presume for these purposes that he was aware of the protected acts on which the Claimant relies. Within the schedule of allegations those are set out as being protected acts one to 26 but we have only found numbers 3, 4, 6, 7, 12, 16, 17, 20, 21, 22, 23 and 24 to be protected acts. The latter two were emails to Sir. Jon Thompson himself.

878. We begin by considering if the response of Sir. Jon Thompson amounted to a detriment. The Claimant contends that it does on the basis, as we understand it, that what Sir. Jon Thompson had told him that matters were being looked into in line with policies was untrue.

879. As we have already set out in our findings of fact above, this is entirely a matter of semantics. It is obvious from the evidence before us that Sir. Jon Thompson's email was taken from what he had been told about the matter from Human Resources. That is not unusual and we would not expect or anticipate the Chief Executive Officer of a vast organisation such as to the Respondent to look into matters in detail personally. It is entirely in keeping with normal practices – and we can take judicial notice of our experience in cases such as this – for there to be reliance on what a senior figure has been told by HR.

880. It also cannot be reasonably said by any stretch that what Sir. Jon Thompson wrote to the Claimant was untrue. Again, against that background the content of the email cannot be said to be a detriment. It caused him no disadvantage at all given that all the email did was to set out what the Claimant already knew – that his complaints were being dealt with under the relevant processes (albeit not to his satisfaction either at the time or eventually but that is not to the point).

881. Moreover, the Claimant is not able to advance any positive case as to how it could be reasonably said that the protected acts relied upon in any way influenced what Sir. Jon Thompson had told him in the email in question. Again, his position amounts to no more than his general contention that the email was termed as it was because the Respondent *"does not allow attempts to undertake protected acts and uses an extremely aggressive, damaging response, supported by Sir. Jon Thompson, to any attempt to do so".* Again, we have already rejected that there was any such culture or response inherent within the Respondent nor could the email from Sir Jon Thompson reasonably be interpreted in that way.

882. It follows that there is nothing to support the Claimant's contention that the email of 14th November 2016 was in any way at all motivated (let alone significantly influenced) by the complaints which we have found to amount to protected acts.

883. It follows that this complaint of victimisation also fails and is dismissed.

Allegation 46 - victimisation

884. This allegation is very similar of course to allegation 78 relating to the complaint of direct discrimination given that it involves what the Claimant terms as the refusal of Jennie Granger to consider his grievance raised on 18th January 2020. As we have already set out above, the reason why Ms. Granger did not become involved in the matter was because she was on leave – a matter that the Claimant was aware of from correspondence from Mr. Gatter and Mr. Coughlin.

885. Given that leave, Mr. Gatter passed the matter on for it to be dealt with by someone other than Ms. Granger. Ms. Granger did not therefore "refuse" to deal with the Claimant's correspondence and cannot be reasonably criticised for not having answered or addressed it whilst she was on leave. Even less so can it reasonably be said that she was influenced by the fact that the Claimant had made a complaint about discrimination or otherwise done a protected act.

886. Therefore, this complaint of victimisation also fails and is dismissed.

Allegation 47 - victimisation

887. This allegation relates to the decision to impose the SPOC arrangements which was conveyed to the Claimant by Dan Coughlin on 28th January 2017. It is no longer alleged by the Claimant that Mr. Coughlin was influenced by the protected acts upon which he relies but instead that he relied on tainted information from Jamie Gracie and Melanie Clare within the Case Review document in respect of which they themselves had been so influenced.

888. As we have observed above, we are satisfied that the decision to put in place the SPOC arrangements was one taken by Mr. Coughlin based on the information within the Case Review documentation but that it was open to him, had he considered it appropriate, to reject the recommendation to put those arrangements in place.

889. The Claimant contends that the putting in place of the SPOC arrangements amounted to a detriment to him on the basis that:

a. Supportive telephone contact was refused;
b. He was refused confidential payslips;
c. There was a refusal to provide him with access to a confidential mailbox for his Fit Notes; and
d. There was a refusal to apply "mandatory guidance".

890. We are satisfied that none of those matters were factually accurate. The Claimant was not refused "supportive telephone contact". He had a KIT contact in Ms. Deveaux and we have little doubt that she would have held a further telephone conversation with the Claimant had he asked for it. There is no evidence of him making any request that was refused. She also sought to meet with him under the AMP process but the Claimant did not engage.

891. The Claimant was also not refused confidential payslips. The position was simply that he received one payslip as an email attachment from Sarah-Jayne-Williams rather than receiving it through the post from another source. That cannot be said to a breach of his confidentiality.

892. The Claimant was also not refused access to a confidential mailbox for his Fit Notes. He was simply asked to provide them to Sarah-Jayne Williams for her attention at her office address as opposed to them being sent to the mailbox to be sent on to her. If anything, that reduced the risk of anyone else seeing the Fit Notes who should not have. There was also no refusal to apply "mandatory guidance" and it remains unclear what the Claimant means by that.

893. However, the SPOC arrangements clearly did not disadvantage the Claimant. Indeed, he had asked for them to be put in train in the first place. They were designed to support him by channelling communication through one individual which was entirely reasonable given the circumstances and,

particularly, the restriction on timing of contact with the Claimant and his representations that he found receiving multiple emails from multiple different people stressful. There was therefore no detriment to the Claimant and, again, his position amounts to no more than an unreasonable sense of grievance.

894. However, even if we had not reached that conclusion there is again no evidence at all that either Ms. Clare or Mr. Gracie had in mind any of the Claimant's complaints of discrimination when making the recommendation about the SPOC. The nature of the complaints was not the issue but, akin to the position of Mary Aiston and the Vexatious Complaints Policy, more the escalation and effect on others. Given that the Claimant had asked for the SPOC arrangements in the first place, they also could not have possibly known that he would find them objectionable once put in place by Mr. Coughlin.

895. Again, other than the Claimant's repeated assertion that the SPOC arrangements were put in place because of a commitment *"to enforcing the Respondent's culture of responding to protected acts with victimisation"*, there are absolutely no facts or evidence whatsoever to support that contention.

896. Therefore, the putting in place of the SPOC arrangements (and the recommendation to do so) were not acts of victimisation and this aspect of the claim also fails and is dismissed.

Allegation 48 - victimisation

897. This allegation concerns the Claimant's assertion that Mr. Bowes provided "blatantly untrue" information to Lynn Coulby as part of her investigation into the third grievance.

898. As we have already found above, that is factually inaccurate. The information that Mr. Bowes gave to Lynn Coulby was his genuine assessment as to the catalyst for the Claimant's grievance. Whilst the Claimant does not agree with that assessment, that does not detract from the fact that it cannot be a detriment to him for Mr. Bowes to have expressed his genuine opinion as part of Lynn Coulby's investigation. It was then a matter for Ms. Coulby to assess that evidence against the remainder of the information collated. There was accordingly no detriment to the Claimant as any issue regarding the information provided is nothing more than an unjustified sense of grievance.

899. However, had we concluded differently we have gone on to consider whether in providing the information that he did, Mr. Bowes had been in some way motivated by the complaints of discrimination that the Claimant had raised.

900. Whilst the Claimant relied on a number of protected acts within the schedule of allegations, he only put to Mr. Bowes that he had knowledge of protected acts 5, 6, 7 and 8. Mr. Bowes accepted that he had seen those documents.

901. However, the Claimant failed to put to Mr. Bowes any basis upon which he was said to have been influenced by the complaints set out within those documents (although we observe that we have found only the fifth and seventh to in fact be protected acts within the meaning of Section 27 EqA 2010).

902. That was most likely on the basis that it was clear from Mr. Bowes' evidence that he said what he said because it was his genuine opinion. There can be no reasonable suggestion that he only did so because he was in some way influenced by any of the acts that the Claimant has relied on as protected acts. There is, quite simply, no evidence to that effect and we accept the evidence of Mr. Bowes that his statement to Ms. Coulby was in the form that it was because that is what he believed at the time and still believes now.

903. Accordingly, it follows that this complaint of victimisation also fails and is dismissed.

Allegation 49 – victimisation

904. This allegation of victimisation relates to the content of Sarah-Jayne Williams' email of 7th February 2017. Although the narrative description of the email differs, the underlying complaint that it was "totally inappropriate due to its size, scope, contents and tone" are the same as those made in respect of allegation 81 (direct discrimination) which we have already determined above.

905. We do not rehearse those matters again here as it is unnecessary to do so but suffice it to say that we cannot agree the Claimant's assessment that it was at all inappropriate whether with regard to size, scope, content, tone or otherwise.

