EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr J Parnell	**v**	Royal Mail Group

Heard at: Manchester Employment Tribunal

On: 19, 20, 21, 23, 24, 27, 28, 29 & 31 October 2020 (in chambers on 3 November & 7 December 2020)

Before: Employment Judge Johnson

Members: Mrs C Clover (by Cloud Video Platform ('CVP))
Mrs M Ramsden (mainly by CVP)

Appearances
For the First Claimant: in person
For the Respondent: Mr M Foster (solicitor)

JUDGMENT

1. The claimant was disabled within meaning of section 6(1) Equality Act 2010 and the respondent was or should have been aware that the claimant was disabled from January 2012.

2. The complaint of direct discrimination on grounds of disability contrary to section 13 Equality Act 2010, is not well founded and is dismissed. This means that this complaint is unsuccessful.

3. The complaint of discrimination arising from disability contrary to section 15 Equality Act 2010, is not well founded and is dismissed. This means that this complaint is unsuccessful.

4. The complaint of discrimination arising from a failure by the respondent with its duty to make reasonable adjustments contrary to section 20 & 21 Equality Act 2010, is well founded insofar as it relates to the failure of the respondent to remove the 2-year serious warning from the claimant's record and to review Ms Nevin's investigation. This means that this complaint is successful.

5. The complaint of harassment arising from the claimant's disability contrary to section 26 Equality Act 2010 is not well founded and is dismissed. This means that this complaint is unsuccessful.

6. The complaint of victimisation contrary to section 27 Equality Act 2010 is not well founded and is dismissed. This means that this complaint is unsuccessful.

7. The case will now be listed for a remedy hearing to determine the successful complaint under section 20 & 21 Equality Act 2010 on **a date to be advised** in the Manchester Employment Tribunal, with a hearing length of 1 day. Further case management orders are provided within the conclusion of this judgment.

REASONS

Background

1. These proceedings arise from the claimant's employment with the respondent as a postman/driver (described as an operational postal grade according by the respondent). The claimant started working for the Post office from 7 June 1999. His employment has since terminated. It is understood that proceedings have been presented to the Tribunal by the claimant relating a complaint of unfair dismissal. However, the unfair dismissal proceedings are being dealt with separately and the findings of fact or decision in this case do not relate to any complaints brought by the claimant outside of the claim before the Tribunal today.

2. First claim under case number 2414528/2018 was presented to the Tribunal on 14 August 2018 following a period of early conciliation from 6 July 2018 to 1 August 2018.

3. There has been considerable case management in these proceedings and preliminary hearings took place on 31 August 2018 before Employment Judge Porter, 11 February 2019 before Employment Judge Ryan and 8 November 2019 before Employment Judge Porter, when the final hearing was postponed and re-listed until October 2020. The case was originally listed to be heard in Liverpool Employment Tribunal. However, due to the restrictions placed on building capacity in courts and tribunals, it was decided to move the case to the Manchester Employment Tribunal. This did not appear to inconvenience the parties or their witnesses as many resided closer to Manchester than Liverpool.

4. Employment Judge Porter noted that the claimant was seeking to rely upon complaints which arose *after* the date that the first claim form was

notified with ACAS. He was advised that for these *later* claims to be accepted, he would need to apply to amend his claim or alternatively, present an additional claim form which post-dated the complaint(s) in question. What followed was a series of claim forms being presented by the claimant and which reached 21 in number and which were determined by Employment Judge Dunlop on 5 February 2020 as being capable of being joined and heard together. All of the claims being dealt with in this hearing relate to disability discrimination, with an agreed list of issues running to 9 pages in length.

5. The claimant asserts that he has been disabled because of anxiety and depression since 2011 and argues that the respondent was aware of his disability since that date.

6. The respondent has amended its response and resists all of the claims. It is asserted that all claims which allegedly took place before 7 April 2018 were out of time. They argue that the earliest date that the respondent could have known that the claimant was disabled in relation to his identified condition of anxiety and depression was 24 April 2018 when its Occupational Health ('OH') advisers confirmed that the claimant was covered by the Equality Act 2010 ('EqA'). However, as will be illustrated in the findings of fact below, this did not prevent one of the respondent's witnesses from seeking to argue that even then, this opinion was not sufficient to demonstrate that the respondent could have known that the claimant was disabled within the meaning of section 6(1) of the EqA.

7. The hearing took the form of a 'hybrid' hearing with Employment Judge Johnson, the parties and their witnesses attending the Tribunal in person. Non-Legal Member Mrs Clover joined the hearing by CVP and for most of the hearing, her colleague Mrs Ramsden, also joined remotely by CVP

8. The claimant was unrepresented in these proceedings and although he was supported by his partner Ms Coghlan, it was clear to the Tribunal that he was extremely anxious and emotional about the hearing. At 10 days in length, it was a relatively long hearing, and it was necessary to allow him regular breaks. The Tribunal took into account its duty under the overriding objective of Rule 2 of the Tribunal's Rules of Procedure and the relevant provisions of the Equal Treatment Bench Book. Appropriate adjustments were made, and the Tribunal is grateful to the claimant in his being candid as to how he was feeling as the case progressed. The Tribunal is also grateful to Mr Foster the respondent's representative in how he conducted himself both in relation to his cross examination of the claimant and his patience with the claimant who no doubt found the experience of advocacy a difficult and challenging one.

