THE EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Cullen**

Respondent: **Advisory, Conciliation and Arbitration Service**

Held at: **Newcastle upon Tyne** **On:** **2-6 December 2019**
16 January 2020 (in chambers)

Before: **Employment Judge Aspden**
Mr M Brain
Mr KA Smith

Appearances

For the Claimant: In person
For the Respondent: Mr A Crammond, counsel

JUDGMENT

The claimant's claims of discrimination and victimisation are not well founded. The claims are dismissed.

REASONS

The claims and issues

1. By a claim form filed on 14 December 2018 the claimant advanced claims to the Tribunal of disability discrimination and victimisation contrary to the Equality Act 2010. The respondent denies all liability to the claimant.

2. The respondent has conceded that the claimant was a disabled person, within the meaning of that term in the Equality Act 2010, by virtue of the impairment of dyslexia.

3. At a preliminary hearing took place before Employment Judge Martin on 27 March 2019. The note of that case management discussion record that the claimant was bringing claims of indirect disability discrimination, discrimination by way of a failure to make reasonable adjustments and victimisation. Judge Martin noted that further information was required from the claimant in relation to the claims and she ordered the claimant to provide further information. A further case management discussion took place before Employment Judge Speker on 11 November 2019. The purpose of that hearing was to identify the issues in dispute between the parties that would need to be determined at the final hearing and to consider certain other case management issues. Ahead of that hearing, the parties had prepared an agreed draft list of issues. Employment Judge Speker set out the agreed issues in his note of the case management hearing. It is clear from the agreed issues that the claimant was no longer pursuing a claim of indirect discrimination. The claims being made by the claimant in these proceedings, as identified in the case management hearing are as follows.

Allegation of Failures to make Reasonable Adjustments: sections 20/21 of the Equality Act

4. The claimant alleges that:
   4.1. the respondent operated a procedure that call advisers in the Newcastle hub had to reach targets for call structure and call scoring;
   4.2. this was a provision, criterion or practice (PCP) which put the claimant at a substantial disadvantage in comparison with persons who are not disabled;
   4.3. the respondent was under a duty to make reasonable adjustments to avoid that disadvantage; it failed to comply with that duty;
   4.4. in particular, in order to comply with that duty the respondent should have made, but failed to make, the adjustments set out at paragraph 5 of the note of the case management discussion of 11 November 2019.

Allegations of victimisation: section 27 of the Equality Act

5. The claimant alleges that:

   5.1. she did protected acts, within the meaning of that term in section 27 of the Equality Act 2010, on the following occasions:
      a) on 2 October 2017, when she told Mr Neil Parker that she was having difficulty collating information;
      b) on 6 October 2017, when she told Mr Parker that her dyslexia problems were not being taken into account; and
      c) on 19 October 2017, when she took part in a conversation on an internal online Yammer forum.

   5.2. because she did one or more of those protected acts, the respondent subjected her to the detriments set out in paragraphs (a) to (p) of Employment Judge Speker's note from the case management hearing. We have reproduced those

paragraphs below. The references in brackets are to where the allegations appear in the claimant's Further and Better Particulars ('FBP'):

a) After being contacted by Susan Clews (Chief Operations Officer) and Susan Tomlinson (Delivery Training Manager) she was not contacted further and told by Neil Parker that it was best to discuss the issue through her line manager and not to higher management. (See 10 FBP)
b) The claimant had 4 desk changes and 4 different managers. (See 12 FBP)
c) The claimant underwent micromanagement and continuous monitoring, including her screen being watched during her break. (See 17 and 30 FBP)
d) The Stress Risk Assessment Form completed by the claimant was not acted upon. (See 22 FBP)
e) The claimant's disciplinary/appeal was prejudged by management, after taking unsupported advice from … the North East Dyslexia Association 30 April 2018. The outcome was that it was assumed that no matter what adjustments were put in place the claimant would not be able to do the job of an advisor. (See 27 FBP)
f) A request by Henry Carroll for copy of the claimant's references - to look for inconsistencies. (See 28 FBP)
g) Reprimanded by Anthony Bainbridge for allegedly making untrue statements to a colleague on 14 May 2018, regarding the claimant's dyslexia and the claimant's disciplinary process. (See 31 FBP)
h) Article produced for the Health and Wellbeing magazine, regarding the effect that the claimant's dyslexia has on her daily life at work. Being silenced by not printing the article. (See 32 FBP)
i) [this allegation was not pursued].
j) Reprimanded and threatened with further action by Anthony Bainbridge for mentioning to a colleague that she believed that her dyslexia was connected to her disciplinary process and the potential threat of dismissal. (See 39 FBP)
k) Pauline Burton denied she had been informed of the claimant's dyslexia (after speaking at area meeting to Tahal Hasan) making the claimant responsible for errors in recruitment process.
l) Pre-judged at all disciplinary and appeal processes. (See 6, 9, 10, 15, 19, 21, 24, 26, 28 to 31, 33 to 36, 41, 43 and 44 FBP)
m) Precluded from applying for internal jobs within the Civil Service. (See 14 FBP)
n) Suspended from work. (See 40 FBP)
o) Failed to permit the claimant to finish the Access to Work sessions, with Ability Smart and allow for the recommended 3-6 months from the initial session. (See 41, 42 and 43 FBP)
p) Dismissed. (See 43 and 44 FBP)

6. With regard to the reasonable adjustment claim, Mr Crammond confirmed on the first day of this hearing that the respondent accepts the following:
   6.1. that it operated a procedure that call advisers in the Newcastle hub had to reach targets for call structure and call scoring;
   6.2. that, at all times material to this aspect of the claim, it knew, or could reasonably have been expected to know, that the claimant had a disability.

7. The respondent does not, however, concede that the PCP relied on by the claimant put the claimant at a substantial disadvantage compared to non-disabled persons, nor that, if it did but the claimant at such a disadvantage, the respondent knew or could reasonably have been expected to know that was likely to be the case.

8. We noted, therefore, that the issues for the Tribunal to determine in respect of the reasonable adjustment claim are as follows:
   8.1. whether the requirement for call advisers to reach targets for call structure and call scoring put the claimant at a substantial disadvantage in comparison with persons who are not disabled;
   8.2. if so, whether the respondent knew or could reasonably have been expected to know that was likely to be the case;
   8.3. if so, whether the respondent failed to comply with its duty to make reasonable adjustments to avoid that disadvantage; in particular:
      a) whether any of the steps set out in paragraphs 4 and 5 of Employment Judge Speker's note of the case management discussion would have avoided the disadvantage; and
      b) if so, whether it was reasonable for the employer to take that step.

9. During discussions at the outset of the hearing, the claimant said she also wished to argue that the respondent applied practices in relation to the training provided for new call advisers. The claimant referred to the 'rigid' nature of the training, the fact that it was for a 'set period', the fact that she had to compile her own files of materials during the training. Mr Crammond objected to the claimant seeking to expand the basis on which she put her claim beyond that set out in the agreed a list of issues that had been discussed at a case management hearing. In light of that objection, the claimant said she was happy to leave the claim as it was (i.e. relying on the PCP in relation to targets) but that she would argue that the respondent should have made changes to the way it provided training as a reasonable adjustment to avoid disadvantage caused by that PCP.

10. So far as the victimisation claim is concerned, the issues for this Tribunal to determine are those set out at paragraphs 7, 8 and 9 of Employment Judge Speker's note of the case management discussion.

Relevant legal framework

11. It is unlawful for an employer to discriminate against or to victimise an employee as to their terms of employment; in the way it affords them access, or by not affording them access, to opportunities for transfer or training or for receiving any other benefit, facility or service; by dismissing them; or by subjecting them to any other detriment: section 39(2) and (4) Equality Act 2010.

Disability

12. Section 6 of the Equality Act 2010 says: 'A person (P) has a disability if -(a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.' Substantial means 'more than minor or trivial': Equality Act s212(1). The requirement that an adverse effect on normal day-to-day activities should be a substantial one

reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people.

Failure to make reasonable adjustments

13. Under section 39(5) of the Equality Act 2010 a duty to make reasonable adjustments applies to an employer. A failure to comply with that duty constitutes discrimination: Equality Act 2010 s21.

14. Section 20 of the Equality Act 2010 provides that the duty to make reasonable adjustments comprises three requirements, set out in s 20(3), (4) and (5). This case is concerned with the first of those requirements, which provides that where a provision, criterion or practice of an employer's puts a disabled person at a substantial (ie more than minor or trivial) disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer must take such steps as it is reasonable to have to take to avoid the disadvantage. Section 21(1) provides that a failure to comply with this requirement is a failure to comply with a duty to make reasonable adjustments.

15. In considering whether the duty to make reasonable adjustments arose, a Tribunal must consider the following (Environment Agency v Rowan [2008] IRLR 20):
    15.1. whether there was a provision, criterion or practice ('PCP') applied by or on behalf of an employer;
    15.2. the identity of the non-disabled comparators (where appropriate); and
    15.3. the nature and extent of the substantial disadvantage in relation to a relevant matter suffered by the employee.

16. A duty to make reasonable adjustments does not arise unless the PCP in question places the disabled person concerned not simply at some disadvantage viewed generally, but at a disadvantage which is substantial (ie more than minor or trivial) and which is not to be viewed generally but to be viewed in comparison with persons who are not disabled: Royal Bank of Scotland v Ashton [2011] ICR 632, EAT.

17. The approach to the comparator and disadvantage questions was addressed by Simler P in Sheikholeslami v University of Edinburgh [2018] IRLR 1090, EAT. There, the EAT said:

> *"The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question … For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances.*
>
> *The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1). The EHRC Code of Practice states that the requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people: see para 8 of App 1. The fact that both*

groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability."

18. The predecessor to the Equality Act 2010, the Disability Discrimination Act 1995, contained guidance as to the kind of considerations which are relevant in deciding whether it is reasonable for someone to have to take a particular step to comply with the duty. Although those provisions are not repeated in the Equality Act 2010, the EAT has held that the same approach applies to the 2010 Act: Carranza v General Dynamics Information Technology Ltd [2015] IRLR 43, [2015] ICR 169. This is also apparent from Chapter 6 of the Code of Practice on Employment (2011), issued by the Equality and Human Rights Commission, which repeats, and expands upon, the provisions of the 1995 Act. The 1995 Act provided, as does the Code of Practice, that in determining whether it is reasonable for an employer to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular, to—
    18.1. the extent to which taking the step would prevent the substantial disadvantage;
    18.2. the practicability of the step;
    18.3. the financial and other costs of making the adjustment and the extent of any disruption caused;
    18.4. the extent of the employer's financial and other resources;
    18.5. the availability to the employer of financial or other assistance to help make an adjustment; and
    18.6. the type and size of the employer.

19. The Code of Practice goes on to set out examples of steps which an employer may need to take in relation to a disabled person in order to comply with a duty to make reasonable adjustments.

Victimisation

20. Section 27 of the Equality Act 2010 provides as follows:

"(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.…"

21. For the purposes of section 27, and section 39, a detriment exists if a reasonable worker (in the position of the Claimant) would or might take the view that the treatment accorded to them had, in all the circumstances, been to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337. As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522G, the tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An alleged victim cannot establish 'detriment' merely by showing that they had suffered mental distress: before they could succeed it would have to be objectively reasonable in all the circumstances: St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540, [2007] UKHL 16.

Burden of proof

22. The burden of proof in relation to allegations of discrimination and victimisation is dealt with in section 136 of the 2010 Act, which sets out a two-stage process.

    22.1. Firstly, the Tribunal must consider whether there are facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed the alleged unlawful act against the claimant. If the Tribunal could not reach such a conclusion on the facts as found, the claim must fail.

    22.2. Where the Tribunal could conclude that the respondent has committed the alleged unlawful act against the claimant, it is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed, that act.

23. The Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258 made the following points in relation to the application of the burden of proof:

    23.1. 'It is important to bear in mind in deciding whether the claimant has proved facts from which the Tribunal could conclude that there has been discrimination that it is unusual to find direct evidence of … discrimination: few employers would be prepared to admit such discrimination, even to themselves and in some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in.'

    23.2. In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

23.3. It is important to note the word ‘could’ in the legislation. At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

23.4. In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

23.5. Where the claimant has proved facts from which the Tribunal could conclude that the respondent has treated the claimant less favourably because of disability, it is then for the respondent to prove that it did not commit that act or, as the case may be, is not to be treated as having committed that act. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

Evidence and primary findings of fact

24. Ahead of this hearing, the parties had prepared an agreed chronology, setting out certain agreed facts.

25. We heard evidence from the claimant and Mrs McManus. For the respondent we heard evidence from Mr Neil Parker (recruitment manager at the time of the events with which we are concerned), Mr Anthony Bainbridge (Helpline Manager), Mrs Pauline Burton (Senior Helpline Manager), Mr Alex Peel (Area Director) and Mrs Wendy Parker (Regional Director). The claimant also asked us to take into account a written statement from a Mrs Goundry, which was submitted in support of the claimant’s claim

26. In addition, we were referred to a number of documents in a bundle comprising some 2000 pages spanning three lever arch files. We explained to the parties at the outset of the hearing that would only take into account the documents that we were specifically referred to.

27. Our primary findings of fact follow.

28. In 2013 the claimant undertook a foundation degree in business Management at Newcastle College. In her first year of the course, a dyslexia coordinator from learning support services at Newcastle College referred the claimant to a psychologist, Dr Makepeace, for a psychological assessment in order to determine whether or not she had an underlying dyslexic condition. Dr Makepeace assessed the claimant and produced a report. During the assessment the claimant underwent tests to ascertain whether or not she presents with the specific learning difficulty known as dyslexia. The nature of the tests carried out are described by Dr Makepeace in his report. Dr Makepeace summarised his findings on page 2 of the report. His findings are set out in more detail through the report.