906. Furthermore, there was no detriment to the Claimant in receiving this email for the same reasons as we have already also set out in connection with allegation 81 above. His complaint about the matter again simply amounts to no more than an unjustified sense of grievance and so the complaint fails for that reason alone.

907. However, had we not made that finding then we have gone on to consider if the way in which the letter was written was in any way influenced by the complaints of discrimination which the Claimant had raised.

908. Despite reliance in the schedule of allegations to a number of protected acts, the Claimant only took Sarah-Jayne Williams to numbers 14, 23, 32, 34, 35 and 36. The remainder of the protected acts were not referred to by the Claimant in cross examination of Ms. Williams despite reminders to him that that would be necessary if he continued to rely on all of them.

909. Of those that he did raise with her, we have found all to amount to protected acts with the exception of number 14. We accept the evidence of Sarah-Jayne Williams that she was not aware of protected act 23 because she was not involved in any investigation of the matter. Her evidence as to protected act 32 was that she might have received this email but that she could not recall it. Her evidence regarding protected act 35 was that she probably saw that email as it was probable that Mike Potter forwarded it to her as SPOC and with regard to protected act 36 she accepted that she was aware through the Claimant's emails that he intended to submit Employment Tribunal proceedings but that this was not of concern to her as it goes with the territory of the job in HR and many proceedings are threatened but not carried through.

910. We turn then to whether Sarah-Jayne Williams was influenced by those protected acts that she did have knowledge of.

911. Again, it is clear from the schedule of allegations that the Claimant again relies only on the overarching contention that anyone who had dealings with him within the Respondent were part of a culture aimed at stopping or punishing those who raised discrimination complaints. We have already made it plain above that there was no such culture but it is also clear from the evidence of Sarah-Jayne Williams that she personally had no negative issues regarding those who raised complaints of discrimination and that, insofar as they were complaints against her, that was simply part and parcel of her HR role. She had had complaints in the past, albeit none that were upheld, and took no issue with the Claimant's complaints.

912. It follows that this complaint of victimisation also fails and is dismissed.

Allegation 50 - victimisation

913. This allegation centres on the failure of Jan Beasley to reply to the Claimant's email of 22nd February 2017. The only protected act put to Ms. Beasley was the email of 22nd February 2017 itself which Ms. Beasley clearly accepted that she had seen because it was sent to her. We have found that email to amount to a protected act within the meaning of Section 27 EqA 2010.

914. We turn therefore to consider whether the failure to reply was a detriment to the Claimant. Whilst we accept that Jan Beasley did not feel a need to reply on the basis that Sarah-Jayne Williams was going to address all open issues with the Claimant, we accept that her failure to reply directly was a detriment to the Claimant because it made him feel ignored and that his entreaties to Ms. Beasley were going unaddressed.

915. We have therefore carefully considered if the reason for failing to reply to the email was because it contained allegations of discrimination. We are satisfied that the failure to reply was not in any way influenced by that. We accepted Ms. Beasley's evidence that complaints of that nature and generally come with the territory in a Human Resources position and that the reason that she had not replied was as we have already set out above.

916. Again, the Claimant has raised no facts or matters to suggest that Ms. Beasley was in some way influenced by his complaints of discrimination. He simply asserts that the reason for ignoring his email was because he had "*undertaken protected acts and was therefore regarded as someone attacking HMRC and who must be aggressively repelled, all attempts at undertaking a protected act be prevented by blocking communication….".*

917. Whilst the Claimant may well believe that to be the case, there is absolutely nothing of substance to that contention. It amounts to nothing more than a repeat of the general contention that the whole of the Respondent (or at least those dealing with the Claimant) are negatively predisposed towards those raising complaints of discrimination or seeking to enforce their rights in that regard. As we have already found, there is no such culture and we do not accept that any complaints of discrimination in any way influenced Jan Beasley in her decision not to specifically reply to the Claimant's email.

918. It therefore follows that this allegation of victimisation also fails and is dismissed.

Allegation 51 - victimisation

919. The next allegation relates to a further email from Sarah-Jayne Williams this time dated 28th February 2017. This allegation is in more than one part and comprises the following complaints of victimisation:

a. That Sarah-Jayne Williams refused to appropriately consider and support the Claimant who was suffering from a mental health disability;

b. That she refused to end the SPOC arrangements; and

c. That she refused to take appropriate action including accepting and considering a formal grievance.

920. Essentially, this is the same complaint as allegation 83 (direct discrimination) and so we do not rehearse here the factual conclusions which we reached above in respect of that complaint. However, suffice it to say that we did not consider anything about the email in question to be inappropriate or unsupportive.

921. We are also entirely satisfied that the content and way in which it was delivered was in no way motivated by any of the protected acts which the Claimant put to Sarah-Jayne Williams in evidence (see allegation 49

above) and which we have found to be protected acts. The Claimant was not, therefore, put at any detriment or disadvantage by the content or tone of the email or by any other aspect of it and any complaint that he has in connection with the same amounts again to no more than an unjustified sense of grievance.

922. The Claimant again relies on a *"lengthy, concerted campaign of victimisation"* that was directly linked to his "attempts to undertake protected acts" and that the email from Sarah-Jayne Williams was part of an "enforcement" of that culture. Again, however, aside from that general assertion and belief that the Claimant holds, there are no underlying facts which support it either in respect of Sarah-Jayne Williams or the Respondent more generally.

923. We accept that Sarah-Jayne Williams was simply doing her best in difficult circumstances to deal with the Claimant in accordance with the SPOC arrangements. Whilst she ultimately carried out those SPOC responsibilities, it was neither her decision to put the arrangements in place or continue with them (those were decisions of Mr. Coughlin and, on review, by Jan Beasley) and she prepared the email which the Claimant finds objectionable in the way that she thought would best deal with the outstanding issues.

924. There is absolutely nothing whatsoever to begin to suggest that Sarah-Jayne Williams was in any way motivated in the sending of this email by the fact that the Claimant had done a protected act or acts.

925. It follows therefore that this allegation of victimisation also fails and is dismissed.

<u>Allegation 52 – victimisation</u>

926. This allegation relates to the decision of IG to refer the Claimant's complaint to Human Resources despite the fact that he wanted the matter to remain confidential and had made that plain in his letter.

927. The detriment of which the Claimant complaints in respect of this issue is the breach of his confidentiality and the refusal to consider his allegations and subsequent complaints. We are satisfied that the Claimant was subjected to a detriment in respect of the breach of his confidence because it is plain that he had asked for his confidentiality to be respected and he was entitled to assume that it would be.

928. However, we do not accept that he was subject to detriment in respect of his allegations within the complaint itself and subsequent complaints not being addressed by IG. In respect of the former, the matters were already being addressed via other processes within the Respondent as we have already observed above. The fact that the Claimant did not agree with the way in which matters were being progressed or the eventual outcome is not to the point; they were nevertheless being addressed and dealt with.

929. IG identified that the Claimant's complaints were personal matters suited to grievances and not whistleblowing complaints which they were responsible for considering and investigating. As such, IG did not "refuse" to deal with anything.

930. Insofar as the second point is concerned, it is presumed that that refers to the complaints that the Claimant made in respect of his confidentiality being breached (again without a witness statement and with a somewhat shifting sands case it is on occasions difficult to be certain) but of course those matters were addressed by Wayne Vernon and Julie Digby. Whilst, again, the Claimant does not agree with the decision that either officer made, that is not a matter of detriment and to that degree is nothing more than an unjustified sense of grievance.

931. We turn then to consider whether the decision to refer the matter to Human Resources in contravention of the Claimant's request was materially influenced by the fact that he had done a protected act or acts. The Claimant relies directly upon the same email that was sent to IG. The issue, therefore, would have to be that because the report contained allegations of discrimination, that this influenced the decision of IG to breach the Claimant's confidentiality and send the matter to HR.

932. Again, there is no evidence of that and the Claimant has not been able to point to any facts (or indeed anything other than a general contention) to suggest that the allegations of discrimination contained in his complaint letter had any bearing over the decision. Indeed, as we have already set out in connection with allegation 84 (direct discrimination) the reason why IG referred the matter to Human Resources was because there was concern that the Claimant had made references to suicide. That is abundantly clear from the email from EH to which we have referred in our findings of fact above. The matter was accordingly referred to Human Resources because they were best placed to advise in relation to those matters and, to a lesser extent, they had oversight of the other ongoing processes involving the Claimant and the various grievances raised. There can be no reasonable suggestion that the same action would not have been taken for someone who had made references to suicide but who had not done a protected act and there is no evidence at all to suggest to the contrary. As we have already remarked, EH's email as to the reason for that referral to CSHR is abundantly clear on that point.