9. The hearing of evidence following the initial reading day was lengthier than the was originally envisaged, but even though it was not possible to hear the case on Day 9 due to a power cut at Manchester Employment Tribunal, the Tribunal was able to hear all of the witness evidence and final submissions.

The Evidence Used in the Hearing

10. The claimant gave oral evidence at the hearing. Other statements relied upon by the claimant, including his partner Ms Coghlan, Mike Dunn and Paul Dugdale. Ms Coghlan did not need to give oral evidence despite attending the entirety of the hearing as Mr Foster agreed that no cross examination was needed as her evidence effectively dealt with issues relating to remedy. The Tribunal had no questions for this witness in relation to the determination of liability.

11. The respondent relied upon 12 witnesses and who all attended to give oral evidence. They were as follows:

    11.1 Antoinette Baillie *(claimant's line manager & Delivery Operations Manager 'DOM' Manchester East);*
    11.2 Peter Byrne *(Optimisation Manager and heard claimant's Bullying & Harassment Appeal);*
    11.3 Darren Banks; *(Operations Manager)*
    11.4 Christopher Mellor *(Delivery Office Manager, based at Salford and heard the conduct Appeal)*;
    11.5 Timothy Bulmer *(Operations Manager – heard claimant's 2019 grievance)*;
    11.6 Mark Aspden *(Plant Manager – heard appeal to claimant's 2019 grievance)*;
    11.7 Stuart Buckley *(Cover Manager for Manchester area and dealt with sickness management/RTW)*;
    11.8 Peter Kelly *(Performance Coach & 'SOSR' manager)*;
    11.9 Peter Robinson *(Delivery Operations Manager 'DOM' East following departure of Ms Baillie)*;
    11.10 Paul Atherton *(DOM Stockport Delivery Office 'DO' & asked to manage claimant's sickness absence)*;
    11.11 Steve Selby *(Service Delivery Leader Manchester DO)*; and,
    11.12 Simon Walker *(Independent Casework Manager, conducted a review of the claimant's complaints)*.

12. The hearing of evidence relating to the numerous issues to be considered naturally involved a lengthy hearing of evidence. The claimant was the subject of significant cross examination of about a day and half. Understandably, the claimant being unrepresented, took time to get used to cross examination and being able to focus upon asking questions

relevant to the list of issues. Employment Judge Johnson did intervene on numerous occasions to explain to the claimant what he could and could not ask and when a statement rather than a question was being made. At times, it may well have appeared that the Judge was employing a quasi-inquisitorial approach during the hearing of the respondent's witnesses. This was necessary, proportionate and in accordance with the overriding objective under Rule 2 as it avoided delay and assisted the unrepresented claimant without causing prejudice to the respondent or their witnesses.

13. Documentary evidence was contained in 4 folders comprising of some 3500+ pages. Additional documents were introduced by the respondent relating to the claimant's sickness absence ('R1', 'R2' and 'R3') and by the claimant in relation to the Bullying and Harassment Policy in force at the relevant time, ('C1').

14. There were also additional documents referred during the hearing but for which no applications were made, in order that they be added to the hearing bundles. The claimant referred to his recent medical evidence from October 2020. However, Employment Judge Johnson explained that as this documentation was prepared shortly before and was not created at the time the relevant issues occurred, it was not relevant to the hearing and permission would not be given for it to be added to hearing bundle.

15. The claimant also referred to the failure on the part of the respondent to produce return to work forms in relation to his sickness absences, despite having requested these documents prior to the hearing taking place. Mr Foster did make enquiries during the hearing and was informed by his client that they had disclosed all the available relevant documentation and they could not find the return-to-work forms. He also checked with his colleagues in Weightmans solicitors whom he informed had reviewed all the disclosure received from the respondent. No return-to-work forms were discovered by them either. Although the Tribunal was not taken to a Royal Mail policy specifically requiring staff to complete such forms, it is surprising an organisation of the respondent's size did not routinely keep such records. Both the claimant and his line manager, Ms Baillie were aware that they were usually completed upon a return to work following sickness absence. None of the respondent's witnesses gave evidence to say this 'return to work form process' was *not* used.

The Issues

16. This was a case were the list of issues was extremely lengthy. However, as the claimant was unrepresented and was finding the process difficult because of his health issues, the Tribunal felt it was not appropriate to seek his agreement to their being abridged at the outset of the hearing.

17. Due to the length of the list, the Tribunal refers to Appendix 1 of this judgment which contains the list of issues in full.

Findings of fact

18. The respondent is known by most people as the Royal Mail or Post Office and is the national provider of postal services in the United Kingdom. It is a very large employer. Its workforce is largely unionised, and the respondent has in place many policies and procedures relating to employee relations, matters of conduct and capability and sickness absence management. It also has access to significant Human Resources ('HR') and Occupational Health ('OH') support when dealing with employment matters in the workplace and matters relating to employee health. Considering the importance of there being a reliable and resilient national postal service, the respondent has strict rules concerning how post is delivered and managed and high expectations are placed upon its staff concerning how they handle the post that they carry and deliver.