29. In the summary of his findings Dr Makepeace noted the following ‘Susan’s cognitive profile indicates significant strengths on tests assessing her verbal and perceptual reasoning skills. Significant weaknesses were observed on tests assessing her

ability to retain information in auditory working memory. Significant weaknesses were also observed on tests assessing her ability to process visual information at speed.' He also noted 'Susan's single word reading skills were found to be within the below average range when compared to a group of people of a similar age. This suggests she may have significant problems with word decoding. Slight difficulties were observed on a test of sentence comprehension and Susan scored at the lower end of the average range when compared to people of similar age. Her spelling skills were found to be within the average range when compared to people of a similar age. Her writing speed is around average and there were some spelling and punctuation inaccuracies in the work she produced. The speed at which she decodes words appears to be adequate. No problems were observed on tests assessing her ability to swap sounds in words.' Dr Makepeace observed that the claimant scored within the average range in tests designed to assess her ability to use verbal skills in reasoning and solving problems, which tests comprised questions looking at factual knowledge, word meanings, reasoning and ability to express ideas in words. Dr Makepeace concluded by expressing the opinion that the claimant has a specific learning difficulty known as dyslexia.

30. In May 2017 the claimant applied for a role as a helpline adviser with the respondent. In a diversity monitoring form that she completed at the time of her application inviting information about disabilities, the claimant said that she had dyslexia. In response to a question about the effects of the disability the claimant said it had a 'positive effect' as it made her 'thorough and careful'. We accept Mrs Burton's evidence that it is not ACAS's practice to pass diversity monitoring forms to line managers when new employees are recruited as the information is considered confidential. We accept that the claimant's diversity monitoring form was not seen by her before or at the time of the claimant's recruitment and nor was she aware of the claimant's dyslexia until it was brought to her attention as the result of the claimant raising an issue on an internal forum, as explained below.

31. The claimant's application was successful and on 11 September 2017 she started work for the Respondent as a Helpline Advisor. The Claimant's probation period was due to end on 11 March 2018.

32. The role of a helpline advisor is to handle inbound enquiries from the public experiencing difficulties at work. It requires the adviser to provide impartial and accurate advice to employees and employers.

33. Immediately after she started work, the Claimant began a 6-week training programme alongside other new recruits. In that period, Mr Parker was one of two managers who organised the training and looked after the trainees whilst in training. During that training programme, new recruits were provided with a very large volume of information, including information covering a wide range of areas of law. Recruits were expected to organise that information themselves into files running to several volumes. Mrs Goundry, who trained alongside the claimant, said in her statement that everyone participating in the training raised concerns about their files and weren't sure how they would come together.

34. The claimant did not immediately ask for adjustments to be made to the role or to the way training was delivered: she said in evidence she could not possibly have

known what adjustments she would need. On 2 October, however, the Claimant raised concerns with Mr Parker saying she was experiencing difficulties collating information. None of the witnesses addressed in their witness statements what it was the claimant said. However, based on the agreed chronology, we find that the claimant did say, or at least imply, she believed she was having difficulties because of her dyslexia.

35. On 5 October 2017 Mr Parker spoke to the claimant after one of the trainers reported to him certain comments the claimant was alleged to have made in the context of a discussion about discrimination and which the trainer thought had offended somebody else who had been involved in the discussion. Having discussed the matter with the claimant, the claimant acknowledged that she understood that her comments could be perceived as discriminatory and apologised. Mr Parker told her that he was satisfied that she had not intended her comments to be discriminatory but explained to the claimant the importance of tact when expressing political views. Mr Parker decided no further action is needed. However, the claimant remained concerned about how she would be perceived by management.

36. On 6 October 2017 the Claimant had a conversation with Neil Parker in which she talked about her dyslexia. She showed Mr Parker a copy of the report Dr Makepeace had produced as well as other information on dyslexia. There is some disagreement in evidence between Mr Parker and the claimant as to precisely what was said during this conversation. However, both agree that the discussion concerned possible adjustments that could be taken in relation to the training to avoid disadvantage that the claimant might experience in consequence of her dyslexia. We accept that it was the claimant who broached the issue of adjustments. On the evidence before us, we do not find that the claimant alleged that the respondent had failed in its duty to make reasonable adjustments. Clearly however she was, during this conversation, seeking to persuade Mr Parker that adjustments should be made.

37. In this conversation, the claimant also referred again to the discussion they had had the previous day about the comments the claimant had made in the context of a discussion about discrimination. She expressed concern that the management team would hold some kind of grudge against her. Mr Parker told the claimant that a line had been drawn under the incident.

38. As part of their training, new advisers must pass a number of tests. The claimant initially failed one of the modules because she had not been able to display, to the satisfaction of the respondent, sufficient working knowledge of the subject matter of the module and had difficulty locating the answer in her notes. There were also concerns about the claimant's impartiality. It is not unusual for trainees to fail modules during their training and to have to undertake re-sits.

39. The claimant was due to re-sit the module on 20 October 2017. On that day, ahead of her resit, the claimant spoke to Mr Parker in a distressed state. She had printed off information about dyslexia and told Mr Parker she thought ACAS was not taking her condition seriously. She also told Mr Parker that one of the symptoms of her condition was a higher state of anxiety. She also said she felt she was covered under the Equality Act. The claimant did not suggest any specific adjustments that

could be made during her training. Under cross-examination, when this was put to her, the claimant's response was 'how would I know what I needed?'

40. The claimant re-sat the module as required and passed. Having passed her training, the claimant was considered ready to start taking calls from the public.

41. On 23 October The Claimant took part in a conversation on an internal forum called Yammer regarding the diversity and inclusion strategy. She posted a message saying 'Hi, I am dyslexic and have recently completed six weeks of knowledge training. The truth is that for me it has been mentally draining and my confidence is at an all-time low. May I just say I am 57 years old, in a previous life I was a director of a property development business, and most recently did my business management degree and qualified as a teacher and lectured at Newcastle College (no dimwit I thought). What I found is that my office is full of the best people, kind, understanding, helpful. However, the service is unprepared for a condition that is complicated and is not easily put into layman's terms (I am not even sure if I understand). I applaud the need for diversity and the benefits are indeed worth the effort. I would ask that consideration is given to how the service can adapt the workplace when employed, and not leave the problem to our hard-working managers.' A colleague replied that he had he was awaiting specific software to be installed on his PC. He said he had a version of dyslexia. The claimant replied 'I go live next week as well, my biggest fear is failing to keep up the standards of my colleagues, and not being sure how my dyslexia will actually affect my work. No software has been offered or mentioned.' A manager replied 'Thank you for bringing this to our attention-we are working to address this particular issue, and hope that others will feel comfortable talking about diversity and inclusion topics. If you're not keen on posting to Yammer, feel free to email me or Julia Dennis and we'll do our best to help. And by the way, I'm sure you'll both be brilliant when you go live!' Another colleague responded 'finding this discussion really interesting.… We are currently developing new content for the new website and have tested it on a number of dyslexic customers for the reasons you have mentioned above, would I be able to contact you in the future when we are testing more of this content, especially how it works with various software mentioned above?' Acas's training manager, Ms Tomlinson, replied 'Thank you for sharing your experience… Look forward to discussing this further with you and hearing your thoughts around areas for review and improvement...There's much to be learned and taken from this thread as well all continue with our work on this.' Another manager responded 'Thanks for posting and sharing your experiences. As Susan Tomlinson has mentioned the training team really appreciates and encourages all feedback and we are keen to help make the training experience of everyone as accessible and inclusive as possible. As knowledge manager it's up to me to make sure the knowledge training materials are the best they can be for everyone. As a national training team we work hard and all training materials but the knowledge documents are my focus. Just let me know and if you want to drop me an email directly please do!'

42. The following day Ms Clews, the respondent's chief operations officer/chief executive officer sent an email to the claimant, copying Mrs Burton and two others, including Ms Tomlinson, in which she said 'Hi Susan, thanks for your feedback about the helpline knowledge training. This looks like something we need to review. I have copied your email to Susan Tomlinson who is our training manager to have a look at

this. I hope you soon feel recovered.' Later that day Mrs Burton, who did not know the claimant, forwarded the claimant's Yammer message in an email to Mr Parker and two other managers. She said 'Hi all. Not sure if any of you are on you, but one of our trainees posted this and it has been picked up by Susan Clews and passed to Susan Tomlinson for the training team. I've copied the text below. It is complimentary of you all and really aimed at the organisation's readiness to adapt the training to work with people with dyslexia. So I can respond to Susan Clews, can you let me know what adaptations have been made? Thanks.'

43. On 26 October 2017, or possibly a day or two before that, the claimant told one of the trainers that she was nervous about moving onto taking calls. She said that she was concerned that her employment law knowledge was not up to standard to go on the phones and linked that with her dyslexia. The trainer told Mr Parker about this conversation. That same day, Mr Parker met with the claimant and asked how she was feeling about going on the phones on the following week and whether there was anything they could help with particularly with her dyslexia. The claimant responded that she didn't need any further assistance and was looking forward to getting on the 'phones.

44. During that conversation Mr Parker and the claimant also discussed what the claimant had said on Yammer. They gave different accounts of that conversation at this hearing. The claimant said in her statement that Mr Parker 'made it clear to me that yammer was not an appropriate forum for me to raise my problems. My feeling was that despite being encouraged to take part in the yammer conversation I was now being told by managers that I had acted inappropriately. This had the result of making me feel increasingly vulnerable and being viewed by management as subversive.' We note that the claimant's account differs in some respects from what she said in her further particulars of claim. There, the claimant said 'I was questioned by Neil Parker and my take was that it was best to discuss issues only with your line manager and talking to senior managers was discouraged.' The claimant's reference to her 'take' suggests not that Mr Parker explicitly told the claimant that she should not talk to senior managers, but that was what the claimant inferred.

45. Mr Parker's account of the conversation was somewhat different and certainly more detailed. He said in evidence he mentioned the Yammer conversation and told the claimant that HR was looking into it, and asked the claimant if she needed any equipment. He said the claimant responded that equipment would not help because it was anxiety issues that were more of a problem. Mr Parker denied saying that the claimant should refrain from raising issues like this with senior management but said he did encourage her to discuss issues like this with her line manager in the first instance in order that they may assist with overcoming any barriers to work.

46. Mr Parker's account is supported by an email he sent to Mrs Burton after the conversation. We find that Mr Parker sent this email at least in part because Mrs Burton had, a few days earlier, asked what adaptations had been made for the claimant during training. In that email he provided an account of what he described as 'steps I have taken to resolve some concerns with Susan Cullen in the last month.' There then followed Mr Parker's account of conversations and interactions with the claimant between 4 October 2017 and 26 October 2017. With regard to the

conversation on Yammer Mr Parker said in his email 'we also discussed her conversation with Susan Clews on Yammer. I advised that HR were considering how ACAS as an organisation could improve conversations around conditions at an early stage of the induction. Susan had also put a comment on Yammer around not being offered equipment to support her condition. I asked what equipment she felt she needed as she advised that office equipment would not help the issues she has with dyslexia as these are more around the anxiety issues than the written word. I advised that we would not automatically offer work equipment but that if as part of our conversations we had identified that this could help we would have pursued this at this point. Susan understood and accepted this.'

47. Looking at the evidence in the round, we find Mr Parker's account more compelling. We find that Mr Parker did say the claimant should speak to her line manager (which was him at the time, effectively) if she had any concerns about adjustments. We are not persuaded that Mr Parker told the claimant that she should not raise issues such as this with senior managers: that appears to be what the claimant inferred from what he said but we find that it is not in fact what he said. Nor are we persuaded that Mr Parker told the claimant she should not raise concerns like this on Yammer although, again, that appears to be what the claimant inferred.

48. One of the other trainers, a Mr Gray, also emailed Mrs Burton in response to her email, saying 'Susan had mentioned it to me in passing in review one. To my knowledge this had not been raised as a concern with the tutors, although this is something we could check. However, she did point out that the effect her condition had was to make her more anxious about the reviews in particular and not her level of performance in the module review. My recollection is that she made no reference, complaint or comment on the content, style, structure, delivery or timetabling of the training, or indeed the method of testing understanding at module reviews. When it was mentioned, she was reassured by managers that she could relax and was encouraged to take her time, so she could fully reference her notes and hopefully ease any anxiety.'

49. On 1 December the Claimant joined Claire Berkley's team who became her line manager.

50. To ensure the quality of its service, the respondent carries out monitoring of calls taken by helpline advisers. Experienced advisers listen to new advisers to check that the advice given is legally correct, impartial and encourages appropriate early dispute resolution (EDR). As part of this process, calls are scored using a scoring matrix. The matrix is aligned to a call structure which advisers in Newcastle are expected to use. The structure is designed to ensure that advisers ask appropriate questions, particularly in the early stages of the call, to elicit from the caller the pertinent information about their situation so that the advice given is relevant and accurate – a process referred to as 'drilling down'. Points are scored for the different elements of the call with the most important parts receiving the highest number of points. Calls will automatically fail if there is a breach of impartiality, if incorrect legal advice is given or if early dispute resolution principles are not followed, for example by unnecessarily escalating dispute or not providing relevant options for early dispute resolution. New advisers have five calls scored and are expected to have an average score of 60% across the five calls with no more than one fail.