933. In addition to reliance on the complaint to IG itself, the Claimant also contends that the action taken was "as a direct result of all protected acts undertaken to that date" and relies upon that as "further evidence of the culture of victimisation in response to its employees undertaking protected acts". Again, we can dismiss that contention in relatively short form given that we have found there to be no such culture and, in all events, there is absolutely no evidence of those earlier complaints being within the knowledge of IG. There is no evidence of such a culture let alone evidence that the decision of IG was in any way anything to do with any of the

protected acts that we have found to be made out or, more generally, any upon which the Claimant relies. The Claimant's complaint in that regard belied something of a rather scattergun approach.

934. It follows that this complaint of victimisation also fails and is dismissed.

Allegation 53 - victimisation

935. Akin to allegation 85 (direct discrimination) this allegation concerns the letter from Mary Aiston of 7th March 2017. It is similar in content but focuses upon the decision of Ms. Aiston that further complaints that the Claimant continued to raise would not be dealt with and that the focus would be on the existing grievances which were already in train and bringing those to a timely conclusion.

936. The Claimant did not have all rights to challenge matters removed as he suggests within this allegation. It is true to say that his access to raise further matters at that stage as formal grievances under the Respondent's Grievance Procedure was limited but that was simply born from the fact that it was necessary to limit consideration of the Claimant's complaints to the ones that were already being investigated as otherwise the situation was at risk of spiralling out of control. It was a situation that the Vexatious Complaints Policy was designed to address.

937. As we have already observed in the context of allegation 85, the concern of Ms. Aiston was that by the Claimant continually raising new issues and grievances sight would be lost of the original grievances that were still being determined and which it was important to bring to conclusion. Given that the Claimant had sought to raise a grievance about almost every action taken by the Respondent and any individual with any involvement, that was an understandable concern.

938. As such, we accept the submissions of Mr. Beever that there was no detriment to the Claimant because his concerns in that regard amount only to an unjustified sense of grievance and the situation was designed to assist him in concluding the existing complaints at the earliest opportunity rather than overcomplicating and protracting the issue. It was obvious that matters needed to be resolved sooner rather than later with the emphasis then being on bringing about a return to work.

939. However, had we not reached that conclusion as to there being no detriment to the Claimant, we have gone on to consider if the decision to limit the Claimant's grievances to those already in train was influenced by the fact that he had made a complaint or complaints of discrimination.

940. The Claimant relies in this regard on his letter to Mary Aiston of 16th September 2016. We have determined that that was a protected act. However, it is notable that the Claimant also sets out that he relies on *"potentially others* [protected acts] *dependant* [sic] *upon MA's access to them and input from other people".* We raise that only as it is indicative of

the Claimant's somewhat scattergun approach to the complaints that he brings in these proceedings as little thought appears to have been given as to the factual basis of any material influence that the various acts relied on actually had.

941. Again, other than the Claimant's general assertion that there was a campaign of victimisation and the letter from Mary Aiston was part of that in order to "silence" him, there is absolutely nothing to suggest that the decision of Ms. Aiston to limit consideration of the complaints to those that were already in train had anything to do with the fact that he had made complaints of discrimination. Indeed, as we have set out above we accept the evidence of Mary Aiston that she welcomes challenges from employees where it was appropriate to do so.

942. We also accept her evidence that the reasons for writing in the terms that she did was the fact that the escalation was impacting on facilitating the Claimant's return to work; concluding existing grievances and the upsetting impact that his communications had had on RW and others.

943. There is therefore no evidence at all that the fact that the Claimant had made a complaint of discrimination had any influence on the way in which Mary Aiston approached this matter or the decision that she took.

944. It therefore follows that this complaint of victimisation also fails and is dismissed.

Allegation 54

945. This allegation relates to the decision of Mr. Oatley to dismiss the Claimant. It is again very similar in nature to the complaint of direct discrimination at allegation 86 with which we have already dealt above. The basis of the allegation is that Mr. Oatley "refused to apply mandatory guidance" resulting in his dismissal of the Claimant when that was not an option open to him.

946. Whilst we accept that the Claimant's dismissal was a detriment, we reach the same conclusions as we have in respect of allegation 86 above regarding the Claimant's contention that Mr. Oatley refused to apply "mandatory guidance" or that the decision to dismiss was not open to him.

947. We do not repeat those same conclusions here but suffice it to say as we did with allegation 86, we do not find that there can be any reasonable suggestion that Mr. Oatley refused to apply mandatory guidance or that dismissal was not an option open to him. It clearly was under the AMP process and, as we have concluded in respect of the unfair dismissal claim, it was a decision which fell squarely within the band of reasonable responses.

948. However, had we not made that finding we have gone on to consider if the decision was in any way influenced by the fact that the Claimant had done a protected act or acts.

949. For the purposes of this allegation, the Claimant set out in his schedule of allegations that he relies on all protected acts. That was not on any particular logical or factual basis but because it is said that Mr. Oatley was *"required to consider all correspondence, take all matters into account and was guided by others"*.

950. As it was, in cross examination the Claimant only put a handful of the protected acts on which he relied. Those were:

a. Number 35 which was an email to Michael Potter dated 10th March 2017. Mr. Oatley's evidence before us on 16th July 2019 was that he believed that he was aware of that because it was in the referral papers. The Respondent concedes that that was a protected act;

b. Number 33 which is an email to Phillip Rutman dated 1st March 2017. We accept Mr. Oatley's evidence that he was not aware of and had not seen that email; and

c. His grievances. Mr. Oatley's evidence, which we accept, was that he was aware of the existence of grievances but had not seen them and was not aware of their substance.

951. The only protected act which Mr. Oatley was therefore aware of in substance was the email to Mr. Potter. The Claimant has not advanced any positive factual case as to how that (or indeed any of the other protected act or acts relied upon) were said to have influenced Mr. Oatley in reaching his decision to dismiss.

952. Again, the Claimant relies only on his overarching case that any challenge *"results in a vicious response designed to ensure that no challenge or protected act can succeed".* Again, there is no evidence to that effect and we are entirely satisfied that the contention is factually inaccurate for the reasons that we have already given elsewhere in this Judgment.

953. Insofar as Mr. Oatley specifically is concerned, the Claimant's position is that his dismissal had already been decided and Mr. Oatley was *"a willing participant in ensuring the Respondent's plan was brought to fruition".* Again, we are satisfied that that is factually inaccurate. Mr. Oatley alone took the decision to dismiss and did so on the basis of the information available to him at the time and, particularly, the fact that there was no evident prospect of a return to work within a reasonable period of time. There is no evidence at all that the decision was pre-judged By Mr. Oatley, pre-determined by someone else or was in any way influenced by the Claimant's email to Mr. Potter or, indeed, any of the other protected acts on which he relied.

Allegation 55 - victimisation

954. This allegation relates to the actions of Sarah-Jayne Williams in that the Claimant asserts that she "attempted to restrict the information to be considered" as part of his appeal against dismissal. It is difficult to understand the scope of this allegation given the rather generic description given to it and again we were not assisted by having a witness statement from the Claimant or any precision within the schedule of allegations setting out the crux of this issue.

955. Within that schedule, the Claimant places dates on these incidents of 3rd August and 8th August 2017. There was email correspondence between the Claimant and Sarah-Jayne Williams on those dates. The correspondence on 3rd August 2017 included a request for correspondence from the Claimant to be sent to Ian Marshall by Sarah-Jayne Williams. She sent those items of correspondence on as the Claimant had requested. That included a copy of an email to Mike Potter of 31st July 2017 and Mr. Marshall accepted in his evidence that he had seen that.

956. However, there is no evidence at all that Sarah-Jayne Williams restricted or in any way attempted to restrict the evidence that was put before Mr. Marshall as part of the appeal or that the Claimant sent something to her that she did not pass on. The Claimant has not in this regard identified anything that he says was passed to Ms. Williams that she did not share with Mr. Marshall. It is clear from her email to the Claimant of 2nd August 2017 that she had provided him with a copy of the Claimant's appeal and minutes of the meeting that he had with Mr. Rhodes and we accept her evidence that other than what was sent directly by the Claimant, she did not have anything else to provide to him. The other documentation relating to the dismissal was passed directly to Mr. Marshall by Jamie Gracie in his capacity as HR caseworker and point of support to the appeal manager.

957. Insofar as any aspect of this allegation might relate to the letter from Sarah-Jayne Williams to the Claimant of 18th September 2017, that was not a restriction on information to be provided to Mr. Marshall but a further reminder of the SPOC arrangements and that the appeal hearing would be the Claimant's final opportunity to submit information about the appeal (although in point of fact Mr. Marshall allowed the Claimant additional opportunity after the appeal hearing). Those were not attempts to restrict information but simply a statement of the position of which the Claimant was already aware.