19. The claimant started work for the respondent on 7 June 1999.

20. The claimant had periods of sickness absence from 2005 and 2010, these related to a variety of health issues and were unexceptional, not related to mental health and were short term in duration

21. The Tribunal understands from the respondent's Occupational Health referral on 1 November 2011, that during that year, the claimant was involved in a 'sensitive personal situation'. The Tribunal heard evidence from the claimant confirming this situation. It is not necessary to discuss this matter any further, other than to note that after it had taken place, he was absent from work from 3 October 2011 until 14 January 2012 by reason of stress.

22. Ms Bailee gave evidence as his line manager in Manchester East Delivery Office and suggested that given the nature of this personal matter, it was not surprising that the claimant was absent from work through stress.

23. Occupational Health evidence on 23 January 2012, recorded that the claimant 'recently met with his manager and agreed to take a career break from the business until his situation resolved. This was from 6 February 2012 until 20 May 2012. The claimant's evidence was that he felt he had little choice in taking this break until the ongoing personal matter was resolved and he believed he continued to suffer with stress related symptoms during this absence. It appears that the reason for the career break was to enable him to resolve this personal matter. Following four sessions of telephone counselling he was described by OH in January

2012 as having developed 'robust coping strategies to help him better manage stress'. However, there was no indication that the claimant was fit for work or when he would be fit for work and there is no discussion of the claimant's present health position and the medication that he was on at this time.

24. The claimant returned to work following his career break in late May 2012. The claimant then displayed several years of good attendance with any sickness absence being only short term in nature an unrelated to mental health issues. This continued until he was absent from 8 February 2016 until 13 February 2016 with stress. The claimant argued that he continued to suffer with mental health issues following his return to work after the career break. Ms Baillie said that although she was his line manager, she did not recall completing a return to work in 2012 following his return to work from his career break. The claimant said a form was completed. No completed return to work form was available in the hearing bundle.

25. Ms Baillie was clear in her evidence that she did not conduct a return-to-work form because in her mind, the claimant had returned following career break and *not* following sickness absence.

26. There were letters from the claimant's GP in the hearing bundle which described the claimant continued to suffer with serious mental impairments from 2011 onwards. These letters were produced in 2018 and 2019, once OH Assist had identified the claimant as being disabled, (see below), but they were not challenged by the respondent.

Issues relating to Antoinette Bailee
(see list of issues; 4.1 – 4.4, 4.13, 6.1, 7.1, 9.1, 12.1 -12.3, 16.1 – 16.11, 16.13,)

27. A number of issues were alleged by the claimant in 2015 relating to harassment from Ms Baillie. He suggested that Ms Baillie deliberately entered the names for the claimant, his partner and their children on the respondent's 'Keep Safe' facility, incorrectly. This facility is a means whereby people can register so that mail received by the Post Office while they are away from home on holiday, can be retained by the Post Office. It was correct that there was a problem with the recording of the claimant's family's correctly. Ms Baillie confirmed that she copied and pasted the names that the claimant had given. When she was informed by the claimant that they had been entered on Keep Safe as incorrect, she said that '*I genuinely thought it was my mistake'*. However, when she raised this matter with the Keep Safe staff, she said they advised her that the error was caused by '*glitch*' in their system causing surnames to be *'missed off*'. The Tribunal noted that Ms Baillie's evidence was convincing concerning this matter, both in the way she recalled the incident and the way in which she tried to resolve it. It is reasonable to conclude that this incident arose from a genuine error and was not deliberate.

28. In May 2015, the claimant completed most of the delivery of packages for the Manchester East Delivery Office but was unable to deliver two parcels due to childcare commitments. He phoned a manager Godfrey Williams in the East DO who told him to leave them with the claimant's neighbour, who worked in the East DO and who could keep them overnight, before taking them to work the next day. The claimant complained that he was subject to harassment in that Ms Baillie threatened him with a conduct process when she found out what had happened. Ms Baillie confirmed that she recalled the incident and went on to say that both Alan Boyd and she spoke with Mr Williams and that he '*got strips torn off*' by both. Her email to the claimant on 8 May 2015 simply said *'this really is not acceptable. I want your assurance that it will not happen again. If it does I will have no option but to follow the conduct procedure'*. There was no dispute that the parcels had been taken home contrary to Royal Mail rules concerning the handling mail and under these circumstances, Ms Baillie's response was a reasonable and proportionate one.

29. The claimant asserted that in November 2015, Ms Baillie deliberately gave him Tuesday as his day off on 3 consecutive weeks. Tuesday was a shorter working day in Royal Mail DOs because on those days, there was less post to process that compared with other days in the week. This meant that the claimant did not enjoy having a day off on the other days which were working days of an hour longer than Tuesday. Ms Baillie confirmed that Wednesday, Thursday and Friday were 'heavy days' and as many staff as possible were required to be in work. She accepted that it was possible to work 3 Tuesday's in a row and that the needs of the business would dictate how each 6-week period of rotas were prepared. However, it was her view that while the claimant may have worked a series of Tuesdays in successive, his working pattern would even out over time. In any event, the Tribunal did not hear any evidence to suggest that the claimant's working patterns for these weeks were manipulated by Ms Baillie to ensure that he would only work on Tuesdays.