51. On 15 December the Claimant attended a mid–probation review with Ms Berkley. Ahead of this meeting, the claimant had five of her calls scored in line with the usual process. Over the five calls, her average score was 59.4%, just below the 60% target. Her average score was badly affected by the fact that she scored 9% on one of her calls. That low score stemmed from Ms Berkley's assessment that the claimant had not asked enough questions of the caller, resulting in her giving advice that was considered by Ms Berkley to be 'not necessarily appropriate.' Ms Berkley considered that, on the other calls, the claimant had generally asked a variety of questions but had not asked appropriate 'drilling down questions' to establish exactly what the caller wanted to know.

52. During her meeting with Ms Berkley, the claimant referred to her dyslexia and said she had difficulty in remembering the different stages of the call structure. Ms Berkley encouraged the claimant to use a document that had been used in training and had been adapted for the claimant's use when taking calls - it set out the call structure and had room for the claimant to make notes throughout the call. Ms Berkley also encouraged the claimant to put callers on hold as a good technique to give her time to think about or find out what she should advise a caller rather than give answers too early. In addition she organised a coaching session before the next five calls were to be scored to help the claimant with her questioning techniques, particularly 'drilling down'. The claimant said she was unsure of any further support the respondent could offer. Ms Berkley said she would refer the claimant to occupational health with a view to finding out what additional support ACAS could offer.

53. In January 2018, five more of the claimant's calls were scored. The claimant's score across those calls was above 60%. Therefore, she was considered to have passed that part of the probation review and the number of calls scored was reduced to two calls monitored per month. Ms Berkley noted, however, that the claimant needed to focus on consistency, asking drilling down questions and maintaining impartiality as those were areas that she and coaches had identified as risks to her calls.

54. On or around 7 February, Ms Berkley listened to three of the claimant's calls for coaching purposes. She recorded that she had concerns about how the claimant had addressed early dispute resolution and was also concerned that the claimant had not been impartial and had given incorrect advice from a legal perspective. She listened to two more calls and recorded that she believed the claimant had, on both of those calls, also given incorrect advice from a legal perspective. Ms Berkley arranged for experienced colleagues to sit with the claimant for support over the next couple of days. One of those colleagues noted that further work was needed on 'call structure and control'. Ms Berkley spoke to the claimant who asked to take calls alone again the following week. Ms Berkley agreed to that but explained that she would be carrying out additional monitoring to ensure standards continued to improve. On 15 February Ms Berkley listened to two of the claimant's calls. She noted that the claimant was 'showing attempts at drilling down' but that the early dispute resolution options given to the caller were incorrect on both calls.

55. On 22 February the Claimant attended a Probation Review meeting with Ms Berkley. Ms Berkley highlighted four areas in which she said she had concerns: that the

claimant was not questioning callers effectively, including 'drilling down'; that she was not giving impartial advice; that she was not giving appropriate advice on matters relating to early dispute resolution; and that she was not giving advice that was legally accurate. The claimant mentioned again that she thought her dyslexia might be affecting her ability to carry out her duties to the required standards. Ms Berkley decided to implement an informal performance improvement plan over a four-week period. This involved scoring two calls each week over the first three weeks and then scoring five calls in the fourth week. She told the claimant that her average call score must be above 60% and there must be no more than one fail on the basis of early dispute resolution, 'legal' or impartiality. The Claimant's probationary period was also extended by 3 months.

56. The following day the Respondent received an OH Report prepared by Dr A Manzoor dated 22 February 2018. Dr Manzoor noted 'Susan agrees that she has been struggling with the different areas of work as mentioned in your referral, however she does feel that she does provide a good service to the individuals and helps them deal with their issues. Clearly she feels confident in terms of the information that she is giving out to clients, however I understand it may not be in the sequence or order that is expected of her and despite your input the issues remain unresolved.' Dr Manzoor suggested that it would be useful to have input from a specialist in dyslexia.

57. Whilst Ms Berkley was away from work in February 2018, Mr Bainbridge monitored two of the claimant's calls. He marked both calls is a fail: one failing because he considered the claimant had not addressed early dispute resolution issues properly and the other because Mr Bainbridge thought the claimant had given incorrect advice from a legal perspective. At this stage the claimant had colleagues sitting next to her listening in to her calls. This was part of her performance improvement plan, the colleague being present to check the claimant's calls. The claimant was unhappy about having other people sitting with her when she took calls. She told Mr Bainbridge this was putting her off due to her dyslexia. Mr Bainbridge therefore arranged for colleagues to conduct checks by listening into the calls remotely rather than sitting directly next to the claimant.

58. In late February/early March an experienced helpline adviser listened in to eight of the claimant's calls. The colleague reported to Mr Bainbridge that the claimant had given incorrect advice on four of the calls and that she had been able to interject to provide the correct advice on two of the calls but on the other two calls she was unable to do so because she was not sitting next to the claimant. The claimant's colleague also said that in the majority of calls 'the drilling down questions were not placed at the beginning of the call. Susan did do this in one of the calls taken. In all other calls she has immediately gone into fact-finding.'

59. Six more of the claimant's calls were reviewed on 6 March. The colleague who reviewed those calls reported that, in the majority of calls listened to, the 'drilling down was not asked at the beginning of each call.' However, they said that they did not have to interject at any point during the call being handled to avoid wrong advice being provided.

60. In early March Mr Bainbridge made arrangements for the claimant to listen in to other advisers' calls to witness the techniques they used on calls. However, the claimant said she did not find it helpful and preferred to review her own notes. Mr Bainbridge agreed to give the claimant time out from taking calls so that she could consolidate her own notes and organise her files. In mid-March the also claimant re-sat a number of the training modules she had passed as part of her initial training.

61. For a short period in March, someone called Laura deputised for Ms Berkley in her absence. Then, on 26 March, Mr Bainbridge became the claimant's line manager following Ms Berkley's move to a different role. Two days later the claimant and Mr Bainbridge had a meeting to discuss call scoring. The claimant had recently been scored on some of her calls. She was told she had failed one of those calls on 'legal alone'. We infer that the claimant was considered by whomever scored her to have failed to give correct advice from a legal perspective on one of the calls. Mr Bainbridge told the claimant that there would be a two-week extension to the informal improvement plan, with Mr Bainbridge providing the claimant with feedback on calls in the first week and then marking five more calls in the second week.

62. On 3 April, someone from Access to Work (ATW) visited the Respondent's office to assess the Claimant as a result of a referral made the previous month. After her visit she prepared a report. According to the report, the claimant told the individual from ATW during her workplace assessment the following: that she had regular problems with information processing and working memory due to her dyslexia; that the effects vary and can include organisational, structural and writing skills; that reading fluency, accuracy and comprehension can be affected and slowed at times; that she is often forced to undertake multiple rereads of text to boost retention and understanding; that this can significantly impair her work efficiency and productivity; that the likelihood of this is increased when she has a large workload, or when her work pressures are mounting; that her memory can also be problematic, and will often cause issues as she may forget the finer details of what she was trying to remember; and that due to the rush and stress involved in her work, any notes she makes can be confusing and lacking structure causing her or others to struggle when re-reading notes later on. The assessor said that poor information retention is a common effect of dyslexia, which can increase learning times and seriously affect workplace confidence. The person from ATW recommended that the claimant attend a series of coping strategy sessions (six sessions in total). The report went on to say 'Mrs Cullen will need time to learn and adapt to new strategies and techniques. As a result there may not be an immediately obvious improvement in terms of performance with the current difficulties. As with any new user or trainee, I suggest that Mrs Cullen would need a period of time, perhaps around 3 to 6 months to adjust and put a new way of working into practice.' It was also suggested that the claimant and her colleagues/managers undertake a three-hour session of disability awareness training.

63. On 3 April the Claimant sent Mr Bainbridge an email in which she said she was 'unclear' as to why she was being monitored as reasonable adjustments had not been put in place. She said a workplace assessment should have been carried out, that she was dismayed that she did not have reasonable adjustments six months into her employment and asked for access to the ACAS stress risk assessment. Mr Bainbridge forwarded that email to Mr O'Carroll of HR and to his line manager Mrs

Burton, saying he wanted to run it by them before he responded. Mr O'Carroll forwarded that email to somebody else (whose name is redacted from the document we were referred to). He began that email 'as you can see from the emails below, in particular the one from Susan herself, where this is heading. I'm about to send all the paperwork and necessary forms regarding stress in the workplace. Anthony has pointed out very well in his response what could be deemed to be reasonable adjustments that have been made. My next step is to gather information in response to each individual point she makes, as to whether we have actually got any evidence of the conversations and responses.…'

64. Because the claimant had said that ACAS should have been aware of her dyslexia and taken advice on adjustments before she started employment, Mrs Burton asked the recruitment manager whether she had been aware of the claimant's dyslexia at the time of recruitment. That person checked the information the claimant had supplied at application stage and told Mrs Burton that the claimant had said she had dyslexia and that it had a positive effect, making her 'thorough and careful'. Mrs Burton reported this in an email to Mr Bainbridge and Mr O'Carroll on 4 April.

65. A few days later, on 6 April, the Claimant completed a form entitled 'HSE Management Standards Analysis Tool'. She said in that form that she was suffering stress due to being micromanaged. The claimant emailed the form to Mr Bainbridge. Later that day Mr Bainbridge spoke to the claimant about the stress she was feeling. Mr Bainbridge sent the claimant an email confirming the issues that were discussed. The claimant replied that she fully understood the probation and the extension process. In response to a comment Mr Bainbridge had made about the claimant having been unable to identify specific adjustments she felt should be made, the claimant said 'just to clarify my dyslexia has impacted on all aspects of my life since birth, adjustments have been implemented when required and I have developed coping strategies for certain situations. However it is impossible for me to pre-empt how my dyslexia will affect me in a new job role as I'm not a specialist, it would be impossible for me to outline what reasonable adjustments could be put in place.…'

66. That same day the Claimant attended an area meeting at which somebody from within the respondent's Diversity and Inclusion group spoke. At that meeting, the claimant said she was concerned that the support network was not in place for people with learning difficulties like dyslexia. Mrs Burton was present at that meeting. Afterwards, Mrs Burton approached the claimant and said she had not been told that the claimant was dyslexic until the claimant had brought that matter to the attention of trainers and managers during her training.

67. On 9 April Mr Bainbridge confirmed to the claimant that, as an adjustment, she could take extra time between calls.

68. Between the 10 and 16 April, five of the claimant's calls were scored as part of her performance improvement plan. Three out of her five calls were recorded as fails. Those calls were independently scored by two of the claimant's colleagues. One of the calls failed on legal grounds, one on early dispute resolution grounds, one on both legal and early dispute resolution grounds. Over the five calls, the average score was 47.6%, against the target level of 60%.

69. On 17 April 2018, Mrs Burton forwarded to Mr Bainbridge the emails that Mr Parker and Mr Gray had sent her in October 2017 in response to her enquiry, following the claimant's comments on Yammer, about adjustments that had been made.

70. On the 18 or 19 April, Mr Bainbridge telephoned the person from ATW who had assessed the claimant and compiled a report. She told Mr Bainbridge that disability awareness sessions are recommended in all cases and that she had no specific concerns about ACAS. She also told Mr Bainbridge that there were no software or physical adjustments that would help the claimant and that she felt coping strategies were the best option because they focused on working memory and processing at a cognitive level.

71. On 20 April Mr Bainbridge wrote to the claimant asking her to attend a first formal meeting with him, which was to be held in accordance with the respondent's probation policy and procedure. Mr Bainbridge explained that the issue causing concern was the quality of calls. He referred to the record of calls scored since the informal performance improvement plan had been put in place. In that letter, Mr Bainbridge warned the claimant that she could be given a first stage written warning and that, if that happened and the claimant's performance level did not improve within the specified time scale, it could ultimately lead to her dismissal.

72. The meeting took place a week later. The claimant was accompanied by a colleague. Mr O'Carroll was present as notetaker. During that meeting the claimant and her colleague made a number of points, including asking that her probation period be extended again and saying she would prefer, during that time, not to be 'micro-managed.'

73. On 30 April, Mr O'Carroll telephoned the British Dyslexia Association and spoke to somebody there. Mr O'Carroll explained the job description and outlined the issues of concern with the claimant. The person he spoke to expressed the opinion 'unofficially' that she believed the claimant would be very unlikely to be able to do the job. She suggested that the claimant may benefit from what was referred to as a 'Cogmed course' which is a course run by the BDA and which she said had helped some people with memory problems.

74. The same day, Mr Bainbridge sent an email to Mr O'Carroll and Mrs Burton on 30 April setting out what he described as his initial thoughts as to how to proceed with the claimant. He said he was open to adjusting the target of 60% to 50% but felt a warning should be issued. In that same email, Mr Bainbridge set out a timeline outlining, in chronological order, a number of events concerning the claimant. The timeline referred to the conversations the claimant had had with Mr Parker about dyslexia on 6 October and 26 October 2017 and discussions that Mr Bainbridge had had with the claimant in relation to her performance and her dyslexia. Mr Bainbridge's chronology also detailed, amongst other things, the coaching and feedback the claimant had had from experienced colleagues, the probation reviews, the dates on which the claimant's calls had been listened to, what feedback had been given on those calls, how calls had been scored, and additional training that the claimant had attended. We accept that the chronology is an accurate reflection of those matters.

75. Two days later Mr O'Carroll asked someone else in HR for a copy of the claimant's references dating from when she had been recruited. He said this was 'required as part of an ongoing case where this information is required to substantiate statements that have already been made and in relation to potentially extending their probationary period…'.