958. The real issue, it seems to us, with regard to this complaint is that the Claimant was being asked to submit evidence and communications to and from Mr. Marshall in accordance with the SPOC arrangements to which he continued to object. Indeed, he made it plain in emails to Mr. Marshall that he objected to that arrangement and requested direct contact.

959. However, that does not amount to "restricting" the information to be considered as part of the appeal. Ms. Williams was simply acting as a conduit for information to be provided and there is no evidence that she failed to supply anything that she was asked to send to Mr. Marshall.

960. Moreover, Sarah-Jayne Williams was not the decision maker in respect of either the initial decision to put in place the SPOC arrangements nor to continue with them. That fell to Mr. Coughlin and to Ms. Beasley on review as we have already observed above.

961. It was also not her decision, but that of Mr. Marshall, to request additional evidence from the Claimant by 1st September 2017 (i.e. only two days after he had returned from a period of annual leave). That was a decision of Mr. Marshall communicated to Ms. Williams on 10th August 2017 and promptly relayed by Ms. Williams to the Claimant the following day.

962. We are therefore satisfied that this aspect of the claim is factually inaccurate and that there was no detriment to the Claimant because there was no restriction of any information by Sarah-Jayne Williams or otherwise. The Claimant sent information to her to be passed to Mr. Marshall and it was passed on; the Claimant emailed Mr. Marshall directly on 7th and 13th September 2017; he had an appeal hearing with Mr. Marshall and was given the opportunity to both be heard and to submit further information or evidence after the hearing.

963. As such, the Claimant was not subjected to any detriment because there was no restriction or attempts to restrict the information to be considered as part of the appeal.

964. Furthermore, it is clear that the actions of Sarah-Jayne Williams were simply in keeping with the SPOC arrangements and, other than the Claimant's generic assertion, there is absolutely nothing to suggest that that had anything at all to do with either the protected acts that we have found to be made out or any of those that are alleged and relied upon by the Claimant.

965. It follows that this aspect of the claim also fails and is dismissed.

<u>Allegation 56 - victimisation</u>

966. This allegation relates to the decision of Mr. Marshall to dismiss the Claimant's appeal. We are able to deal with the factual issues in respect of this allegation in relatively short form given that it is the precise same complaint as appears at allegation 88 of direct discrimination.

967. For the same reasons as we set out in relation to dismissal of allegation 88, we do not accept that Mr. Marshall "refused to appropriately consider the appeal and apply mandatory guidance".

968. In short terms, we are satisfied that Mr. Marshall took his decision to uphold the decision made by Mr. Oatley after his review on the basis of the evidence before him and we are similarly satisfied that he reached a conclusion that was certainly open to him on the facts.

969. Moreover, there are again no facts or matters advanced by the Claimant to suggest that Mr. Marshall was in any way influenced by any protected act that the Claimant had done. Again, this amounted to no more than the repeat of the Claimant's generic contention that the Respondent as a whole (or at least those who dealt with him) were negatively pre-disposed to those who raised complaints of discrimination. The Claimant in this regard contends that *"the punishment for undertaking protected acts had been decided some time before and* [Mr. Marshall] *was willingly undertaking his designated role".*

970. We are satisfied that that is factually inaccurate. We accept that Mr. Marshall made the decision of his own volition and without any predetermination, pressure or influence from anyone else. Amongst other things, that is evidenced by his lengthy appeal hearing with the Claimant and his invitation to him to submit further information or documentation after the hearing for consideration.

971. The only protected act put to Mr. Marshall by the Claimant in any meaningful way was the fact that he had issued Employment Tribunal proceedings. We accepted Mr. Marshall's evidence that whilst he had been aware of that, he had not seen the Claim Form and he had not known anything of the substance of the allegations or that they contained complaints of discrimination at the time that he had taken his decision to dismiss the appeal. The fact that the Claimant had made a complaint of discrimination was therefore not known to Mr. Marshall at the material time and so cannot possibly have influenced him in any way in respect of either the way that he dealt with the matter or the decision that he came to.

972. Furthermore, other than the generic argument already set out and dismissed above, there are no facts or evidence to support the Claimant's assertion that the doing of any protected act had anything to do with the way in which Mr. Marshall approached the appeal or his decision.

973. It follows that this allegation of victimisation also fails and is dismissed.

<u>Allegation 57 - victimisation</u>

974. This allegation related to the letter from Mr. Goad of 23rd October 2017 which confirmed the decision to award nil compensation under the Civil Service Compensation Scheme. The Claimant's position is that there was "no basis" for that decision and that the evidence used was "blatantly untrue" and that Mr. Goad denied him a right of appeal to the CSAB.

975. This complaint is, in essence, the same as allegation 89 (direct discrimination). We reach the same conclusions on this allegation as we did in respect of allegation 89 as to the factual accuracy of the Claimant's complaints. For the avoidance of doubt, as we have already found above the decision of Mr. Goad was one that was open to him on the evidence before him; was not based on untrue information and in no way denied the Claimant a right of appeal to the CSAB which had already been notified to him some time earlier by Mr. Oatley.

976. Accordingly, the Claimant was not placed at any detriment because he had already been told about his right of appeal and how to exercise it and the decision of Mr. Goad was one which was not unreasonable and was clearly open to him. Again, whilst the Claimant is clearly aggrieved at the decision in the circumstances that amounts to no more than an unjustified sense of grievance. There was, therefore, no detriment.

977. However, had we not reached that conclusion we have gone on to consider whether the decision of Mr. Goad or the timing of that decision was influenced by the Claimant having done a protected act. The protected act relied upon is the issuing of Employment Tribunal proceedings and *"potentially others dependent upon information and 'advice' provided to* [Mr. Goad]*"* (see schedule of allegations at Schedule Two). No other specific protected acts or alleged protected acts were put to Mr. Goad by the Claimant during cross examination other than him having issued Employment Tribunal proceedings (and then only when reminded by the Tribunal that he would need to do so).

978. Mr. Goad's clear and unchallenged evidence, which we accept, was that he was not aware of the ET1 Claim Form at the time that he took his decision on nil compensation and that he was only aware of that much later when asked to do his witness statement. As he therefore had no knowledge of the protected act relied on, it cannot possibly be the case that he was influenced by it. That of itself is sufficient to determine this particular complaint.

979. However, again the Claimant advances no positive factual case as to the reason(s) why he contends that Mr. Goad was influenced by the issue of Tribunal proceedings. Again, his position is simply a generic assertion that Mr. Goad was *"a willing participant in the campaign of victimisation designed to cause the maximum damage to [his] mental health and wellbeing, [his] family and potentially [his] life"* and that the decision was part of a *"clear, concerted campaign of victimisation*". As we have already found above, there is no evidential basis for that position.

980. It follows that this final complaint of victimisation therefore also fails and is dismissed with the result that the claim is dismissed in its entirety.

981. We would observe on a final note that we acknowledge that this decision will come as a considerable disappointment to the Claimant and we have

no doubt as to his strength of feeling about what he perceives as the unfairness of his treatment by the Respondent and that he considers all aspects of actions taken to have been discriminatory. We also have no doubt that he has invested emotionally in these proceedings and we recognise that he feels that his professional, and to some extent personal, life is on hold until they conclude. For that reason, we have set out our decision, and our findings of fact particularly, at some considerable length in the hope that that will allow the Claimant to fully understand the reasons why we have reached the decision that we have.

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Employment Judge Heap

Date: 17th March 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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SCHEDULE ONE

RESERVED **Case No: 2600403/2017**

MR. A TEAGUE

Claimant

v

HMRC

Respondent

LIST OF ISSUES

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1. Section 13: Direct discrimination because of the protected characteristics of disability:

1.1. Has the Respondent subjected the Claimant to the following treatment falling within section 39 Equality Act, namely*:*

1.1.1 Subjecting the Claimant to the treatment complained of at complaints 76 to 89 of the Schedule of Allegations[29]?

1.2. If so, has the Respondent, in treating the Claimant as complained of at 1.1.1 above, treated him less favourably than it treated or would have treated an appropriate comparator or comparators (either actual or hypothetical)[30]?

1.3. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic of disability.

1.4. If the Claimant has proved facts from which the Tribunal is able to draw an inference of discrimination on the grounds of disability and the Claimant has therefore reversed the burden of proof, what is the Respondent's

[29] The Schedule of Allegations being the table delivered to the Tribunal under cover of an email from the Respondent's representatives of 4th February 2019.