30. On 30 November 2015, an incident arose following the claimant receiving a text from a manager called Wilf Veevors who was based in the Manchester North DO to report to work there on a Saturday. The claimant said that he had been told by Ms Baillie the day before the text was sent that 3-part timers would be going. He claimed that when he went to East DO collect a van, another manager Colin Burgess, told him that he was staying in the East DO. Ms Baillie said that she had no control over Mr Veevors texting the claimant and that Mr Burgess had told her that the claimant had had a 'hissy fit' about going to North DO and she was caught in the middle between an argument between Wilf, Colin and the claimant. She accepted that a 'relatively heated' discussion between the claimant and her took place and that both '*John (claimant) and I were both wordy and tended to talk over each other to get their points across'*. She denied that she threatened the claimant and denied that the trade union officer had to step in to stop it.

31. It is fair to say that Ms Baillie should have conducted herself in a calmer way than she described as she was the claimant's line manager. However, she was willing concede the difficult position that she felt she was in. the Tribunal notes the text messages which took place between the claimant and Mr Veevors and he clearly was unhappy with being asked to work in North DO. It appears that Ms Baillie told Mr Veevors that he was unavailable. In any event, the Tribunal does not find that the claimant was being deliberately intimidated, and this was more an incident born out of frustration between two individuals who have found themselves at the mercy of Mr Veevors, who was using an informal way to arrange staffing in North DO.

32. There was a log of a call to the Bullying and Harassment helpline on 30 November 2015 which the claimant said related to this incident. The log indicated that the claimant was given advice including the Bullying and Harassment process, how to use a 'H1' form to make a formal complaint and the benefits of keeping a diary. He was also encouraged to speak with a line manager.

33. The Tribunal was taken to numerous emails during the hearing where the claimant had emailed himself and Ms Coghlan describing incidents that happened on the day, they took place, or shortly afterwards. While this was effectively a contemporaneous note and a diary record as recommended by the helpline advisor, many of the incidents were disputed by the respondent's witnesses as not accurately reflecting what was happening. The claimant's belief was that the unwillingness of the respondent to accept his allegations was evidence of a management conspiring to remove him from the workplace, or as he put; Antoinette Baillie and others '*micromanaged*' colleagues to ensure that he could be undermined. This was an ongoing theme of this case, but there was little evidence available other than the claimant's email diary notes to support this belief as actually being a true reflection of how he was being managed at work. There was little evidence of the claimant seeking to engage with other managers at this time, describing how he was feeling and how he felt he should be treated. The claimant was someone whose mental state caused issues arising at work to prey on his mind. However, while this was the case, we find on balance that many of the allegations relating to direct discrimination, harassment and victimisation in the list of issues arose because of the claimant misunderstanding management's reasons for operating in a particular way and assuming that he was being targeted rather than simply managed.

34. No further issues occurred until 12 September 2016. The claimant said his concentration levels were poor and he was coached by Ms Baillie following a delivery mistake on 12 September 2016. Ms Baillie explained that a customer came into the East DO and complained that although she received a text to say an item had been delivered, she had not received it.

This was on the claimant's round and the respondent's Tracking Enquiry System suggested it had been delivered to another address. She said that the claimant was confrontational, and she asked the claimant to see if the lady at the DO reception was the same person who had signed for the item. The claimant told her that he must have delivered it to her mother and, Ms Baillie recalled, that the claimant suggested that her mother was *'a thief'*. The claimant felt that Ms Baillie was using any mistake on his part to criticise and undermine him. There was no dispute that the claimant received 'coaching' from her concerning good practice. Ms Baillie said that claimant was irate and would not accept responsibility, but that a mis delivery could result in formal conduct action. She said that she coached many staff on an ongoing basis and that more formal action such as counselling and conduct would be taken if coaching was proving to be ineffective. Given the nature of the mistake in question, the relatively informal action of coaching appeared to be a moderate way of dealing with this matter and had Ms Baillie really wanted to get at claimant she could have legitimately taken more formal action. The fact that the meeting was heated suggests frustration from both individuals and the claimant would no doubt have been upset by this episode.

35. On 2 December 2016, an incident arose which was not in dispute that the claimant had been given duty walk 25 (which was particular delivery walk and alongside walk 26 were the longest of the walks at this DO). In advance of the walk, the duty postman had to prepare their items for delivery. It was routine for staff to be allocated to the Inward Primary Sorting ('IPS') frame in addition to preparing for their allocated walk. However, the claimant argued that it was customary for those allocated to walks 25 and 26 to avoid this additional duty because of the relative size of their walks and the additional preparation involved. The claimant asserted that Ms Baillie nonetheless ordered him to work on the IPS frame. She could not recall the specific incident but attempted to explain how the incident might arise. She said that there were a mix of part timers who would come into work later and also a range of different skill sets. As line manager, she would make the decision on who was the quickest. The claimant felt she allocated him to IPS deliberately knowing that he would be 'set up to fail' having been allocated a long walk already. This was denied by Ms Baillie and there was no evidence of the claimant raising this as an issue with her. On balance, the Tribunal finds that on 2 December 2016, the claimant was allocated walk 25 and also asked to do some work on the IPS. However, there is insufficient evidence available to suggest that this allocation was deliberately made by Ms Baillie to overburden the claimant and was normal practice for someone with the claimant's experience and hours of work.