76. On 3 May Mr Bainbridge sent a letter to the Claimant issuing her with a First Written Warning. He also told her that he was putting her on a formal performance improvement plan and extending her probation. He summarised the reasons for his decision as follows 'you are now eight months into your employment with ACAS and there has been a significant amount of training and support provided to you to reach the required standard. Though the support has been in place, there have been ongoing issues with call quality. When incorrect information is provided, or relevant options are missed, there is a reputational risk to us as an organisation. This can also have a significant impact on the lives of our customers who are contacting us, often in difficult situations, and who are trusting our expertise and acting upon the advice we provide. Taking into consideration all that we discussed and the substantial effect on customers when we get calls from, it is my decision to issue you with a first warning in line with our probation policy.'

77. In his letter, Mr Bainbridge addressed in detail points the claimant had raised during their meeting. Mr Bainbridge had decided not to adjust the targets. He explained that decision in his letter as follows 'under the informal PIP you were set the objective to score over 60% average on your call score across five calls, where there should be no more than one fail for legal, early dispute resolution or impartiality. You have requested we consider dropping the target to 50% for you. After giving this much thought I do not deem this to be a reasonable adjustment. The reason for this is that the call scoring system takes into account the whole call, both the call structure and the advice given. Structure is in place to ensure we ask the right questions to deal with the call the situation and offer the correct advice. The helpline adviser role as a customer facing role and reducing this objective would have the impact of lowering the quality of advice we are delivering. A reasonable adjustment should help you reach the required standard, not lower the standard at a detriment to our customers.'

78. During her meeting with Mr Bainbridge, the claimant had said she felt 'micromanaged'. Mr Bainbridge said in his letter 'I appreciate you would prefer us not to listen to the amount of calls which we have. It is the nature of the job to have calls listened to as we monitor quality by coaching and call scoring. As mentioned in the meeting, going forward there will be a support plan in place for you. The details of which we will discuss in detail on your return. I will endeavour to balance both your needs and the needs of the business, to ensure you are getting feedback and support at a level you feel more comfortable with.' Towards the end of the letter, Mr Bainbridge warned the claimant that if her performance did not meet the required level at the end of the formal review period, or there were other concerns during the formal review period, she may move to the next stage of the procedure which could ultimately lead to her dismissal.

79. On 10 May Mr Bainbridge emailed to the claimant a copy of her formal PIP. The claimant had asked for a reduction in her hours so that she could work four days a week instead of five days a week, which she felt would be less stressful. Mr

Bainbridge had agreed to that and confirmed it in his email. The email also confirmed that the claimant would be provided with support from a colleague during daily 'reading time' that the claimant was provided with. Mr Bainbridge sent a copy of his email to Mr O'Carroll and Mrs Burton. In response to a query from Mr O'Carroll as to whether the claimant was expected to appeal, Mr Bainbridge said 'I would be very surprised if we don't get one as she's challenged us every step of the way so far.' He said he had mentioned the option of an appeal but the claimant had not committed either way. He then said 'I can see her screen in the distance from my desk and she was working on a word document earlier but whether that's the appeal or not is unknown.'

80. The claimant appealed the decision to give her a first written warning. In the meantime, the formal improvement period began on 11 May. It was due to last six weeks until 21 June 2018.

81. Sometime on or before 14 May the claimant had a conversation with a Ms Botto who was a well-being coach within ACAS and responsible for producing the organisation's in-house health and well-being magazine. The claimant was writing an article about her experiences of being dyslexic. The claimant and Ms Botto had a conversation about the article. Following that conversation, Ms Botto spoke to Mr Bainbridge and gave an account of what the claimant had said to her, which conversation she said had happened in the ladies' toilets. We infer that the account Ms Botto gave when speaking with Mr Bainbridge was consistent with what she said later in an email she sent to Mr Bainbridge on 21 May. In that email Ms Botto said 'Susan mentioned she was no longer sure whether she wanted to progress the article, explaining she would likely be punished for talking about her dyslexia. Proceeding to tell me she was on a final written warning for this reason alone; highlighting she was no longer the same positive person I spoke with at the start of January. Susan stated ACAS had failed to make any adjustments and that she was at a loss because if she talked to any of her colleagues they would be disciplined as a direct result. She brought my attention to the fact that two new starters also have dyslexia and was concerned they would be disciplined for that reason and just hoped they would get the necessary support unlike her.' Ms Botto also said that when she had mentioned to the claimant how she found it difficult on the phones to begin with, the claimant had replied saying she must have some sort of condition/dyslexia. Ms Botto also said that the claimant was visibly upset through the conversation and that she had decided it was appropriate to approach Mr Bainbridge about the claimant's concerns.

82. Mr Bainbridge then spoke to the claimant and put to her that Ms Botto had told him the claimant had said she had received a warning for raising concerns about having a disability and that she was unable to speak to colleagues about this as they would be disciplined. The claimant denied having made such comments. We accept that what Mr Bainbridge said to the claimant in that conversation is consistent with a follow-up email he sent to the claimant on 18 May. In that email, Mr Bainbridge acknowledged that the claimant denied having made such comments and said 'as you are aware speaking to colleagues is perfectly acceptable. All we ask is that when talking to someone any information is accurate and truthful. You also need to consider the appropriateness of where you have conversations. This is a public building and we regularly have in delegates who are training with us. Overhearing

incorrect information such as the above could negatively impact the reputation of the organisation. As I said when I met with you, it's been important that I speak to you about this as I needed to ensure you are clear and that no one has been giving you misleading information, if that had been the case I would need to address it. I will have a further conversation with the individual who approached me, just so that everything is clear.'

83. The claimant's article was never published. We were directed to a copy of the article at page 682 of the bundle. It is clear that this is not a completed article as it contains a section which the claimant described as 'just a few ideas'. The draft we were referred to contained nothing that could be perceived as critical of ACAS or any of its managers. Indeed it highlighted the 'support and kindness' of the claimant's fellow colleagues. We note that the claimant said in that article 'what I do bring to the job is a lifetime's experience, empathy… and the ability to say something ten different ways so they fully understand the complicated subject we cover.' She also said 'I think what I would really like is to not be treated differently, nobody worried about saying something wrong, nobody needing to get procedures right, no ticking of boxes,…'

84. We infer Ms Botto must have sent a copy of the draft article to Mr Bainbridge when, or before, she sent him her account of her conversation with the claimant on 21 May as Mr Bainbridge sent a copy to Mrs Burton and Mr O'Carroll saying 'I know you were interested to see this Henry.' Mr Bainbridge also forwarded Ms Botto's email account of the conversation and said 'following the meeting with Susan I consider this matter closed and she is clear about the reason for the warning and the appropriateness of speaking with colleagues.' He said he was going to keep hold of Ms Botto's record 'for information purposes only' and that he did not intend on taking further action. Mr O'Carroll replied to Mr Bainbridge and Mrs Burton 'thank you for this information, the article makes interesting reading. Totally agree that this matter should now be closed, therefore there would be no need to address it should it be raised during the appeal.'

85. In the meantime, on 17 May, the Claimant sent Mr Bainbridge an email expressing an interest in a vacancy for Grade 9 Recruitment Manager. Although ACAS has a policy that staff with live warnings cannot apply for promotions, Mr Bainbridge agreed that the claimant could apply for the role.

86. On 18 and 25 May the claimant had coaching sessions with Mr Bainbridge; he and the claimant listened to calls and he provided feedback, emailing the claimant afterwards to confirm the feedback. On 18 May, the feedback Mr Bainbridge gave was largely positive. However, he said that with regard to one of the calls, about sick pay, he could not be certain that the information the claimant provided was accurate as 'there was a lack of questioning around exactly what the policy states'. He told the claimant that 'the area of the call structure that all three calls will benefit most from would be working on the drilling down. This will allow you to find out exactly what the caller wants to ensure you are giving accurate advice that is relevant to the question.' On 25 May, the feedback Mr Bainbridge gave the claimant referred again to the need to get the 'drilling down' questioning and asking it as early as the claimant occurred, saying 'as it helps you understand what the caller wants, meaning you can ask more relevant questions. It saves you asking extra questions

that may not be necessary, avoiding getting additional information which could overcomplicate the situation.' Mr Bainbridge also highlighted a couple of matters about which the claimant had given information that was legally incorrect or legal points that the claimant had not picked up on.

87. On 25 May, Mr Bainbridge suggested to the claimant that she be referred back to Occupational Health to seek an opinion on how the organisation could help the claimant to deal with stress. The claimant emailed Mr Bainbridge that day agreeing to the referral. Mr Bainbridge passed that information to Mr O'Carroll by email who then arranged the referral. In his email to Mr O'Carroll Mr Bainbridge referred to his conversation with the claimant about the referral and said 'The only way she feels there will be less stress is if we stop the current PIP and stop call scoring – which isn't an option.' In his email to Mr O'Carroll, Mr Bainbridge told Mr O'Carroll that he was scoring the claimant's calls as part of the formal performance improvement plan that week. He said 'I have marked 3/5 calls and 1/3 has failed. It has failed on Impartiality which is different from the previous fails. The breach to impartiality occurred when Susan suggested an employee be dishonest with their employer.' Mr O'Carroll responded 'Not the news I was hoping for ref the call scoring.'

88. On or around 25 May, the claimant tried to apply for other jobs within the Civil Service, outside ACAS, via a website. There is no evidence that the website was operated by ACAS and we infer that it was not, given that it was an online facility that enabled applications for vacancies across the wider civil service. When trying to make applications using the website, the claimant was asked whether she was under a formal procedure. On clicking the answer 'yes' she was not able to continue further with her application. The claimant told Mr Bainbridge about this on 25 May and Mr Bainbridge raised it with Mr O'Carroll and asked if there was anything he could think of that would allow the claimant to complete her applications to other areas of the civil service. Mr O'Carroll, in turn, asked someone else in ACAS, a Ms Dewsbery, if, in her experience, she had ever been able to overcome that problem. She replied saying 'some departments (often the larger ones) will not allow the promotion or lateral to proceed when it is indicated that there is a live warning in place. Some of the smaller departments & agencies are more flexible and some will allow applications to proceed on a lateral basis only.' She suggested that the claimant could try approaching the recruiting manager of the other civil service department directly to explain her situation.

89. Mr Bainbridge continued to arrange coaching sessions for the claimant in which the claimant's calls were listened to by either himself or other experienced colleagues who provided feedback.

90. On 1 June 2018 there was an appeal hearing against the first written warning. That meeting was chaired by Mrs Burton. The claimant attended with her union representative. At the meeting, the claimant focused on wanting the call structure and/or scoring reduced. Both the claimant and her representative said that they believed the scoring had been applied harshly to her calls. Mrs Burton agreed that she would listen to the calls before reaching her decision. She asked the claimant what it was, specifically, about the job that the claimant found difficult. The claimant referred to the call structure which she said she found difficult to follow. She also said that 'one word can mean the whole call is marked down.' Mrs Burton told the

claimant that the call structure is there to make sure advisers get the information needed from the customer to be able to answer their questions and avoid giving advice that is wrong. She also pointed out that it was not the failure to follow the call structure that was causing the claimant to fail calls: that failure had caused the claimant's score to fall below the 60% target, but when calls had failed that was because the claimant had given incorrect advice from a legal perspective, given advice that was not impartial or failed to advise properly in relation to early dispute resolution. The claimant repeated that she found it difficult to follow the call structure saying 'I can cover the basics - not necessarily in the correct order' and that it would help if the call scoring were reduced. Mrs Burton responded that removing the call structure would be detrimental to customers and potentially lead to the claimant giving incorrect information. In response to that the claimant said that the information she was giving was 'not all wrong' and that 'it may be just one simple word that makes me come across as taking someone's side, and also I feel that I'm being judged by the perceptions of one individual.'

91. We accept Mrs Burton's evidence that she did not tell the claimant at this meeting that the claimant would be dismissed, although the claimant must have been aware that dismissal was likely if her performance did not improve. Mrs Burton's evidence is supported by the notes of the meeting that suggest that it was the claimant, not Mrs Burton, who referred to the risk of dismissal.

92. Following the appeal meeting, Mrs Burton listened to the last five calls scored by Mr Bainbridge as part of the formal improvement plan and asked another helpline manager to score them independently. The other manager commented on the same sorts of issues as Mr Bainbridge and gave very similar scores. Mr Burton noted that all of the calls scored poorly on asking questions and giving clear information and she formed the view that the customers' experience was not of an acceptable standard. Mrs Burton rejected the claimant's appeal against the written warning and formal improvement plan and notified the claimant of her decision, and the reasons for it, by email of 8 June. Mrs Burton declined to reduce the 60% target for call scores and also declined the claimant's request to be allowed to deal with calls outside of the usual structure. She told the claimant that she agreed with Mr Bainbridge that this would have the effect of offering customers a lower standard of service and would not be reasonable. She also told the claimant that the call structure was not about 'scripting' calls, it was in place to ensure the adviser got all the information needed to assess the situation and give appropriate and correct advice to the customer and that poor questioning skills present a risk to ACAS's reputation as the employment relations experts. She added that she did not feel that the claimant fully accepted the reasons for her calls failing and did not take responsibility for the poor standard of service or incorrect information given to customers.