[30] The Claimant appears to rely on hypothetical comparators for all complaints other than allegation 79 in which he relies on an actual comparator, or in the alternative, a hypothetical comparator. The Claimant confirmed on day 11 of the hearing that he relies only on hypothetical comparators with the exception of allegation 79.

explanation? Does it prove a non-discriminatory reason for any proven treatment?

2. Section 27: Victimisation

2.1. Did the Claimant do a protected act by all or any of the following[31]:

(i) The Claimant's first grievance dated 5th June 2014;
(ii) The Claimant's second grievance dated 12th October 2014;
(iii) The Claimant's document – Comments on Mental Health Action Plan – Large Business dated 12th February 2016 (pages 229 to 239 of the hearing bundle)[32]
(iv) The Claimant's third grievance dated 4th May 2016;
(v) An email to HP on 17th June 2016;
(vi) HRACC1 Form dated 28th June 2016;
(vii) HRACC1 Form dated 15th July 2016;
(viii) A text message from the Claimant to Tim Bowes dated 20th July 2016 (page 337 of the hearing bundle);
(ix) A conversation with HP on 22nd July 2016;
(x) An email to HP dated 2nd August 2016;
(xi) An email from the Claimant to AL dated 3rd August 2016 (page 365 of the hearing bundle);
(xii) An email from the Claimant to AL dated 3rd August 2016 (page 366 to 369 of the hearing bundle);
(xiii) An email from the Claimant to AL dated 12th August 2016 (page 375 to 377 of the hearing bundle);
(xiv) The Claimant's fourth grievance dated 6th September 2016;
(xv) An email from the Claimant to RW dated 15th September 2016;[33]
(xvi) Email complaint to Mary Aiston dated 16th September 2016;
(xvii) An email from the Claimant to RW dated 4th October 2016 (page 539 of the hearing bundle);
(xviii) An email from the Claimant to RW dated 11th October 2016 timed at 10.56 (page 586 of the hearing bundle);
(xix) An email from the Claimant to RW dated 11th October 2016 timed at 14.46 (page 584 to 585 of the hearing bundle);

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[31] This list comprises the acts that the Tribunal understands that the Claimant *may* rely upon. The Claimant certainly relies upon (i), (ii), (iii), (iv) and (ix) but given paragraph 35 and 36 of the Preliminary hearing on 14th February 2018 it may go further than that. The Tribunal currently has no witness statement from the Claimant to assist on this point but the Claimant will be asked at the hearing to clarify is the assessment set out above is correct and, if not, what other protected act(s) are relied upon. The Claimant confirmed on day 11 and 12 a number of additional protected acts upon which he relies. Those are set out above. Those set out in blue type are the additional protected acts added on day 11. Those set out in green type are the additional protected acts added on day 12. It was made clear by the Tribunal that whilst the Claimant indicated that he potentially sought to add further protected acts, there had been ample time to deal with this matter before today and he had been informed on day 11 that he had a final opportunity to clarify the position on the morning of day 12 but thereafter a line had to be drawn given that the need for clarity on the claim being advanced.

[32] The Claimant is not able to say who this document was sent to other than a number of senior managers in the Large Business team at the time.

[33] This email does not appear to be in the hearing bundle and the Claimant is to locate a copy for the Tribunal.

(xx) Email from the Claimant to AG and DF dated 18th October 2016 (page 673 and 674 of the hearing bundle);
(xxi) Email from the Claimant to AG and DF dated 18th October 2016 (page 610 of the hearing bundle);
(xxii) An email from the Claimant to RW dated 21st October 2016 timed at 11.08 (page 650 to 652 of the hearing bundle);
(xxiii) Email from the Claimant to Sir Jon Thompson dated 25th October 2016 (page 663 of the hearing bundle);
(xxiv) Email from the Claimant to Sir Jon Thompson dated 25th October 2016 (page 667 of the hearing bundle) forwarding on the HRACC1's (which are at pages 723 and 732 of the hearing bundle);
(xxv) Email from the Claimant to Sir Jon Thompson dated 25th October 2016 (page 680 to 683 of the hearing bundle) forwarding on an email chain from himself to others within the Respondent;
(xxvi) Email from the Claimant to Sir Jon Thompson dated 25th October 2016 (page 684 to 689 of the hearing bundle) forwarding on an email chain from himself to others within the Respondent;
(xxvii) An email from the Claimant to RW dated 28th October 2016 timed at 11.55 (page 693 to 694 of the hearing bundle);
(xxviii) An email from the Claimant to RW dated 11th November 2016 timed at 9.49 (page 746 to 748 of the hearing bundle);
(xxix) An email from the Claimant to Mary Aiston dated 13th December 2016 timed at 12.04 (page 862 to 836 of the hearing bundle);
(xxx) An email from the Claimant to Mary Aiston dated 10th January 2017 timed at 14.43 (page 926 to 927 of the hearing bundle);
(xxxi) An email from the Claimant to Sarah-Jayne Williams dated 21st February 2017 (page 1111 to 1112 of the hearing bundle);
(xxxii) An email to Jan Beasley dated 22nd February 2017;
(xxxiii) An email from the Claimant to Philip Rutman, Permanent Secretary of the Department for Transport dated 1st March 2017 (page 1161 to 1163 of the hearing bundle);
(xxxiv) An email to Internal Governance dated 7th March 2017;
(xxxv) An email from the Claimant to Michael Potter, Disability Champion within the Respondent, dated 10th March 2017 (page 1223 to 1224 of the hearing bundle); and
(xxxvi) Presenting Employment Tribunal proceedings on 9th May 2017.

2.2. Has the Respondent subjected the Claimant to the following treatment falling within Section 39 Equality Act 2010, namely*:*

2.2.1 Subjecting the Claimant to the treatment complained of at complaints 43 to 57 of the Schedule of Allegations?

2.3. Has the Respondent subjected the Claimant to detriment in treating him as complained of at 2.2.1 above?

2.4. If so, did the Respondent subject the Claimant to any proven detriment because he had done a protected act or the Respondent believed that he may do a protected act (i.e. has the protected act or acts had a "significant

influence" on the employer's decision making) and, in particular, did the individuals said to have subjected the Claimant to detriment know about the fact and substance of the protected act(s) that the Claimant had done before taking the actions complained of?

3. Unfair dismissal

3.1. What was the reason for the dismissal? The Respondent asserts that it was a reason related to capability which is a potentially fair reason for dismissal under Section 98(2) Employment Rights Act 1996. The Respondent must prove that it had a genuine belief in incapability and that this was the reason for dismissal.

3.2. If the Respondent does so, did the Respondent act fairly and reasonably in dismissing the Claimant on the grounds of capability?

SCHEDULE TWO

Adrian Teague v HMRC: Schedule of Allegations

Victimisation – s.27 Equality Act 2010

	Summary of alleged **detriment** suffered (the act or omission) inc. when, basic facts, who involved/present/witness, if/when raised with employer	Details of alleged **protected act** under s27(2) EA 2010 inc. when it was done, how it was done, which part of s27(2) applies **Or** details of employer's **belief** that a protected act had been or may be done	Why the claimant says the detriment was **because of** doing the protected act?		
43	Emma Spear refused to appropriately consider my appeal into Lynn Coulby's decision.	S27(2)(d) EA2010. I had repeatedly raised complaints of offences under EA2010 and had informed my employer of my intention to take legal action.	LC's refusal to appropriately investigate and consider a formal grievance is so blatant that there is no legitimate reason not to allow the appeal and overturn LC's decision. ES does not do this because of the rigorously enforced culture of discrimination, harassment and victimisation which includes a vicious response to any attempt to undertake a protected act.	(xiv) (v) – (xiii) available to appeal manager	The protected acts identified were viewed by the Respondent as an unacceptable challenge to the culture of bullying & discrimination which must not be allowed to succeed. ES was a willing participant in ensuring this.