36. The claimant was off sick from work from 5 December 2017 and 10 February 2017 with the reason being recorded as back pain. He argued that Ms Baillie neglected the claimant during this sick leave, despite her being absent on sick leave herself from 12 to 22 December 2017. The initial sickness absence management of the claimant was initially carried out by a relief manager, Colin Burgess whom the claimant said was

unhappy about having to the do the OH referral instead of Ms Baillie. The claimant was referred to OH on 21 December 2017 which was before Ms Baillie returned to work and a report was produced on 30 December 2017 stating that the claimant was not fit to return to work. Ms Baillie sent a letter to the claimant on 11 January 2017 and inviting him to a wellbeing meeting on 16 January 2017. The respondent produced an attendance management storyboard for the claimant which Ms Baillie explained was only started for long term sickness cases. It recorded that he attended on 16 January 2017 and this meeting was with her. As the claimant told Ms Baillie that he did not feel fit enough to return to work, she authorised physiotherapy and in evidence, said that she authorised 9 sessions instead of the usual 6 sessions. Considering the documentation available to support Ms Baillie's evidence, the Tribunal is not convinced that the claimant was neglected by her during this sickness absence period.

37. The claimant also asserted that a return-to-work form was not completed by Ms Baillee on 18 February 2017. The claimant said that he was simply told to go onto a walk by Ms Baillee and she did not ask about his wellbeing. In his email note sent to himself on 18 February 2017, he expressed dismay at a return to work not taking place and said that he felt worthless and demoralised. The attendance management storyboard suggests that the claimant returned to work on 13 February 2017 on a rehab plan which was effectively a phased return to work. Ms Baillee could not recall completing a return-to-work plan on this occasion, but that it usually would be in relation to an employee returning to work. However, in the absence of a return-to-work form being provided by the respondent despite numerous requests, the Tribunal can only conclude that this form was not completed.

38. The claimant alleged that Ms Baillie was overheard on 29 April 2017 '*can't stomach'* the claimant. His email 'note' to himself on the same day suggested that the East DO union representative Darren Crolla witnessed the incident, but no evidence was available to suggest that the claimant complained when this incident occurred or that Mr Crolla supported the claimant's recollection. During his later Bullying and Harassment investigation with Gaynor Nevins, the claimant suggested in a note that he produced that there was a 'history' between Mr Crolla and him. However, Ms Baillie has no recollection of the incident, the claimant did not complain and on balance the Tribunal finds that this incident did not happen as alleged by the claimant.

39. The claimant complained that on 4 May 2017 that Ms Bailie had shouted across the office floor at him; 'you're getting conducted'. Ms Bailie said the claimant had been found to have driven the OPG whom he was paired with home in a delivery van. Their home was out of the local area and it meant that his mail was not delivered as he ran of time on his shift. The claimant denied that the journey was outside of the local area and that they ran out of time in their delivery and 25 letters were returned. This was a concern for the respondent management, but Ms Baillie mentioned

that there were two cases involving undelivered mail concerning two pairs of OPGs and all were treated the same. She denied deliberately singling out the claimant and that she had spoken to him in a hostile way. Considering the available evidence the Tribunal prefers the evidence of Ms Baillie as it relates to a genuine conduct issue and incidents where employees were treated similarly for the same issue and in a proportionate way.

40. On 16 May 2017, the claimant said that he had just spoken with Human Resources (HR) who had visited the office concerning 'Have Your Say' employee survey packs which were left in the East DO canteen. The claimant says that he had made a comment to Amy, who was the HR officer who was visiting. He said to her that he would speak with staff about issues in the East DO and get back to her. Shortly afterwards, Ms Baillie came out of her office and threatened the claimant with 'conduct'. He believed this incident was prompted by his frank comments made to HR. Ms Baillie was very clear that she cannot recall the incident, but recalled HR visiting concerned the Have Your Say surveys. The claimant said that he spoke with Amy after this incident and said he was about to bring a grievance. While the claimant sent an email to himself later that day confirming this incident happened in a way which suggested MS Baillie was deliberately picking on him because of his comments made to HR, there was no independent evidence to suggest that this incident happened as alleged.

41. The following day on 17 May 2017, the claimant then said that Ms Baillie told the claimant '*John, just pick the mail up and put it in the frame'*. He said that he told colleagues he '*could not take it anymore'* and that nobody said anything because he believes they were frightened. Ms Baillie was unable to recall the incident but did admit that this is the sort of thing that she would say to many postmen and women. While we acknowledge that the claimant may well have been upset by these comments and on balance they happened as described, the incident does not appear to be one which amounted to a deliberately hostile act against him by Ms Baillie.