93. In early June a second OH report was sent to Mr Bainbridge, following a telephone consultation between the claimant and the OH adviser a few days earlier. The OH adviser described herself as a 'specialist practitioner in Occupational Health'. Her report recorded that the claimant had reported that her stress arose from scoring, having to follow structure and 'the micro-management style'. It also contained information about how dyslexia can affect people, noting however that 'dyslexia varies from person to person and no two people will have the same set of strengths

and weaknesses.' It said 'Some of the symptoms can be: memory difficulties; organisational difficulties; writing difficulties; visual processing difficulties; reading difficulties; auditory processing difficulties; time-management difficulties; sensory distraction and sensory overload.' It is clear that the OH adviser did not consider herself an expert in dyslexia and was not purporting to express an opinion as to how the claimant's dyslexia manifested itself. As she said 'I cannot hope to assess Susan's needs in the 45 minute consultation and ATW [Access to Work] are the experts.' Rather, we find that she was reporting the claimant's own subjective perception of how her dyslexia affected her.

94. In June the claimant began having the coping strategy sessions that had been recommended by Access to Work. They were provided by an organisation called Ability Smart and took place whilst the claimant was working so that the person providing the training could recommend and demonstrate techniques in the context in which they would need to be used by the claimant.

95. On 12 June, one of the claimant's colleagues emailed Mr Bainbridge saying she was slightly concerned about some things the claimant had said to her the previous day. She said the claimant had told her that Mrs Burton had said to her the previous day that she may be dismissed. Mr Bainbridge spoke to Mrs Burton, who she said she had not said what the claimant was alleging. Mr Bainbridge spoke to the claimant about this on 14 June and then sent the claimant an email saying 'as this is the second time I have been approached by a colleague worried about statements you have made, I felt it necessary to speak to HR. Though HR have advised this is a potential conduct issue, I am at this point going to take no further action.… I appreciate this has been a difficult period of time for you and it is normal to seek the support of your colleagues. Once again, I would suggest you give consideration to conversations you have within the organisation and ensure any statements you make are wholly accurate. If there are any similar instances of this we may need to consider further action.' The claimant replied by email setting out her version of the conversation she had had with her colleague, suggesting she had simply expressed her own worry and distress about the possibility of being dismissed. Mr Bainbridge replied by email saying: 'as discussed yesterday it is up to you how much you want to share with colleagues ..the only concern I have is when someone approaches me advising you have said something which is inaccurate. I fully appreciate you dispute what has been said. If you want to speak to colleagues, you are free to do so, just ensure there is no room for misunderstandings.'

96. At some point in June, Mr Bainbridge scored 5 of the calls that the claimant had taken during the 6-week formal performance improvement plan. He had given the claimant scores which averaged 46.7% (the pass rate was 60%) and had failed three of the calls, one on 'impartiality', one on 'early dispute resolution' and one on 'legal and early dispute resolution'. The two calls that Mr Bainbridge marked as a 'pass' were calls he scored at 75.5% and 67.5% respectively. The marks Mr Bainbridge gave to the 'failed' calls brought the claimant's overall score below the 60% target. We accept Mr Bainbridge's evidence that he selected the calls he scored at random.

97. Mr Bainbridge spoke with the claimant on 22 June about the results and why the calls had failed. He then sent an email to the claimant setting out her final scores. In

that email Mr Bainbridge said that although overall there had been some improvements, there was still an 'underlying issue around drilling down and the delivery of the answer' and an issue with the 'clarity and accuracy of the advice' given by the claimant. In the email he said 'I have an ongoing concern over the advice being provided to our callers and as these calls fall below the required standard, I am going to seek further advice on next steps for us. One possible option would be to suspend you as we need to protect the reputation of the business. This comes into question when incorrect advice is provided. This step will not be taken lightly and I will seek further advice when considering the appropriate options. As discussed, if suspension is something I feel we must do, I will write to you to inform you next week.' Mr Bainbridge copied the email to Mr O'Carroll and Mrs Burton. After taking advice from HR, Mr Bainbridge decided to suspend the claimant. Mr Bainbridge told us that he did so because he felt that the claimant's performance was not improving and allowing the claimant to continue taking calls from the public posed too high a risk, both for members of the public who called in and for the reputation of ACAS. On 25 June the claimant went on annual leave. Upon her return, the claimant was told she was suspended from work and put on special leave. Mr Bainbridge then cancelled the sessions with Ability Smart that were due to take place in the workplace.

98. In her statement, Mrs Goundry said the claimant had, during her employment, expressed concerns to her that no matter how well she was doing managers were going to fail her and that managers were finding ways of failing her regardless of how good calls were and regardless of the information she was given. She did not say when the claimant had expressed that opinion but we accept that she had.

99. The claimant was asked to attend what was described as a formal Stage 2 Meeting for Managing Unsatisfactory Performance under the Probation Policy and Procedure. The meeting took place on 13 July and was chaired by Mr Peel, area director for ACAS Northeast. The claimant attended that meeting with her union representative. At the meeting the claimant was given the opportunity to listen to the recent calls that had been scored. She opted not to listen but her union rep did listen to the calls. Mr Peel observed that in week three of the performance improvement plan, two of the claimant's calls that had been reviewed were assessed as fails, and in week six, three of the calls were assessed as fails. Mr Peel listened to what the claimant and her union rep had to say in that meeting. Afterwards he spoke with HR colleagues, listened to the failed calls again and reviewed the reasons for those calls failing. After doing so, Mr Peel decided to dismiss the claimant.

100. Mr Peel notified the claimant of his decision by letter dated 24 July 2018. In that letter he gave extensive reasons for his decision. He noted in his letter that it was significant that that the claimant's calls consistently failed based on the three core principles of early dispute resolution, legal information and impartiality and that this posed a significant risk to both ACAS and its customers. He noted, in particular, that one of the calls which failed during the claimant's performance improvement plan had been failed on impartiality when the claimant suggested that a customer be dishonest with their employer regarding an issue surrounding their contract and suspension. He observed that handling a call in that way brought into question ACAS's integrity and posed a substantial reputational risk. He acknowledged that the claimant had only had two sessions of coping strategy training with Ability Smart

but said that if she were to be allowed to continue with those sessions then, building in time for the claimant to benefit from the sessions, the claimant would need an extension to her probation period totalling 18 months. Mr Peel said he did not feel it was appropriate to allow the claimant to continue taking calls on that basis.

101. On 1 August the Claimant sent a letter to Mrs Parker (regional director) appealing the decision to dismiss her. At the end of that month, following an appeal hearing which the claimant attended with her union rep, Mrs Parker rejected that appeal. We are satisfied that the claimant was given the opportunity to raise any points she wanted to during her appeal. Mrs Parker upheld the decision to dismiss the claimant. The reasons she gave for doing so were essentially the same as those set out by Mr Peel.

Conclusions

Complaint of failure to make reasonable adjustments

102. The respondent accepts that, at all times material to the allegation, the claimant was a disabled person and the respondent knew or ought reasonably to have known that was the case. The respondent also accepts that that it operated a procedure that call advisers in the Newcastle hub had to reach targets for call structure and call scoring and that this was a provision criterion or practice that was applied to the claimant.

103. It does not follow from those concessions that the respondent was under a duty to make reasonable adjustments. That duty only arose if the respondent's requirement for advisers to reach targets for call structure and call scoring put the claimant at a substantial disadvantage in relation to her employment in comparison with persons who are not disabled and the respondent knew that it did so or was likely to do so.

104. The claimant's case was that she was less likely to reach the respondent's targets for call structure and call scoring because her dyslexia made it difficult for her to attain the required standards.

105. In her witness statement the claimant said that the respondent's practice of marking calls placed her at a 'distinct disadvantage' compared to non-disabled colleagues. She went on to explain 'the marking was based on a call structure which was rigid and, due to my disability, was difficult for me to follow.' Further on in her statement the claimant referred again to the call scoring structure putting her at a disadvantage because she 'had difficulty in following structure and potentially you could lose a significant number of points by not following the structure correctly.'

106. As recorded in our findings of fact, as part of the respondent's quality controls, advisers have calls scored using a scoring matrix. The matrix is aligned to a call structure which advisers in Newcastle are expected to use. The structure is designed to ensure that advisers ask appropriate questions, particularly in the early stages of the call, to elicit from the caller the pertinent information about their situation so that the advice given is relevant and accurate – a process referred to as 'drilling down'. It is not appropriate to describe it as a 'script' as alleged by the

claimant. Points are scored for the different elements of the call with the most important parts receiving the highest number of points. Calls will automatically fail if there is a breach of impartiality, if incorrect legal advice is given or if early dispute resolution principles are not followed, for example by unnecessarily escalating dispute or not providing relevant options for early dispute resolution. New advisers have five calls scored and are expected to have an average score of 60% across the five calls with no more than one fail.

107. During the claimant's employment, managers and experienced colleagues consistently observed that the claimant was failing to ask appropriate 'drilling down questions' at the early stages of the call. This caused several calls to be marked down.

108. Dyslexia is a specific learning difficulty that affects different people in different ways: for some, the effects will be severe; for others the effects will be significantly less so. The respondent concedes that the claimant had a disability. It follows that the respondent concedes that the claimant's dyslexia had more than a minor or trivial effect on day-to-day activities. There is objective evidence of the effects of the claimant's dyslexia before us in the form of the report compiled by Dr Makepeace when the claimant was at university in 2013. That report was not considering the effects of the claimant's dyslexia in the context of her work with ACAS. Nevertheless, it is relevant evidence of the way in which the claimant's dyslexia affected her. Dr Makepeace noted in particular that the claimant had significant weaknesses in retaining information in auditory working memory and processing visual information at speed. We accept that the claimant was affected in these ways.

109. We can also imagine that the difficulties described by Dr Makepeace could, in principle, affect somebody in the environment and role in which the claimant worked with ACAS. However, it is not for us to speculate as to how the claimant was affected at work. Therefore, we asked the claimant to explain to us in what ways the call structure was problematic for her. She replied 'many people without a disability can follow structure; I had to concentrate more on what the caller was asking me and I followed their direction to get to what was needed. I say it might be all there but jumbled up. They preferred me to do it the correct way; they said that is the way to get the correct information.' The claimant went on to say 'I can't do order; I can't remember to follow certain aspects. I can't remember times-tables for example. Structure and putting things in a certain order can be difficult for me to remember.' We asked the claimant if having a document in front of her with the structure on it helped her to remember. She replied 'in some respects but my main aim was to listen to the caller and if they wanted to go in a different direction I would always go with them because that way I had the ability to find out what they needed.'

110. It is clear to us that the claimant considered this to be an effective technique. This is revealed by her answers to these questions and also by comments she made to Dr Manzoor in February 2018 – we infer from his report that the claimant had said she was confident in the information she was giving but that it was not in the sequence or order expected of her – and the significant amount of evidence that the claimant did not think the call structure, with its expectation that drilling down questions would be asked, and asked at an early stage of a call, was necessary: during her employment she asked several times not to have to follow the structure,

pointing out that other offices did not have to follow it, and said she felt she was being marked harshly for not having followed it; she also referred to the call monitoring dismissively as 'micro-management', indicating that she did not agree that her performance was below standard.

111. The explanation given by the claimant suggests to us that the claimant had a strong preference for not asking the kind of questions referred to as' drilling down' questions early on in the calls, not because she did not remember to ask relevant questions early on or because she found it difficult to do so, but because she preferred to allow callers to talk freely rather than take control of and direct the conversation herself and she believed this to be an effective approach. It is not difficult to see that some individuals might be more comfortable with that approach, rather than adopting a more active, interventionist technique and we note that the claimant said in her witness statement: 'many of my fellow colleagues advised me that despite having many years of experience in the role they were also struggling with the new call structure and had been placed on personal improvement plans' and 'the rigid structure that Newcastle managers had adopted did not necessarily fit all advisers and many were finding it detrimental to their call scoring…' Mrs McManus, in her evidence, also said that the majority of advisers had been facing performance improvement plans over the last few years.

112. Looking at all the evidence in the round, we are not persuaded by the claimant's submission that the call structure, with its expectation that advisers ask probing questions early on in the call, was difficult for her to follow due to her disability.

113. In her witness statement the claimant also said that during her training, she had difficulty collating information whilst learning the fundamentals of employment law and her files became disorganised. Her case appeared to be that she was more likely to give incorrect advice because of her dyslexia.

114. In cross-examination Mr Crammond put it to the claimant that when she got things wrong on calls, that was not because of her disability. The claimant responded that that was not correct and that her disability affected how she could find information, how she interpreted information and how she would pass it on. She did not elaborate at that point. In response to further questioning the claimant said 'I was struggling because of my knowledge and how I explained things – it was because of dyslexia.' She also said suggested that, even though she was able to check her notes before giving advice, advice could still be incorrect if she had not from the outset understood a particular part of employment law accurately. She said she had felt confident she did know the law and it was only when she was told she was wrong that she realised that this was part of her dyslexia.

115. When Mr Crammond put it to the claimant again that her dyslexia did not cause her to give out incorrect information in relation to early dispute resolution or incorrect legal advice or advice that was not impartial, the claimant's response was that it was 'not as easy as that' and there were times when she got information from others and still failed. The claimant here seemed to be suggesting that she had been failed even when she gave correct advice. The claimant also appeared to be suggesting that she was marked 'harshly' in retaliation for alleging that the respondent had discriminated against her by failing to make reasonable adjustments. Under cross

examination, the claimant accepted that she was under a duty to give correct advice that was impartial that this was fundamental to her role. However, when Mr Crammond put it to the claimant that if she did not give advice that was right then there would be a clear risk to the public and the reputation of ACAS. The claimant responded 'it's open to interpretation'. When pressed to say whether or not she accepted that if she did not give advice that was correct there would be a clear risk to the public and the reputation ACAS, the claimant responded 'I accept the need to help the caller and give correct information but the law is vast.' When Mr Crammond put it to the claimant that someone who consistently fails to meet standards would need to have their performance monitored the claimant's initial response was that she had not failed.