44	Portrayed as being a danger to other staff **without any evidence whatsoever** being produced. Many instances inc. S-JW's email if 07/03/17, Mary Aiston's letter of 08/03/17 and extensively in submissions to Tom Oatley & in Tom Oatley's conclusions.	S27(2)(a) EA2010 and S27(2)(d) EA2010. HMRC were fully aware of me undertaking protected acts and my intention to and subsequent taking of legal action.	This is part of a concerted campaign of victimisation waged against me as a direct result of challenging offences under EA2010. HMRC continually attempted to force me into silence but I continued to appropriately challenge and attempt to undertake protected acts. As a result, they portrayed me as dangerous in order to prevent communication and to justify denying even the most basic level of support. As HMRC considered me to be a suicide risk at the time, it was reasonable to expect all involved (senior managers and HR specialists) to be fully aware that their actions may result in my suicide (something which I had repeatedly brought to their attention).	All protected acts.	All claims are brought against the Respondent & this claimed offence is a tactic repeatedly used by the Respondent and identified by the Claimant in his response to HMRC's Mental Health Action Plan which pre-dates the claims before the Tribunal.
45	14/11/16 – email from Jon Thompson (JT), HMRC Chief Executive. JT's email dismissed the concerns I had raised with him – "the issues are under consideration and	S27(2)(d) EA2010. I had repeatedly raised allegations of offences	A casual look at the evidence I provided to JT would make it clear that discrimination, harassment and	Directly: (xiii) – (xxvi) Indirectly: (I) – (xxii)	JT lied to the Claimant, claiming that he had looked into the Claimant's concerns

	are being handled in line with our policies". This must have been known to be untrue.	under EA2010 and informed HMRC of my intention to take legal action.	victimisation was occurring but JT dismissed my concerns with what must have been known to be untrue. The reason for this is that HMRC does not allow attempts to undertake protected acts and uses an extremely aggressive, damaging response, supported by JT, to any attempt to do so.		whilst ensuring that no independent consideration was undertaken. This was directly due to the protected acts which challenged the culture of bullying & discrimination and must be denied regardless of the facts, the Respondent's policy & guidance and the law.
46	18/01/17 – informed Jennie Granger of my intention to raise a formal grievance, which was subsequently submitted, into Mary Aiston. JG refused to get involved (Gary Gatter from JG's office responded) and when I pressed for details of what action had been taken I received MA's letter informing me that no action would be taken.	S27(2)(d) EA2010. I had repeatedly raised complaints into offences under EA2010 and my grievance to JG included such claims. I had also informed HMRC of my intention to take legal action.	There is no basis for JG to refuse to consider an appropriate grievance into a member of staff she manages. This is done to prevent protected acts being undertaken and offences under EA2010 being appropriately dealt with.	Directly: (xxx) Indirectly: (I) – (xxix)	Despite it being hidden from the Claimant, it was the same people making all decisions based on the Respondent's insistence to stop at any cost protected acts from being undertaken.
47	24/01/17 – email from Dan Coughlin, HR Director. Imposition of 'SPOC' with the removal of basic rights by Dan Coughlin on the advice of Jamie Gracie & Melanie Clare. The detriment includes: - All supportive telephone contact refused	S27(2)(d) EA2010. This action was taken as a direct result of my allegations of offences under EA2010. HMRC was aware of my	This action was justified by portraying me as aggressive and dangerous to other staff simply because of having a mental health disability and challenging the culture of discrimination,	Directly: (xxx) Indirectly: (I) – (xxix)	Like Jon Thompson, DC did not even write 'his' response but relied on people aware of all protected acts and committed to enforcing the

	- Refused to provide me with confidential payslips - Refusal to provide access to HMRC's secure mailbox for submission of fit notes - Refusal to apply mandatory guidance	intention to take legal action.	harassment and victimisation by undertaking protected acts.		Respondent's culture of responding to protected acts with victimisation.
48	02/02/17 & 03/02/17 – TB provides blatantly untrue information to Lynn Coulby as part of her investigation into formal grievances – comments of PCS rep and the 'reason' why I raised a grievance.	S27(2)(d) EA 2010. I had repeatedly raised claims of offences under EA2010 and had informed HMRC of my intention to take legal action.	This was an active attempt to mislead a formal investigation in order to discredit me by ensuring my complaint was not upheld and to thwart the undertaking of a protected act. HMRC used this grievance being dismissed as evidence against my claims in their ET3 response.	Directly: (v) – (viii) Indirectly: (ix) – (xiv)	As a result of undertaking protected acts, there was never any intention by the Respondent to appropriately consider my formal grievance. TB's specific involvement is his assistance in achieving this aim.
49	07/02/17 – email from S-JW which refused to appropriately deal with many issues raised. Despite S-JW recognising me as suicidal she sends me an email that is totally inappropriate due to its size, scope, contents and tone.	S27(2)(d) EA2010. I had repeatedly raised complaints in respect to offences under EA2010 and had informed HMRC of my intention to take legal action.	This email was the latest in a long campaign of victimisation due to my refusal to accept the culture of discrimination that is enforced in HMRC and my constant attempts to undertake protected acts to challenge this.	(I) to (xxx)	All protected acts prior to 07/02/17 are relevant in respect to the appointment of S-JW, the information provided to her and her approach to the Claimant.
50	22/02/17 – I emailed Jan Beasley (JB) literally begging for help. Despite the fact that HMRC considered me at risk of committing suicide and, apparently, were	S27(2)(d) EA2010. My email to JB contained allegations of offences	HMRC does not expect its officers to ignore communications, especially when they are in respect to a	Directly: (xxxii) Indirectly: (I) – (xxxi)	JB victimises on behalf of the Respondent in response to repeated protected acts

	concerned for my wellbeing, I received no reply whatsoever.	under EA2010. I had also repeatedly made such allegations and informed HMRC of my intention to take legal action.	vulnerable, distressed member of staff. The reason for ignoring my email was because I had undertaken protected acts and was therefore regarded as someone attacking HMRC and who must be aggressively repelled, all attempts at undertaking a protected act be prevented by blocking communication and, despite (because?) recognising me at risk of suicide, the maximum amount of stress be created for me.		and attempts to ensure that the protected acts can come to nothing and the Claimant is silenced to prevent further protected acts from being undertaken.
51	28/02/17 – email from S-JW. Refusal to appropriately consider and support someone with a mental health disability. Refusal to communicate with me in a professional, supportive manner. Refusal to end 'SPOC' arrangement. Refusal to take any appropriate action including accepting & considering a formal grievance in accordance with HMRC mandatory guidance.	S27(2)(a + d) EA2010. Actions to refer matters to the tribunal had, from memory, commenced and I had repeatedly made my intention to take legal action known and had also alleged offences under EA2010.	This forms part of a lengthy, concerted campaign of victimisation that has been directly linked to my attempts to undertake protected acts. The detriment includes being prevented from raising a grievance in respect to offences under EA2010.	Directly: (xxxi) Indirectly: (I) – (xxx)	The claimed detriments are as a direct result of all protected acts undertaken prior to 28/02/17 with S-JW's email enforcing the Respondent's victimising approach to the Claimant for undertaking said acts.

52	23/03/17, 04/05/17 & 24/05/17 – letters from IG. My confidentiality, despite contacting IG via their 'in-confidence' helpline, was ignored and serious allegations referred to them in confidence were passed to the very people complained about to decide what action to take. None. Detriment: - Refusal to respect confidentiality - Refusal to appropriately consider serious allegations - Refusal to appropriately consider subsequent complaints.	S27(2)(a + d) EA2010. HMRC was aware that legal action was being taken. The referral to IG alleged offences under EA2010 and such allegations had been made previously.	The detriment was part of a campaign of victimisation as a result of my refusal to cease my attempts to appropriately challenge the culture of discrimination (etc.) that is not only accepted but strictly enforced in HMRC.	Directly: (xxxiv) Indirectly: (I) – (xxxiii)	Despite an unequivocal guarantee from Sir Jon Thompson, my confidential approach to Internal Governance is referred without the Claimant's knowledge to the very people complained about. This was as a direct result of all protected acts undertaken to this date and further evidence of the culture of victimisation in response to its employees undertaking protected acts.
53	07/03/17 – letter from Mary Aiston removing all rights to challenge and the protections provided by mandatory guidance.	S27(2)(d) EA2010. This action was taken as a direct result of my making allegations of offences under EA2010.	Since undertaking a protected act, HMRC have continually refused to deal with me in accordance with their own policies & guidance. MA's letter was a continuation and escalation of this campaign of victimisation and even attempts to thwart attempts to undertake protected acts.	(xvi) and potentially others dependant upon MA's access to them and input from other people.	MA's letter results directly from the Claimant undertaking protected acts and removes all protection, right to challenge and any chance to be heard. This was intended to ensure protected acts failed and the Claimant was silenced.
54	Tom Oatley, Decision Manager, refused to appropriately apply mandatory guidance	S27(2)(a) EA2010, claims of offences	Appropriate challenge of senior managers is not permitted	All protected acts as TO was required to consider all	As a direct result of the Claimant undertaking