42. The claimant said that on 22 May 2017, that Ms Baillie deliberately assigned him different duties despite knowing that his health issues required him to have stability in his working role. He said that he had planned a trip with his children to Alton Towers following an assurance by Ms Baillie that his duties would not change for the next two weeks. However, he said that shortly before the Saturday in question, Ms Baillie told him that he was on driving duty that day and he believed this was done deliberately to upset his plans with his family. Ms Baillie argued that she was unaware of the Alton Towers trip and explained that as a manager she had learned to only allocate duties two to three weeks in advance and not to make promises to staff as to when they would be working. She said she did not change the claimant's duties to affect the claimant's plans and as a matter of practice, she said that if an employee

told her of their plans, she would do her best to accommodate them. What was clear to the Tribunal was that the DOMs had complicated rotas to be worked out on regular basis. Unless formal requests were made for time off/leave by staff, it was difficult for any guarantee to be made with regards to the rota not changing on particular days. While this undoubtedly caused employees difficulties in their domestic arrangements, there was no evidence of any of the claimant's colleagues being treated differently to him and of a formal request being made by the claimant for the Saturday in question to be ring fenced as a non-working day.

43. On 31 May 2017, the claimant alleged that Ms Baillie threatened the claimant with conduct and then failed to implement this process. In evidence during cross examination, he suggested that this arose from a discussion about the delivery of polling cards and that she referred to ongoing conduct matters. Mr Foster for the respondent suggested to him that this was a legitimate form of management rather than resorting to formal processes. The claimant disputed this and argued that it was being used as a form of intimidation. Ms Baillie had no recollection of the incident but did say that at this time the claimant was going through coaching. The claimant did not appear to make any complaint concerning this matter at the time and it seems on balance to be the case that the claimant took exception to normal and legitimate management comments made by Ms Baillie and which we have no reason to belief would not have been made to anyone else whom she managed if appropriate.

44. The Tribunal was aware that the claimant relied upon a number of events which he said took place during May 2017 and at times, it was confusing as to how matters took place and whether some of the different events in the list of issue for this period overlapped or were the same incidents. However, having considered the evidence that we heard from both the claimant, Ms Baillie and the documentary evidence, it is clear that the claimant was having a difficult time in May 2017 due to anxiety and although the Tribunal thought he was being managed properly appropriately and the same as colleagues, in a busy depot and by a busy line manager. He took this treatment to be deliberate and because of his disability. Ms Baillie at this stage said that she had no reason to believe the claimant was disabled, although she acknowledged he was struggling emotionally at times.

45. The claimant did allege that Ms Baillie treated the claimant differently to a colleague called 'Ryan' by not threatening him (Ryan) with conduct in November 2017. The claimant had produced an email diary note 23 November 2017 which suggested that Ryan had taken mail bags home and brought them back the next day. The claimant said that when he had done something similar in May 2017, he was '*conducted*'. Ms Baillie could not recall the incident and in response to her answer in cross examination, the claimant did not ask her further questions regarding this incident. The Tribunal is unable to accept that this incident happened as alleged by the claimant.

46. On 30 December 2017, the claimant suggested that Ms Baillie handed him a conduct letter and that she knew what had happened concerning his conduct process because he felt that she appeared to be pleased in handing the letter over to him. Ms Baillie recalled handing a letter to the claimant on or around this time. She denied opening the letter but recalled that once the claimant had received it from her, he asked for time out to speak with his trade union representative. Mr Mellor who had drafted the conduct letter and posted it, thought that this letter had been inserted into a sealed envelope marked for the claimant's attention, then folded and inserted into another envelope so that it could be delivered to the claimant's workplace. This was to ensure that the original remained sealed and as the claimant was at work, it was felt to be the easiest way to get the letter to him. While we appreciate that by this time, the claimant may have been suspicious of Ms Baillie and the letter in question dealt with an emotive issue, we are satisfied that this incident simply involved the passing of an unopened letter from a line manager to a member of staff.

Issues relating to Gaynor Nevins
See 4.5 to 4.9, 4.12, 12.4 and 16.12

47. Ms Nevins' role in this case was restricted to her involvement in the claimant's Bullying and Harassment ('B&H') claim which he raised on 17 May 2017. It was unfortunate that she was unable to attend the hearing to give evidence, but the Tribunal understands that she has since left the respondent's employment.

48. The claimant completed a Bullying and Harassment Complaint Form (H1) on 17 May 2017. He described his complaint as being *'victimised, single out, be little, virbely abused (sic), manager speaking aggressive towards me. Turned staff in unit against me. Abuse of position, Being treated differently, unwanted behaviour, feel intimidated all the time…'.* He went on to say that his complaint was against Antoinette Baillie. The form seems to have been received by the respondent's HR Services Centre on 19 May 2017 and this was when an Initial Complaint Call Form was completed following a telephone call with the claimant. The claimant was recorded as saying that the matter had been going on for 3 years. He noted that he used to be a manager, returned to being an OPG from 2015. He said that he believed Ms Baillie had never liked him. The note recorded that when asked whether he would like the complaint to be dealt with informally, the claimant indicated that he did not. Therefore, it is understandable that the respondent treated this matter as being a formal complaint.

49. Ms Nevins was Delivery Office Manager (DOM) for Salford and was appointed as the B&H investigator and met with the claimant on 21

May 2017 to explain the process to him. She produced a note of what was discussed which was included in the hearing bundle and which was unsigned by the claimant. He had produced a separate version of the note which included a great deal of annotation by him and which added to the recorded allegations and which he signed. The claimant did raise concerns that Ms Nevins did not use the annotated version that he produced in her meeting with him. However, the Tribunal notes that she was very clear when producing her note that the meeting lasted 3 hours due to the claimant being distressed and that she did not record everything that he said. In any event, she described numerous allegations made by the claimant and the impact these issues were having on his health. She also noted that following the meeting she raised these concerns with her line manager Gary Richardson who said that Ms Baillie would be moving to another DO, which would mean that the claimant would no longer be line managed by her. She also questioned whether he was best suited for the reserve role and instead should be given his own duty so that he was subject to less management contact.