116. It wasn't clear to us, therefore, whether the claimant accepted she had got the law wrong on the occasions where her calls had been failed for giving incorrect legal advice. Therefore, we asked the claimant if she accepts she had given incorrect advice from a legal perspective. She responded 'the law can be interpreted in different ways'. We asked the claimant if she accepted that she did not explain the law correctly. The claimant's response was 'it is perhaps better to say I may have understood it but been unable to explain it'. When we mentioned that she had said in the article she was writing for the publication Ms Botto put together that one of her strengths was being able to explain things in different ways, the claimant said 'if I understood it'. We therefore asked the claimant whether she was saying she did not have the required basic understanding of the law in order to advise properly. She replied 'some parts of it I didn't' and that this was because her training was not accessible to her as a dyslexic. She also said 'with my dyslexia-I could read something but it's sometimes difficult for me to understand what I read because I can misread continue to misread in the same way.'

117. We did not find the claimant's evidence on this matter convincing. It appears to us that she was simultaneously reluctant to accept that she had given incorrect advice (also evidenced by the fact that the claimant dismissed the monitoring of her calls as 'micro-management', implying she felt it was unwarranted) yet at the same time claiming that her dyslexia meant she had difficulty giving correct legal advice. With regard to that latter point, the claimant shifted from saying she understood the law but could not explain it to, when faced with her article in which she referred to being good at explaining things to people in different ways, saying she did not understand the law. We note that advisers are not expected to have a detailed understanding of every aspect of the law – the idea is that they are expected to be able to find the answer in their files if they do not already know the answer. The claimant suggested that, because of her dyslexia she found it difficult to organise her files. However, in her statement, Ms Goundry said everyone participating in that training raised concerns about their files and in any event the claimant's failed calls persisted even after she was given more time to organise her files and resit training.

118. Looking at all the evidence in the round, we are not persuaded that the claimant was more likely to fail calls because of her dyslexia.

119. We find that the respondent's practice of requiring advisers in the Newcastle hub to reach targets for call structure and call scoring did not put the claimant at a substantial disadvantage in comparison with non-disabled persons. That being the

case, the respondent was not under a duty to make reasonable adjustments and the claimant's complaint that the respondent discriminated against her by failing to comply with such a duty fails.

Complaints of victimisation

120. The claimant alleges that she was subjected to various detriments because she did one or more protected acts, within the meaning of that term in section 27 of the Equality Act 2010. The alleged protected acts relied on by the claimant are as follows:
    120.1. telling Mr Parker on 2 October 2017 that she was having difficulty collating information;
    120.2. telling Mr Parker on 6 October 2017 that her dyslexia problems were not being taken into account; and
    120.3. taking part in a conversation on an internal Yammer forum on 19 October 2017.

121. With regard to the first of those alleged protected acts, the respondent accepts that the claimant did, on 2 October, raise concerns with Mr Parker, saying she was experiencing difficulties collating information. We have found that, in that conversation, the claimant said or implied that she believed she was having difficulties because of her dyslexia. We have not found, however, that the claimant made any allegation during that conversation, whether expressly or impliedly, that anyone had contravened the Equality Act 2010. Nor, unlike in the conversation that followed on 6 October, have we found that the claimant made any reference, express or implied, to the duty of employers to make reasonable adjustments. We conclude that the claimant did not do a protected act within the meaning of the Equality Act 2010 on 2 October 2017.

122. On 6 October 2017, however, the claimant went further than in the previous conversation. Not only did she talk about her dyslexia, she also showed Mr Parker a copy of the report Dr Makepeace had produced as well as other information on dyslexia and the claimant broached the subject of possible adjustments that could be taken in relation to the training to avoid disadvantage that the claimant might experience in consequence of her dyslexia. The claimant did not allege, expressly or impliedly, that the respondent had failed in its duty to make reasonable adjustments. The claimant did, however, seek to persuade Mr Parker that adjustments should be made.

123. The Equality Act 2010 puts employers under a duty to make reasonable adjustments in some cases. We are satisfied that in referring to her dyslexia and the difficulties she was experiencing in her training and seeking to persuade Mr Parker that adjustments should be made, the claimant was, in effect, drawing Mr Parker's attention to the employer's duty under the Equality Act 2010 to make reasonable adjustments and asserting that the duty arose in her case. We conclude that, in doing so, the claimant was doing a 'thing for the purposes of or in connection with' the Equality Act 2010. As such, the claimant's actions were a protected act within section 27(2)(c) of the Equality Act 2010.

124. We also find that the claimant did a protected act when she took part in the Yammer conversation on 23 October 2017. In our judgement, the claimant's comments made on that date contained an implicit allegation that the respondent had discriminated against her by failing to comply with a duty to make reasonable adjustments.

125. The issue then for us to determine is whether the respondent subjected the claimant to detriments, as alleged, because she did those protected acts.

Allegation a

126. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments) she was subjected to a detriment which is described in the agreed list of issues as follows: 'after being contacted by Susan Clews and Susan Tomlinson she was not contacted further and was told by Mr Parker that it was best to discuss the issue through her line manager and not too high a management.'

127. This is a reference to the conversation that took place on Yammer in October 2017. We have found as a fact that that Mr Parker spoke to the claimant in response to comments she had posted. It is not the case, therefore, that the claimant was 'not contacted further': she was contacted by Mr Parker, who was her de-facto line manager at the time.

128. If the claimant is suggesting that it was a detriment to her that she was not contacted personally by Ms Clews or Ms Tomlinson, we reject that contention. Ms Clews is the organisation's chief executive officer; nothing in her response to the claimant's comments could have led the claimant to reasonably believe that she, personally, would contact the claimant again. So far as Ms Tomlinson is concerned, her comment in the course of the Yammer conversation was entirely positive and was followed up by an equally positive comment from a colleague in the training team.

129. In our judgement, no reasonable worker (in the position of the Claimant) would have considered that they had been disadvantaged in the circumstances in which they had thereafter to work by the fact that neither Ms Clews nor Ms Tomlinson personally contacted the claimant again to seek her input into the review of training materials, or that this had been to their detriment in some other way, especially when Mr Parker had spoken with her himself.

130. As recorded in our findings of fact, we are not persuaded that Mr Parker told the claimant that she should not raise issues such as this with senior managers or on Yammer. Mr Parker said the claimant should speak to her line manager (which was him at the time, effectively) if she had any concerns about adjustments. This was an entirely reasonable comment for him to make, particularly as the claimant had implied, in saying 'no software has been offered or mentioned', that she felt she might have benefited from being provided with certain software and yet had not made any mention to Mr Parker in previous conversations about adjustments that

she thought software might help. A reasonable worker (in the position of the Claimant) would not have considered that they had been thereby disadvantaged in the circumstances in which they had thereafter to work or that the comments made by Mr Parker had been to their detriment in some other way.

131. It follows that the claim of victimisation set out at allegation (a) is not made out.

Allegation b

132. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), she was subjected to a detriment which is described in the agreed list of issues as follows: she had four desk changes and four different managers.

133. We have found as a fact that the claimant was initially managed, in effect, by Mr Parker during her training period, was then managed by Ms Berkley once her training had ended, was managed briefly by somebody called Laura in March 2018 who was deputising for Ms Berkley and was thereafter managed by Mr Bainbridge. We accept that it is likely that the claimant was given a different desk to sit at when her manager changed so that she would be sitting in reasonably close proximity.

134. We are satisfied that the changes in management – and related changes to where the claimant was to sit - were in no way related to the fact that the claimant did the protected acts referred to above ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments. We are satisfied that the reason Mr Parker was no longer the claimant's manager – with responsibility shifting to Ms Berkley - is that his responsibility was for training and trainees and the claimant had completed her training period. The reason the claimant was managed by Laura was that she was deputising for Ms Berkley in Ms Berkley's absence. The reason Ms Berkley then stopped being the claimant's line manager is because she had a change of role. The claimant was, therefore, moved to Mr Bainbridge's team. We reject the claimant's suggestion that she was moved around between managers because she was perceived as being 'difficult'. The evidence simply does not support such an inference.

135. It follows that the claim of victimisation set out at allegation (b) is not made out.

Allegation c

136. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments) she was subjected to a detriment which is described in the agreed list of issues as follows: 'she underwent micromanagement and continuous monitoring, including her screen being watched during her break.'

137. By 'micromanagement' and 'continuous monitoring' the claimant appears to be referring to the fact that her calls were monitored. We have found as a fact that Ms Berkley and Mr Bainbridge did listen in to and score a number of the claimant's calls during her employment, and arranged for other colleagues to do the same. They also arranged coaching sessions in which the claimant's calls were listened to by either themselves or other experienced colleagues who provided feedback.

138. ACAS is a non-departmental public body whose responsibilities include advising workers and employers on workplace rights, regulations and best-practice. It guards its reputation for giving accurate and impartial advice fiercely, as well it should. As recorded above, to ensure the quality of its service, it is the respondent's usual practice to carry out monitoring of calls taken by helpline advisers to check that the advice given is correct and appropriate. As part of this process, calls are scored. For reasons which are self-evident, new advisers are monitored more closely and more frequently than are experienced advisers. It is the respondent's usual practice that new advisers have five calls scored and are expected to have an average score of 60% across the five calls with no more than one 'fail.' If the adviser achieves that standard, the number of calls monitored and scored is reduced, usually to two calls per month. This policy was applied to the claimant in the same way as it was to all other new advisers. When the claimant reached the required standard at the end of January 2018, the level of call monitoring was reduced. However, the volume of calls monitored was increased again after her line manager, Ms Berkley, listened in to some of her calls and recorded certain concerns. Ms Berkley then decided to extend the claimant's probation period and place her on and informal performance improvement plan. Over the following months monitoring of the claimant's calls continued, both in order to score those calls but also, outside of the scoring process, for coaching purposes, with those monitoring the calls providing guidance as to where the claimant was not doing well and how she could improve her technique. During that period several different people, all experienced advisers, listened to the claimant's calls and expressed concerns that the claimant's performance was not at the required standard. That remained the case throughout the claimant's employment up until her suspension, notwithstanding steps taken by Ms Berkley and Mr Bainbridge to try to help the claimant improve, including, amongst other things, arranging the coaching sessions, giving the claimant time to re-organise her files, allowing her to retake training modules, arranging for those monitoring the claimant's calls to do so remotely to reduce the pressure the claimant felt she was under, and allowing the claimant extra time between calls.

139. We reject the claimant's assertion that the monitoring was 'continuous' the claimant did not have every call monitored. We also reject the suggestion that Mr Bainbridge was keeping a close eye on the claimant's computer screen. That assertion appears to have stemmed from a single comment made by Mr Bainbridge in his email of 10 May 2018 to Mr O'Carroll and Mrs Burton about whether the claimant was expected to appeal the written warning he had given, which email presumably the claimant obtained either through a subject access request or in the disclosure process as part of these proceedings. The fact that Mr Bainbridge noticed that the claimant was working on a Word document on her PC that day does not come anywhere close to supporting an inference that the claimant's actions were, as she implies, under constant surveillance.

140. The claimant has suggested in these proceedings that her calls were marked 'harshly'. As we understand it, the claimant is inviting us to infer that the respondent applied higher standards to her than to others and did so because of the protected acts she did in October 2017. However, the claimant did not identify specific calls that she thinks were graded lower than was warranted, save for referring to one call on which she gave advice that was marked as incorrect despite the fact that she had checked the advice she was giving with others before she gave it. We do not accept that the claimant was in fact marked any more harshly than anybody else would have been. The claimant's calls were marked by several different individuals, experienced advisers, who identified failings in her performance over a significant period. The idea that all of those individuals marked the claimant more harshly than they would ordinarily have done, and did so because the claimant had asked Mr Parker for reasonable adjustments during her training, or because she had made critical comments on a staff forum in October 2017, is fanciful.

141. It is abundantly clear to us that the reason Ms Berkley and then Mr Bainbridge monitored the claimant's calls for both scoring and coaching purposes and arranged for others to do the same, and, connected with that, the reason Ms Berkley extended the claimant's probationary period in February and implemented an informal improvement plan which Mr Bainbridge then extended, was that they genuinely and reasonably believed that the claimant's performance was not up to the required standard and that there was a risk of her giving advice that was inappropriate or inaccurate. We are satisfied that the fact that the claimant had sought to persuade Mr Parker that adjustments should be made during her training played no part in the decision to monitor the claimant's calls and nor did the fact that the claimant had impliedly alleged in October 2017, on a forum open to all staff, that the respondent had failed to comply with a duty to make reasonable adjustments.

142. It follows that the claim of victimisation set out at allegation (c) is not made out.

Allegation d

143. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), she was subjected to a detriment which is described in the agreed list of issues as follows: the Stress Risk Assessment Form she completed was not acted upon.

144. We have found as a fact that, on 6 April 2018, the Claimant completed a form entitled 'HSE Management Standards Analysis Tool'. She said in that form that she was suffering stress due to being micromanaged. The claimant emailed the form to Mr Bainbridge and later that day Mr Bainbridge spoke to the claimant about the stress she was feeling. The following month, Mr Bainbridge referred the claimant back to Occupational Health to seek an opinion on how the organisation could help the claimant to deal with stress.