	resulting in him dismissing me when this option was not available to him.	were already submitted to the tribunal.	in HMRC and, therefore, any attempt at such a challenge results in a vicious response designed to ensure that no challenge or protected act can succeed.	correspondence, take all relevant matters into account and was guided by others.	protected acts, his dismissal had already been decided and TO was a willing participant in ensuring the Respondent's plan was brought to fruition.
55	03/08/17 & 08/08/17 – S-JW attempts to restrict the information that is to be considered as part of my appeal.	S27(2)(a + d) EA2010. Matters were already before a tribunal.	S-JW actively attempts to thwart any challenge including claims of offences under EA2010 by restricting what information is to be considered. This was after a large amount of documentary evidence and information had been provided in support of and accepted into my appeal.	Directly: (xxxvi) Indirectly: all others	S-JW's actions were part of the Respondent's organised campaign of victimisation of the Claimant for repeatedly undertaking protected acts and his refusal to be silenced. The decision to dismiss the Claimant had been taken before the formal procedure to consider such an option had begun and the decision making process and subsequent appeal were weak parodies of these procedures. S-JW's actions are part of the process of ensuring that the Claimant was dismissed.
56	Ian Marshall refuses to appropriately consider my appeal and apply the mandatory guidance.	S27(2)(a) EA2010. Matters had already been	HMRC does not allow challenge of its senior managers and	Directly: (xxxvi) & (iv) – (xxxv) [para 19, IM witness statement]	As described at claim 55, the punishment

		referred to a tribunal.	the openly unacceptable approach taken is to punish me for attempting to undertake protected acts.		for undertaking protected acts had been decided some time before and IM was willingly undertaking his designated role, unlike his predecessor M Rhodes, who was removed in an extraordinary fashion when he didn't comply with the culture of victimisation.
57	23/10/17 – letter from Dan Goad (DG) confirming the award of nil compensation was correct and dismissing my appeal. There is no basis for this decision and the 'evidence' used is blatantly untrue. I am also denied a right to appeal to the CSAB.	S27(2)(a + d)EA2010. HMRC was fully aware of my repeated allegations of offences under EA2010 and the fact that action was underway before a tribunal.	HMRC had repeatedly denied me basic rights as a direct result of my attempts to challenge discrimination and undertake protected acts. There is no basis for DG's actions and it forms part of a clear, concerted campaign of victimisation.	(xxxvi) [& potentially others dependent upon information and 'advice' provided to DG.	As described above, this act of victimisation was as a direct result of undertaking protected acts in an attempt to bring about a positive change to the Respondent's recognised culture of bullying & discrimination. DG was a willing participant in the campaign of victimisation designed to cause the maximum damage to my mental health & wellbeing, my family and potentially my life.

Direct discrimination – S13 EA 2010

What happened (the act or omission) including **when, basic facts, who/witnesses**		Identity of **actual comparator** treated more favourably ***or*** facts to show a **hypothetical comparator** would have been treated more favourably	**Why** the act/omission was **because of** the claimant's disability	
76[34]	Steve Billington (SB), Samantha Edwards (SE) and others. Refused to provide an explanation as to why additional pension contributions were required.	A hypothetical comparator would be treated more favourably as they would be provided with an appropriate explanation rather than being fobbed off with lies.	My disability was directly linked to the actions taken. Furthermore, this is another example of the stigma around mental health that results in HMRC removing all rights from people with mental health disabilities. SB directly asked questions about my disability and medication without any basis and in opposition to HMRC policy and guidance.	
77	Lynn Coulby refused to appropriately investigate and consider a formal grievance	A hypothetical comparator would be treated more favourably as they would have their grievance appropriately considered in line with HMRC mandatory policy & guidance.	The refusal to allow me the protection and redress of HMRC mandatory guidance which is afforded to all HMRC staff without my mental health disability as a direct result of the recognised stigma around mental health which allows it to be regarded as acceptable to blatantly pervert the grievance process.	It is the recognised effects of the Claimant's disability and, therefore, the disability itself that has been directly used to present the claimant as an aggressive bully and serial, malicious complainer. It is therefore the disability itself that was used to justify LC's failure to appropriately investigate and decide upon the Claimant's grievance.
78	Jennie Granger (JG) and Gary Gatter refused to	A hypothetical comparator would be	My mental health disability is the	The reason for the failure of the

[34] This complaint was withdrawn by the Claimant during the course of the Tribunal hearing.

	accept a formal grievance with JG refusing to even correspond with me. My grievance was passed to the people complained about to deal with	treated more favourably as they would be treated in accordance with HMRC policy and guidance and have their grievance appropriately considered.	reason why I am not entitled to the protection and redress afforded to all staff without a mental health disability	Respondent to follow its own mandatory guidance and refused to consider an appropriate formal grievance was due to the Respondent claiming that I had demonstrated the known (by the Respondent) effects of my disability. This was then used to justify the discriminatory behaviour the Claimant was subjected to.
79	Portrayed as being a danger to other staff without any evidence being produced in order to justify the removal of all basic rights under HMRC policy & guidance and the law. This includes any right to challenge, any right to be communicated with in an appropriate supportive manner and the right to confidentiality. There are many instances of this including Sarah-Jayne Williams' email of 07/03/17, Mary Aiston's letter of 08/03/17 and extensively in submissions to Tom Oatley and Tom Oatley's conclusions. Furthermore I am denied the opportunity to challenge this portrayal by HMRC not taking formal action against me as a direct result of my disability.	A former male colleague who was known to be an expert in martial arts allegedly made threats to stab his female manager. Despite this, he was not subjected to the same actions as I was and was subsequently promoted to a senior management grade. HP and, presumably, others involved in these matters are fully aware of this and his identity. Hypothetically, it is the very fact of having a mental health disability and demonstrating recognised symptoms which resulted in acceptance of the groundless claims that I am a danger to others, something which would not happen to someone without my disability.	It is the disability and showing evidence of its symptoms/effects which is directly used to categorise me as being aggressive and dangerous. This is an issue that featured in a previous grievance which found bullying & harassment and was identified by me as a tactic used by HMRC in my report on HMRC's Large Business Mental Health Action Plan in early 2016.	It is the disability and showing evidence of its symptoms/effects which is directly used to categorise me as being aggressive and dangerous. This is an issue that featured in a previous grievance which found bullying & harassment and was identified by me as a tactic used by HMRC in my report on HMRC's Large Business Mental Health Action Plan in early 2016. Communication from the Claimant which is not aggressive is characterised as such without question as a direct result of having a mental health disability which allows the Respondent to accept that the

				Claimant is a 'dangerous nutter' without the need for evidence.
80	24/01/17 – email from Dan Coughlin (DC), HR Director, imposing a 'SPOC', Sarah-Jayne Williams. This act removed all rights to appropriate communication, confidentiality and tights under mandatory guidance & the law. This was done in a confrontational manner.	It is my disability that directly resulted in the act and, therefore, would not have happened to anyone without my disability. Also, it is the recognised stigma around mental health disability that resulted in the confrontational tone which would not be adopted when communicating with someone without my disability.	Recognised symptoms of my disability have been caused by the actions of HMRC and then been characterised as aggression and me as dangerous despite no evidence ever been produced and no opportunity to challenge. This is a tactic used by HMRC that I highlighted in a report in early 2016. This directly uses my disability as an excuse to remove basic rights.	Recognised symptoms of my disability have been caused by the actions of HMRC and then been characterised as aggression and me as dangerous despite no evidence ever been produced and no opportunity to challenge. This is a tactic used by HMRC that I highlighted in a report in early 2016. The Claimant requested a SPOC as a reasonable adjustment some months prior to DC's email but this was refused. The appointment of a SPOC was not done to assist the Claimant but specifically done to facilitate discrimination, victimisation & harassment and was part of a plan to do this with the intended result being the dismissal of the Claimant. It is the known effects of the Claimant's disability that have been used to justify and facilitate this plan.
81	07/02/17 – email from S-JW which confirms that she considers me to be a suicide risk (and, therefore, disabled under EA2010)	All HMRC staff and customers would be treated more favourably as it is not acceptable (to HMRC) to send such	S-JW recognises my mental health disability and my severe vulnerability at the start of her email but then	Despite the Claimant always being very clear that he was not suicidal but was concerned for the wellbeing of

	but then continues with an extremely lengthy, hugely stressful, aggressive and at times blatantly untrue email that has a further 15 stressful attachments.	lengthy correspondence by email. Furthermore, the contents would not be acceptable to HMRC/CS if sent to someone without my disability.	specifically corresponds in a manner that would not be acceptable when dealing with HMRC staff and customers without my disability. This is one of many examples where having a mental health disability directly results in basic standards no longer having to be applied.	others, the Respondent intentionally ignores this & the points raised by the Claimant and responds claiming concern for the Claimant's immediate safety. Despite this, the Respondent then demonstrates that the display of concern for the Claimant's safety was merely empty words by presenting the Claimant with an extraordinary amount of highly stressful correspondence. It is reasonable to presume that a potential outcome of the Respondent's actions in respect to a vulnerable, highly stressed, suicidal person in the Claimant's situation would be for them to take their own life and this must have been known to the Respondent. The reason for these actions is as a direct result of the Respondent claiming that I had demonstrated the known effects of my disability which were then used to justify all actions taken against me.
82	Monique Bruce (MB), KIT Manager Refused to provide any support or appropriate contact.	A hypothetical comparator would be treated more favourably as they would be treated in accordance with HMRC policy & guidance.	It is my mental health disability and the recognised stigma around it that causes MB to believe that it is appropriate to treat	MB's involvement & subsequent actions were part of a plan to discriminate against the Claimant as a direct result of him having a mental