50. Both the claimant and Ms Nevins had a period of leave and then she continued with her investigation. She interviewed Ms Baillie, other witnesses and an anonymous witness whose evidence she discounted as being unreliable. She completed her report into the B&H allegation in September 2017 and sent a copy to the claimant on 14 September 2017. Her decision was not to uphold his complaint. In her report she summarised the complaint and the impact that the incidents had on is health, how being treated differently by Ms Baillie left him feeling anxious, taking medication, increasing his consumption of alcohol, poor sleep and taking longer time off work than might normally be necessary when ill. It focused upon the allegations that he was treated differently by Ms Baillie than colleagues, was shouted and humiliated by her at work and that empty threats were made of conduct which increased his anxiety.

51. She referred to two witnesses whom she interviewed who worked at the DO East (and whom she did not specifically name), but who she said did not recall Ms Baillie bullying the claimant. The CWU representative Darren Crolla denied that she belittled the claimant or anyone else. The claimant however, believed that Mr Crolla had a conflict of interest because he was managed by the claimant in the past. Ms Nevins' view was that the claimant had been treated fairly and that his allegations were not made in good faith. She then went on to make recommendations that he be assigned his own walk so that he had continuity and stability, that he has less interaction with managers, that he should give consent for OH Assist to provide him with long term support and recommended mediation between the claimant and Ms

Baillie (accompanied by Ms Nevins and Clare Drummond, who was the respondent's equality representative).

52. The Tribunal however, noted that Ms Nevins in her report made a number of references to the claimant's mental health throughout the process and how her third recommendation identified a need for long term HR support and that his current health situation was '*genuine episodes of anxiety and stress'.* Given that over a period of approximately 4 months where Ms Nevins was involved with the claimant, she noted substantial mental health concerns, it is surprising that she concluded that his complaint was made in bad faith when the more logical conclusion would be that even if she found the events did not had happen as alleged and described by him, for someone in his condition at that time, they would have seemed genuine to him. That she then recommended conduct action should commence upon the conclusion of the appeal period (presumably if unsuccessful), seems unreasonable. There was no evidence that she knew what would happen in the conduct process, or what sanction would be imposed, but this decision clearly had a huge impact upon the claimant's mental health and how he engaged with the respondent subsequently.

53. Ms Nevins was not present to give oral evidence concerning her thought processes in relation to this investigation and the Tribunal is therefore left to consider the documents in the bundle and the claimant's witness evidence. However, based upon the findings we have already made above, while we her decision to dismiss the B&H complaint as reasonable, it was unreasonable to find that the complaint had been made in bad faith. The claimant had argued that the matter could have been converted to an informal process although he clearly wanted the matter to be formal at the outset. He did not request that it revert to an informal process during the investigation and he had clearly made allegations of a serious nature which would not prompt an investigating officer to consider that an informal process should be recommended as to him.

54. The B&H procedure should have taken 35 days to conclude if the policy was followed correctly. It took 119 days for the decision to be made. Ms Nevins explained the delay as being because of extended annual leave and sickness and the need to interview witnesses and request data from archives. She did meet with the claimant on 6 September 2017 to explain what her decision would be, but even allowing for this, it seems that she failed to keep the claimant properly informed as to the reasons for the delays when they arose and when he could reasonably expect to see the report. Considering how upset he was and that on 20 July 2017, he reminded her of his anxiety and that he felt 'left in the dark', the Tribunal would have expected Ms

Nevins or a nominated colleague to provide the claimant with regular updates. She did recognise his health issues and recommended that OH be involved, but the Tribunal understands that this was a matter that could only be accessed by line management and not her under the respondent's systems. It appears that Ms Nevins put the claimant and management on notice of this issue.

Peter Byrnes
Issues 4.10, 4.11, 4.14, 12.5, 12.6,

55. The claimant appealed Ms Nevin's decision as was his right under the B&H Policy on 18 September 2017. He suggested that Ms Nevins trained Ms Baillie in the past and her appointment as investigating officer was inappropriate, the investigation was 'one sided' against him and that the outcome was wrong, and conduct should not have been recommended. On 28 September 2017, HR informed him that Mr Byrne, Optimisation Manager had been appointed to hear the appeal.

56. The appeal hearing took place on 20 October 2017 and in addition to Mr Byrne and the claimant, Ms Drummond from the CWU union supported him. A note of the hearing was produced, and it was recorded as being 3 hours in length. It was noted that it did not record everything discussed, but that it summarised 17 incidents ('a' to 'q'), which Mr Byrne would investigate. The note was sent to the claimant and he was invited to provide amendments. He then interviewed Ms Baillie concerning the incidents 30 October 2017. He concluded his appeal and sent the decision to the claimant on 8 November 2017. His decision was not to uphold the complaints and his report found that there was a '*clash of personalities between JP and AB'*. He noted that the claimant's habit of recording incidents in emails, rather than raising them with management left things unresolved. This compounded the stress the claimant felt, and he recommended in future the claimant should raise concerns when they arose.