145. We reject the allegation that the respondent did not act on the form the claimant completed. Mr Bainbridge met the claimant and discussed the contents with her

immediately after she emailed it to him and subsequently referred the claimant to Occupational Health.

146. It appears that what the claimant may really be alleging is that the respondent failed to agree to her request to stop the performance improvement plan and stop call scoring. The facts do not support an inference that the reason Mr Bainbridge did not agree to that request was that the claimant had, back in October 2017, the claimant had sought to persuade Mr Parker that adjustments should be made during her training or had impliedly alleged on Yammer, over six months earlier, that the respondent had failed to comply with a duty to make reasonable adjustments.

147. In any event, we are satisfied that the only reason Mr Bainbridge refused to agree to the request was that set out in his letter to the claimant of 3 May ie that monitoring and scoring the claimant's calls in this way was necessary for quality control purposes, to protect the public and safeguard the respondent's reputation.

148. It follows that the claim of victimisation set out at allegation (d) is not made out.

Allegation e

149. This allegation of victimisation is framed in the agreed list of issues as being a claim that, because the claimant did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), she was subjected to a detriment described as follows: 'the claimant's disciplinary/appeal was prejudged by management, after taking unsupported advice from … the North East Dyslexia Association on 30 April 2018. The outcome was that it was assumed that no matter what adjustments were put in place the claimant would not be able to do the job of an advisor.' On the face of the list of issues, this allegation would appear to be a duplication of allegation (l), which we consider below. Looking at paragraph 27 of the claimant's Further and Better Particulars, however, it appears to us that the claimant is alleging that 'taking unsupported advice from … the North East Dyslexia Association on 30 April 2018', in itself, constituted detrimental treatment of her.

150. It is not disputed that, on 30 April, Mr O'Carroll telephoned the British Dyslexia Association and spoke to somebody there. Mr O'Carroll explained the job description and outlined the issues of concern with the claimant. The person he spoke to expressed the opinion 'unofficially' that she believed the claimant would be very unlikely to be able to do the job. She suggested that the claimant may benefit from what was referred to as a 'Cogmed course' which is a course run by the BDA and which she said had helped some people with memory problems.

151. The context in which this contact took place was that the claimant's performance was giving continuing cause for concern and she had linked her performance issues to her dyslexia. The respondent had taken a number of steps to try to address the difficulties the claimant said she was experiencing but the claimant expressed the opinion that the respondent had not done enough, although she was unable to identify herself what adjustments might help her (beyond those recommended in the report from ATW). The respondent's managers are not experts in dyslexia. It was not

unreasonable for them to seek informal guidance from someone who knew a lot more than they did about the condition and might be able to offer some suggestions. Indeed the person Mr O'Carroll spoke to did suggest some practical options, including the Cogmed course.

152. In our judgement, a reasonable worker (in the position of the Claimant) would not have considered that they had thereby been disadvantaged in the circumstances in which they had thereafter to work or that this had been to their detriment in some other way. We, therefore, conclude that the respondent did not subject the claimant to a detriment when Mr O'Carroll spoke to someone at the BDA.

153. It follows that the claim of victimisation set out at allegation (e) is not made out.

Allegation f

154. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), Mr O'Carroll requested a copy of the claimant's references, which the claimant says was done to 'look for inconsistencies.'

155. It is not disputed that Mr O'Carroll, in HR, asked a colleague in the recruitment team for sight of the references provided when the claimant was recruited. The context was that the claimant's performance was giving continuing cause for concern, she had linked her performance issues to her dyslexia, had expressed the opinion that the respondent had not made reasonable adjustments and that the respondent had known about her dyslexia prior to her recruitment and ought to have been considering adjustments even before her employment began.

156. It is understandable, in those circumstances, that Mr O'Carroll, who was providing guidance from an HR perspective, should want to ascertain what the respondent knew, at the time of the claimant's recruitment, about her dyslexia and, connected with that, what previous employers, or other referees, had said about the claimant, whether in relation to her dyslexia or her performance. There is no evidence that the claimant knew, at the time, that Mr O'Carroll had sought copies of the claimant's references. We infer that she only learned of this when documents were disclosed to her, either as part of the disclosure process in these proceedings or following a subject access request made by the claimant under data protection legislation.

157. In our judgement, a reasonable worker (in the position of the Claimant) would not consider that they had thereby been disadvantaged in the circumstances in which they had thereafter to work or that this had been to their detriment in some other way. We, therefore, conclude that Mr O'Carroll did not subject the claimant to a detriment by looking into the references obtained at the time of the claimant's recruitment.

158. It follows that the claim of victimisation set out at allegation (f) is not made out.

Allegation g

159. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), Mr Bainbridge reprimanded her for allegedly making untrue statements to a colleague on 14 May 2018, regarding the claimant's dyslexia and the claimant's disciplinary process.

160. We have found as a fact that Mr Bainbridge spoke to the claimant about a conversation she had had with Ms Botto on 14 May. Mr Bainbridge broached the conversation after Ms Botto told him the claimant had said she had received a warning for raising concerns about having a disability and that she was unable to speak to colleagues about this as they would be disciplined. The claimant denied having made such comments. Mr Bainbridge acknowledged her denial and said it was acceptable to speak to colleagues but that she should ensure that what she said was accurate and truthful and that she should think about where she had such conversations given the risk of them being overheard. Mr Bainbridge took no further action.

161. We are not persuaded that it is appropriate to describe what Mr Bainbridge said to the claimant as a 'reprimand' or that a reasonable worker (in the position of the Claimant) would have considered that they had thereby been disadvantaged in the circumstances in which they had thereafter to work.

162. If we are wrong about that and Mr Bainbridge's comments could reasonably be interpreted as an informal warning that was detrimental, it is for the claimant to show facts from which we could conclude that the respondent subjected the claimant to this detriment because the claimant did one of the protected acts referred to above.

163. The circumstances were that Ms Botto had told Mr Bainbridge that the claimant had said she was on a final written warning for talking about her dyslexia and that if she talked to any of her colleagues they would be disciplined as a direct result. Based on what Ms Botto had said, Mr Bainbridge, perfectly reasonably, believed the claimant may have made an allegation to a colleague that misrepresented what was actually happening, and may have done so in a place where she could be overheard. It was understandable that Mr Bainbridge would want to speak with the claimant about this and that is what he did. The claimant denied having said what Ms Botto alleged. Mr Bainbridge acknowledged her denial but clearly was not entirely convinced by it and asked that the claimant made sure that anything she said to colleagued was 'accurate and truthful' and that she think about where she held such conversations. It was reasonable and proper for Mr Bainbridge, as line manager, to speak to the claimant in the terms he did, in the circumstances.

164. The protected acts on which the claimant relies happened over six months prior to this incident. One of those acts entailed implicit criticism of the respondent but that criticism was not directed at Mr Bainbridge: the criticism related to a period during which Mr Bainbridge had no involvement with the claimant and concerned matters related to recruitment and training that were not his responsibility.

165. Looking at the facts in the round, in our judgement they do not support an inference that Mr Bainbridge's treatment of the claimant on this occasion was in any way connected with the fact that, over six months previously, the claimant had sought to persuade Mr Parker that adjustments should be made during her training. Nor do the facts support an inference that Mr Bainbridge's actions were in any way influenced by the fact that the claimant had impliedly alleged on Yammer, over six months earlier, that the respondent had failed to comply with a duty to make reasonable adjustments.

166. In any event, we are satisfied that the only reason Mr Bainbridge spoke to the claimant as he did was because he reasonably believed that the claimant had, or may have, said things to Ms Botto that were untrue. We are satisfied that Mr Bainbridge's actions were in no way influenced by the fact that the claimant had asked the respondent to make adjustments nor by the fact that the claimant alleged that the respondent had failed to comply with a duty to make reasonable adjustments, whether in October 2017 or, for that matter, subsequently.

167. It follows that the claim of victimisation set out at allegation (g) is not made out.

Allegation h

168. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), the respondent 'silenced' the claimant by failing to print an article she had produced for the Health and Wellbeing magazine about the effect that the claimant's dyslexia has on her daily life at work.

169. We have found as a fact that the claimant's article was never published. However, the only version of the article we were referred to was clearly an incomplete draft. We infer that the claimant never completed the article. Furthermore, when the claimant spoke to Ms Botto on 14 May she was upset and said she was no longer sure she wanted to publish the article. There is no evidence that the claimant spoke to Ms Botto to say she had changed her mind and did want to publish the article after all.

170. The claimant refers us to emails between Mr Bainbridge and Mr O'Carroll of 21 May which reveal that Mr O'Carroll was interested to see the article and Mr O'Carroll described the article as making 'interesting reading'. We understand she invites us to infer that Mr Bainbridge or Mr O'Carroll or perhaps Mrs Burton prevented the publication of the article. We do not think the evidence supports such an inference. As noted above, there was nothing critical of the respondent in the article (which we infer is one of the reasons why Mr O'Carroll found it to be interesting). We do not believe Mr Bainbridge's reference to the matter being 'closed' is a reference to the article itself, but rather was a reference to the issue of the comments made by the claimant to Ms Botto.

171. In our judgement, the facts do not support an inference that the respondent declined to publish the article because the claimant had sought to persuade Mr Parker that adjustments should be made during her training. Nor do the facts

support an inference that the respondent declined to publish the article because the claimant had impliedly alleged in October 2017, on a forum open to all staff, that the respondent had failed to comply with a duty to make reasonable adjustments. It appears to us far more likely that Ms Botto did not publish the article because it was incomplete and the claimant had told her she was no longer sure she wanted to publish the article.

172. It follows that the claim of victimisation set out at allegation (h) is not made out.

Allegation j

173. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), she was (as it is put in the agreed list of issues) 'reprimanded and threatened with further action by Anthony Bainbridge for mentioning to a colleague that she believed that her dyslexia was connected to her disciplinary process and the potential threat of dismissal.'

174. We have found as a fact that that Mr Bainbridge spoke to the claimant on 14 June after one of the claimant's colleagues emailed him saying she was slightly concerned about some things the claimant had said and that the claimant had told her that Mrs Burton had said to her the previous day that she may be dismissed. Mr Bainbridge spoke to Mrs Burton before he spoke to the claimant and she told him she had not said what the claimant was alleging. Mr Bainbridge then sent the claimant an email saying 'as this is the second time I have been approached by a colleague worried about statements you have made, I felt it necessary to speak to HR. Though HR have advised this is a potential conduct issue, I am at this point going to take no further action.… I appreciate this has been a difficult period of time for you and it is normal to seek the support of your colleagues. Once again, I would suggest you give consideration to conversations you have within the organisation and ensure any statements you make are wholly accurate. If there are any similar instances of this we may need to consider further action.' When the claimant emailed with a different account of her conversation with a colleague, Mr Bainbridge replied 'as discussed yesterday it is up to you how much you want to share with colleagues ..the only concern I have is when someone approaches me advising you have said something which is inaccurate. I fully appreciate you dispute what has been said. If you want to speak to colleagues, you are free to do so, just ensure there is no room for misunderstandings.'

175. We accept that Mr Bainbridge's initial email could be viewed as a something akin to a 'reprimand', or at least a warning about the claimant's behaviour.

176. It is for the claimant to show facts from which we could conclude that the respondent subjected the claimant to this detriment because the claimant did one of the protected acts referred to above.

177. The circumstances were that a colleague had told Mr Bainbridge that the claimant had said something that Mrs Burton, when he checked with her, denied having said. He had already had cause to speak to the claimant about comments Ms Botto

alleged she had made. In the circumstances it was entirely proper for Mr Bainbridge, as line manager, to speak to the claimant in the terms he did.

178. The protected acts on which the claimant relies happened over nearly eight months prior to this incident. As recorded above, neither of those protected acts entailed criticism directed at Mr Bainbridge.

179. In our judgement the facts simply do not support an inference that Mr Bainbridge's treatment of the claimant on this occasion was in any way connected with the fact that, over seven months previously, the claimant had sought to persuade Mr Parker that adjustments should be made during her training. Nor do the facts support an inference that Mr Bainbridge's actions were in any way influenced by the fact that the claimant had impliedly alleged on Yammer, over seven months earlier, that the respondent had failed to comply with a duty to make reasonable adjustments.

180. In any event, we are satisfied that the only reason Mr Bainbridge spoke to the claimant as he did was because he reasonably believed that the claimant had, or may have, for a second time, said things to a colleague that were untrue. We are satisfied that Mr Bainbridge's actions were in no way influenced by the fact that the claimant had asked the respondent to make adjustments nor by the fact that the claimant alleged that the respondent had failed to comply with a duty to make reasonable adjustments, whether in October 2017 or, for that matter, subsequently.

181. It follows that the claim of victimisation set out at allegation (j) is not made out.

Allegation k

182. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), Mrs Burton denied she had been informed of the claimant's dyslexia (following an area meeting) 'making the claimant responsible for errors in the recruitment process.'

183. It is not disputed, and we have found as a fact that, on 6 April 2018, Mrs Burton approached the claimant and said she had not been told that the claimant was dyslexic until the claimant had brought that matter to the attention of trainers and managers during her training. Mrs Burton made the comment following a meeting during which the claimant had said she was concerned that the support network was not in place for people with learning difficulties like dyslexia. A few days earlier, the claimant had sent an email to Mr Bainbridge, which he had forwarded to Mrs Burton, and from which Mrs Burton understood the claimant to be suggesting that adjustments should have been made before her employment began.