	Inappropriately involved in my dismissal. Provided false information to secure my dismissal.		me in a manner that would not be acceptable with others who did not share my disability. This includes portraying any evidence of my disability, despite recognising me as suicidal, as aggression and/or unacceptable behaviour.	health disability and claims that he had demonstrated the known & expected symptoms.
83	28/02/17 – email from S-JW Recognises me as a suicide risk despite the fact I had always made it clear it is the actions if HMRC that are the problem but HMRC refuse to consider these actions. Refusal to allow communication by ending the SPOC arrangements. Refusal to accept a formal grievance to Jennie Granger. I am considered to be a danger to other members of staff due to having a mental health disability. Removal of confidentiality.	All other HMRC employees without a mental health disability would be routinely communicated with appropriately and would be allowed to use the formal grievance procedures. Safeguards regarding confidentiality would also be applied.	The reason for the acts was because I have a mental health disability and, therefore, all rights, safeguards and protections that are available to all other employees are deemed to no longer apply to me. This is because my disability has been used to portray me as aggressive and dangerous.	S-JW's involvement & subsequent actions were part of a plan to discriminate against the Claimant as a direct result of him having a mental health disability and claims that he had demonstrated the known & expected symptoms. Part of the detriment intended for the Claimant was to punish him and actively pursue an aggressive, damaging & potentially life-threatening (the Respondent recognised the Claimant as suicidal) plan of which S-JW's email was a part.
84	01/03/17 – I rang the HMRC Internal Governance 'in-confidence 24-hour hotline' and, as requested, emailed further details on 07/03/17. 23/03/17 – received a letter from Martin Hulbert, IG, informing me that my confidentiality had not	The refusal to respect my confidentiality is specifically linked by IG to my mental health disability. Anyone who does not have a MH disability would have their confidence maintained and their concerns appropriately considered.	IG have specifically stated that concerns regarding my mental health were the reason for breaching my confidentiality (though nothing was done to support me). IG directly used my disability to justify	IG's actions were as a result of the Claimant's mental health disability and claimed concerns regarding 'self-harm'. Despite a formal unequivocal assurance from Jon Thompson that confidence would not be broken

	been maintained and that my concerns had been passed to those complained about. No further action would be taken on their advice. 04/05/17 – received a letter from Wayne Vernon, IG, which dismissed my complaint. 24/05/17 – letter from Julie Digby, IG, again dismissing my concerns.		the removal of basic rights.	without first contacting the Claimant, the Claimant's confidential approach to IG is referred, as with everything else, to the very people complained of. This is as a direct result of the Claimant's disability which has been used to justify the removal of all rights and treatment in accordance with the Respondent's policy & guidance and the law.
85	08/03/17 – letter from Mary Aiston (MA), Director WMBC. This informed me that formal grievances already raised (including in respect to MA) would not be considered. It also characterises me as a danger to others and vexatious and removes any opportunity for an appropriate challenge. MA encloses guidance claimed to support MA's actions but even this guidance clearly doesn't support her position.	This action is directly linked by MA to my MH disability and would not be taken in respect to anyone without such a disability.	MA directly links the refusal to apply mandatory guidance to my having a mental health disability. This is one of many examples where having a mental health disability is used to remove all basic rights including protection under HMRC's policy/guidance & the law.	The Respondent intentionally targeted the Claimant's disability by creating huge amounts of stress and denying the Respondent of appropriate support. The understandable effect was to cause the known symptoms of the Claimant's disability which have then been specifically used to justify the actions taken by MA.
86	Tom Oatley (TO), Decision Manager. TO refused to appropriately consider and apply mandatory guidance in order to dismiss me. This guidance includes the clear position that TO did not have this option available to him.	Any hypothetical comparator would be treated more favourably as they would be treated in accordance with mandatory guidance and, therefore, would not be dismissed.	This is a further example of how all rights are removed if one has a mental health disability. TO accepts the blatantly untrue claims of aggression and a lack of engagement and refuses to recognise the stigma around	As a direct result of having a mental health disability, the Claimant was portrayed as a dangerous and unpleasant bully and it was decided to terminate his employment prior to the referral to

	TO accepted without evidence blatantly untrue statements from HP, MB and others and refused to consider documentation that must be considered. TO also even challenges whether I have a disability despite the fact that HMRC have accepted this for over four years.		mental health that allow such claims. TO even questions my status as disabled without any basis and therefore demonstrates a totally unacceptable attitude to mental health disability.	the decision maker, TO. TO was a willing participant in the plan to terminate the Claimant's employment and failed to follow the relevant mandatory guidance in order to ensure that the only outcome would be dismissal. TO's actions were directly as a result of the incorrect portrayal of the Claimant based on him merely having the known symptoms of a mental health disability.
87	Jamie Gracie (JG) was appointed, against my clear wishes, as a second SPOC. 06/06/17 – I requested a copy of my completed CSIBS form containing HMRC's comments. JG continually refused to provide this. 13/07/17 – JG agrees to provide it when his current IT problems were resolved. It has never been provided and this excuse appears to be a blatant lie known to S-JW and others. JG also refused to copy me into my own CSIBS form when it was submitted as "my view is that this wouldn't be appropriate". JG also corresponds to me in a manner that is not acceptable to both HMRC and me and even fails to use HMRC's mandatory letter templates.	A hypothetical comparator would be treated more favourably as they would be treated in accordance with HMRC policy & guidance. This includes being treated with honesty, as required by the Civil Service Code, and, if someone is known to have lied, have the appropriate disciplinary action taken.	My mental health disability is the reason why all basic rights, even my contractual right to annual leave, are removed. JG confirms this by refusing me access to my own CSIBS submission as it is "inappropriate". This is the same reason that HP refused to provide me with contact details for my own line management. The reason why it would be "inappropriate" has never been explained but is clearly because of me having a mental health disability.	This claim was made prior to the extent of JG's significant involvement being disclosed to the Claimant. JG has repeatedly characterised the Claimant's disability as aggression and even bullying and is instrumental in creating this discriminatory portrayal and formulating & ensuring the plan to dismiss the Claimant was successful. It is the Claimant's disability that has been used to justify JG's actions and allow his attitudes & behaviours to go unchecked.

	31/07/18 – JG refuses to provide guidance on a refusal to allow annual leave.			
88	Ian Marshall (IM), 3rd Appeal Manager. Refused to appropriately consider my appeal.	A hypothetical comparator would be treated more favourably as they would be treated in accordance with HMRC policy & guidance and receive the protection it contains.	I am denied all basic rights, including those in connection with appropriately considering my appeal, because of my disability and the associated stigma.	As with others, IM acted in accordance with the Respondent's plan to punish the Claimant for having a mental health disability and displaying the known and expected consequences of such.
89	23/10/17 – letter from Dan Goad (DG), HR Director. I had been denied an opportunity to appeal against the award of nil compensation on the termination of my employment but DG states he had considered my appeal and he confirms the award based on information that must have been known to be untrue.	Anyone without my mental health disability would not be treated in this manner as it is my disability that is used to support grossly untrue statements, e.g. "The employee has a poor attitude or little commitment to work".	HMRC has a culture of discrimination, harassment and victimisation and this act is evidence of that. My MH disability is directly used to justify a refusal to follow mandatory guidance and reach decisions, such as this, that are not allowed by said guidance. Any attempt to appropriately challenge is dismissed due to my disability.	As with others, DG failed to appropriately undertake the duties & responsibilities of his role in order to ensure that the Respondent's plan to punish the Claimant by dismissing him with nil compensation because he has demonstrated the known symptoms of his disability takes place without there ever being any appropriate consideration and chance of any other outcome.