184. As to whether Mrs Burton subjected the claimant to a detriment by saying she had not been aware of the claimant's dyslexia until during her training, we note that what Mrs Burton said was a statement of fact, as recorded in our findings above. It was also a relevant observation for Mrs Burton to make in circumstances where the claimant had suggested that steps should have been taken to identify and address possible disadvantages before her employment began.

185. The claimant clearly felt, and continues to feel, that the information divulged by her about her dyslexia in the course of applying for employment should have been passed on to managers in the department in which she was going to be working, or that it should have prompted managers involved in recruitment to make proactive enquiries of her about her dyslexia, and that, before she started work, some form of expert advice should have been obtained about the likely effects of her dyslexia in relation to the job she was being recruited to. The claimant believed, and still does, that the fact that the respondent did not deal with matters in this way was an 'error in the recruitment process'. It appears she was unhappy about Mrs Burton's comment because it did not affirm the claimant's belief that there had been any such errors. Rather, the claimant believed – probably correctly - that Mrs Burton's comment implied that the respondent could not have been expected to take such steps in the recruitment process in the circumstances of the claimant's case.

186. It is not for us to determine in these proceedings whether or not the claimant's reference to her dyslexia in positive terms in a diversity monitoring form should have triggered further enquiries and action by the respondent before she started work. What is clear, however, is that this is a matter on which there could be a legitimate difference of opinion between the claimant and Mrs Burton. In our judgement, a reasonable worker (in the position of the Claimant) would have recognised that and would not have considered Mrs Burton's comment to be to their detriment, however strongly they might have felt that their employer was at fault.

187. We, therefore, conclude that the respondent did not subject the claimant to a detriment as alleged. It follows that the claim of victimisation set out at allegation (k) is not made out.

Allegation l

188. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), she was, as it is put in the agreed list of issues, 'pre-judged at all disciplinary and appeal processes.'

189. By 'disciplinary' processes, we understand the claimant to be referring to the decisions to give the claimant a first written warning on 3 May (and, connected with that, put her on a formal improvement plan and extend her probation), then, later, to suspend her, and, finally, to dismiss her. We address the allegation in so far as it relates to the decisions to suspend and dismiss the claimant, and reject her appeal against dismissal, later in this judgment. We consider here the allegation in as far as it relates to the decisions to give the claimant a first written warning (and put her on a formal improvement plan and extend her probation) and to reject the claimant's appeal against that decision.

190. It was Mr Bainbridge's decision to issue the claimant with the warning on 3 May and to put her on a formal performance improvement plan and extend her probation. As we have already said, it is clear to us that Mr Bainbridge genuinely and reasonably believed that the claimant's performance was not up to the required

standard and that there was a risk of her giving advice that was inappropriate or inaccurate. We have no doubt that remained the case at the time the warning was given in view of the results of the call scoring undertaken between 10 and 16 April, just days before Mr Bainbridge wrote to the claimant asking her to attend the formal meeting following which the first written warning was given. Before he issued the warning, Mr Bainbridge discussed his concerns at that formal meeting with the claimant, at which she was accompanied and had an opportunity to make any points she wished to make. We are satisfied that Mr Bainbridge listened to and took account of what the claimant said: his letter in which he explained his decision addresses a number of those points. In particular, it is clear from the email Mr Bainbridge sent to Mr O'Carroll and Mrs Burton that he gave serious consideration to the possibility of reducing the target from 60%; ultimately he decided against that course of action and he gave compelling reasons for doing so in his letter to the claimant.

191. Looking at all the evidence in the round, we find that the reason Mr Bainbridge gave the claimant a written warning and extended her probation period was as set out in his letter to the claimant ie that despite training and support having been provided, there were ongoing issues with the advice the claimant was giving to the public on calls, which created a reputational risk for ACAS and a risk to customers, who rely on ACAS's expertise and act upon the advice provided. We are satisfied that the decision was not 'prejudged' and was in no way influenced by the fact that the claimant had, many months earlier, sought to persuade Mr Parker that adjustments should be made during her training and had impliedly alleged in October 2017, on a forum open to all staff, that the respondent had failed to comply with a duty to make reasonable adjustments.

192. As for as the decision to dismiss the claimant's appeal against the warning, that was a decision taken by Mrs Burton. Before dismissing the claimant's appeal, she met with the claimant and her union representative. The claimant had an opportunity to make any points she wished to make. We are satisfied that Mrs Burton listened to and considered what the claimant said. In response to the claimant's allegation that she had been scored harshly, Mrs Burton listened to the claimant's calls herself to form her own opinion and arranged for the claimant's calls to be scored independently by another helpline manager, who gave the claimant's calls very similar scores to those given originally by Mr Bainbridge. Mrs Burton explained this to the claimant in the letter rejecting her appeal. On the evidence before us, we have no doubt that Mrs Burton shared Mr Bainbridge's opinion that that the claimant was not performing her job to the expected standard and that this created a reputational risk for ACAS and a risk to customers.

193. The claimant has suggested that because the criticisms she made of the organisation on Yammer in October 2017 had been seen by ACAS's chief executive officer, that had caused Mrs Burton to be professionally embarrassed, as it was she who had responsibility for the department in which the claimant worked and that, consequently, Mrs Burton, in particular, considered her to be as a trouble-maker and, in the claimant's words, she had a 'target on her back'. The claimant's case is that this is what motivated Mrs Burton to reject her appeal some seven months later. The claimant's submission is, however, simply not supported by the evidence. We are entirely satisfied that the reason Mrs Burton rejected the appeal against the

written warning was as set out in her letter to the claimant ie that the claimant was not performing to an acceptable standard and her calls presented a risk to ACAS's reputation as the employment relations experts. We are satisfied that the decision was in no way influenced by the fact that the claimant had, many months earlier, sought to persuade Mr Parker that adjustments should be made during her training and had impliedly alleged in October 2017, on a forum open to all staff, that the respondent had failed to comply with a duty to make reasonable adjustments.

194. It follows that the claim of victimisation at allegation at (l) that the decision to give the claimant a first written warning (and put her on a formal improvement plan and extend her probation) and the decision to reject her appeal against the warning were prejudged because the claimant had done protected acts in October 2017 is not made out.

Allegation m

195. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), she was precluded from applying for internal jobs within the Civil Service.

196. Because the claimant was in the midst of a performance improvement process, she was unable to apply for jobs in the Civil Service, outside ACAS, via a particular website. The website was not operated by ACAS. It is clear from the emails between Mr O'Carroll and Ms Dewsbery that the question of whether a department in the wider civil service is willing to allow applications from someone who is the subject of capability proceedings is a matter for that department: it is not something determined or decided upon by ACAS. As far as ACAS were concerned, its usual policy of not permitting moves during probationary periods was relaxed to enable the claimant to apply for other roles.

197. We conclude that the respondent did not prevent the claimant from applying for other jobs, whether within ACAS or within the wider public service. It follows that the claim of victimisation set out at allegation (m) is not made out.

Allegations n, o and l

198. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to comply with a duty to make reasonable adjustments), the respondent suspended her from work. This is allegation (n) in the agreed list of issues.

199. It is also appropriate to consider here allegation (l), in which the claimant alleges that, because she did the protected acts in October 2017, the decision to suspend her was 'prejudged' (although this allegation appears not to add anything of substance to allegation (n)). We also consider here allegation (o), in which the claimant alleges that, because she did the October 2017 protected acts, the

respondent failed to permit the claimant to finish the Access to Work sessions, with Ability Smart and allow for the recommended 3-6 months from the initial session.

200. The decision to suspend the claimant was taken by Mr Bainbridge. He took the decision after listening to five randomly selected calls taken by the claimant and marking three of the calls as 'fails'. He spoke to the claimant on 22 June and warned her that he may decide to suspend her. We find that Mr Bainbridge genuinely believed the claimant's performance in her role remained unsatisfactory and posed a serious risk to customers and the reputation of ACAS. He suspended her at the end of June 2017. He then cancelled the sessions with Ability Smart that were due to take place in the workplace.

201. We accept that a reasonable worker would have considered that this was to their detriment.

202. We do not, however, accept that the claimant has shown facts from which we could conclude that Mr Bainbridge's decisions to suspend the claimant, and thereafter to cancel her upcoming session with Ability Smart, were in any way connected with the fact that, over eight months previously, the claimant had sought to persuade Mr Parker that adjustments should be made during her training. Nor do the facts support an inference that Mr Bainbridge's actions were in any way influenced by the fact that the claimant had impliedly alleged on Yammer, over six months earlier, that the respondent had failed to comply with a duty to make reasonable adjustments.

203. In any event, we are satisfied that the only reason Mr Bainbridge suspended the claimant and put her on special leave was because he genuinely believed the claimant's performance in her role was unsatisfactory and posed too high a risk to customers and the reputation of ACAS to allow her to continue in her role. We are also satisfied that the only reason he thereafter cancelled the upcoming sessions with Ability Smart was because, having suspended the claimant, she could not engage with those sessions because they could only take place while the claimant was actively engaged in her role which, having been suspended, she was not. We are satisfied that Mr Bainbridge's actions were in no way influenced by the fact that the claimant had asked the respondent to make adjustments nor by the fact that the claimant alleged that the respondent had failed to comply with a duty to make reasonable adjustments, whether in October 2017 or, for that matter, subsequently.

204. It follows that the claim of victimisation set out at allegations (n) is not made out and nor is the claim of victimisation at allegation (l) made out in respect of the allegation that the decision to suspend the claimant was 'pre-judged'. In so far as allegation (o) concerns the decision of Mr Bainbridge to cancel Ability Smart sessions, that allegation also fails.

Allegations p, o and l

205. The claimant alleges that, because she did the protected acts referred to above (ie sought to persuade Mr Parker that adjustments should be made during her training and impliedly alleged, in October 2017, that the respondent had failed to

comply with a duty to make reasonable adjustments), she was dismissed. This is allegation (p) in the agreed list of issues.

206. The claimant also alleges, at allegation (l), that, because she did those protected acts, the decisions to dismiss her and to reject the appeal against dismissal were 'prejudged'. We consider that allegation here, although in relation to the dismissal it appears not to add anything of substance to allegation (p). It is also appropriate to revisit allegation (o), in which the claimant alleges that, because she did the protected acts in October 2017, the respondent failed to permit the claimant to finish the sessions with Ability Smart and allow for the recommended 3-6 months from the initial session.

207. The decision to dismiss the claimant was made by Mr Peel. Before dismissing the claimant he met with her and her representative. She was given the opportunity to listen to the calls that had been scored and discuss them with Mr Peel. She chose not to but her union rep did listen to the calls. Mr Peel listened to what the claimant and her rep had to say. He then listened to the failed calls again himself. We are satisfied that Mr Peel shared the opinion of Mr Bainbridge and Mrs Burton that the claimant's performance was unsatisfactory and allowing her to continue in her role posed a risk to ACAS and its customers. That belief was grounded upon a substantial amount of evidence, the claimant having been adjudged by various individuals over a period of several months to have repeatedly given advice that was legally incorrect, not impartial, that failed to properly address early dispute resolution and/or that fell below the required standards in some other way (usually by not asking appropriate questions early enough in the conversation to gather relevant information).

208. We are satisfied that the only reason Mr Peel dismissed the claimant was as set out in his letter confirming his decision ie that, like Mr Bainbridge, he genuinely believed the claimant's performance in her role was unsatisfactory and posed a risk to customers and the reputation of ACAS. We are also satisfied that the reason he did not allow her to complete the sessions with Ability Smart before deciding whether or not to dismiss was because she could not engage with those sessions because they could only take place while the claimant was actively engaged in her role and, as explained in the letter confirming his decision, to enable the claimant to continue with those sessions and reap any benefit from them would mean allowing the claimant to continue taking calls from customers for several months. We are satisfied that Mr Peel's actions, like those of Mr Bainbridge, were in no way influenced by the fact that the claimant had asked the respondent to make adjustments nor by the fact that the claimant alleged that the respondent had failed to comply with a duty to make reasonable adjustments, whether in October 2017 or, for that matter, subsequently.

209. The claimant's appeal was determined by Mrs Parker (regional director). Mrs Parker met with the claimant and her union rep and we are satisfied that the claimant was given the opportunity to raise any points she wanted to during and before that meeting. Mrs Parker upheld the decision to dismiss the claimant and rejected the appeal. The reasons she gave for doing so were essentially the same as those given by Mr Peel when he dismissed the claimant.

210. We are satisfied that the only reason Mrs Parker dismissed the appeal was, as with Mr Bainbridge's decision to suspend the claimant and Mr Peel's decision to dismiss her, because she genuinely believed the claimant's performance in her role was unsatisfactory and posed a risk to customers and the reputation of ACAS. We are satisfied that Mrs Parker's actions, like those of Mr Bainbridge and Mr Peel, were in no way influenced by the fact that the claimant had asked the respondent to make adjustments nor by the fact that the claimant alleged that the respondent had failed to comply with a duty to make reasonable adjustments, whether in October 2017 or, for that matter, subsequently.

211. It follows that the claim of victimisation set out at allegations (p) is not made out and nor is the claim of victimisation at allegation (l) made out in respect of the allegation that the decision to dismiss the claimant and reject her appeal against dismissal were 'pre-judged' because of the protected acts. In so far as allegation (o) concerns the decision of Mr Peel not to allow the claimant to complete, and benefit from, the Ability Smart sessions before deciding whether to dismiss the claimant, that claim of victimisation also fails.

212. In conclusion, none of the claimant's complaints are made out.

EMPLOYMENT JUDGE ASPDEN

27 February 2020