57. He did uphold the recommendations made by Ms Nevins including the bad faith matter and referring this to conduct process. Unfortunately, he did not consider the claimant's health issues in any detail as raised by Ms Nevins. He accepted in evidence that the claimant was visibly upset in meetings and it seems that a second chance was missed to resist finding that the matter was raised in bad faith. This is especially surprising given the many sensible observations he made concerning the reasons why the B&H arose. It was reasonable not to uphold B&H, there was not a significant delay. We accept that it was not his role to follow up mediation and there was no evidence that the claimant asked him to intervene. We accept that he could not refer the claimant to OH

as he was not the claimant's line manager and the respondent's PSP system prevented him making the referral.

Christopher Mellor

Issues 4.16 – 19, 12.7-8, 16.14

58. Mr Mellor who at that time was the Middleton DO Manager was appointed to investigate the conduct referral made at that B&H outcome and invited the claimant on 4 January 2018 to a meeting on 9 January 2018.

59. At this stage, the claimant started a series of appointments with OH Assist which would appear to have arisen following the recommendations made by Ms Nevins in the B&H. The first report was dated 13 January 2018 and it was noted by Ms K Woodcock, Wellbeing Practitioner, that his symptoms were '*consistent with anxiety and depression'*, were *'significant*' and having a '*very negative impact on his wellbeing'*. Consideration was asked by HR to consider what barrier might prevent the claimant from attending the conduct process. The claimant was off sick at this stage and Ms Woodcock's opinion was that the claimant was not yet fit for work and would need to have the conduct matter concluded before he could be expected to return to work as they were clearly troubling him. In the meantime, she recommended mediation take place.

60. Mr Mellor wrote to the claimant again on 13 January 2018 and invited him to a meeting on 26 January 2018. The claimant continued to remain absent from work and Mr Mellor wrote again on 27 January 2018. He had by this time seen the OH Assist report and noted the importance of resolving the conduct matter as quickly as possible and invited him to a new meeting on 2 February 2018.

61. During February 2018, attempts were made by Stuart Daniels to arrange a mediation meeting between the claimant and Ms Baillie. He was examined by OH Asist on 28 February 2018 and they advised that his '*anxiety and depression symptoms remained significant'*. He was not thought to be fit to return to work and that the conduct investigation being resolved as quickly as possible with a view that '*[h]e would benefit from 2 weeks'* notice of the meeting as this will enable him to make preparations and ensure that he has appropriate support in place. The view of Ms Woodcock was that the claimant was not covered by the Equality Act in relation to his disability.

62. Mr Mellor wrote to claimant on 3 March 2018 reminding him that he had failed to attend 3 invitations to a conduct meeting with him. He noted the OH Assist report from 31 January 2018 and the need to progress the conduct matter. He invited the claimant to a formal fact-

finding meeting on 7 March 2018 and advised that if the claimant could not attend it was necessary to decide the matter on the papers that he had. The Tribunal notes that Mr Mellor had made three attempts to meet and his letter clearly indicated that he was concerned at this moment at least, that there was a need to progress the conduct matter even if the claimant was unable to attend. This was an understandable approach and was broadly consistent with HR advice.

63. The meeting took place on 7 March 2018 and the claimant attended with his CWU representative Keiron Regan. A lengthy note was sent to the claimant on 24 March 2018 and it recorded what was discussed including the reasons why the claimant brought the B&H complaint. The Tribunal were shown a copy of the note including the claimant's amendments. The claimant was then invited to a formal conduct interview by letter dated 10 April 2018 on 13 April 2018 enclosing documentation that would be used at the meeting.

64. The conduct meeting actually took place on 17 April 2018 and the decision which was sent on 24 April 2018 was that that it was the claimant's '*intention to build a vexatious case that you believed would see A Baillie herself facing conduct for.'* Mr Mellor decided to impose a sanction of a two-year serious warning and a compulsory transfer to Manchester North DO. Although his decision letter is reasonably detailed, the Tribunal was unable to establish how by making claims which were not upheld, the claimant had raised the B&H complaint in bad faith. It is correct that most of the allegations did not happen in the way or for the reason he described. But Mr Mellor despite being aware of the claimant's ongoing ill health relating and mental health issues involved appears not to have considered whether this may have played any role in how he interpreted incidents that took place between Ms Baillie and him. Instead, Mr Mellor simply seems to have adopted the view that if the claimant made a complaint which was found in the B&H investigation not to have happened as alleged and had not raised it with managers beforehand, his reason for doing must have been because he was trying to *set up* Ms Baillie for a conduct process. This was an unreasonable conclusion to reach considering what information was available to Mr Mellor.

65. Mr Byrne had already identified that the claimant's problem was diarising events as he saw them by email, but not actually making complaints to management to have them resolved. This allowed the problem to build up and for his health conditions to worsen. Despite, having access to Mr Byrne's decision, Mr Mellor appeared to 'flip these conclusions on their head' and argued that instead of an unwell man not seeking to resolve matters, he was amassing a case to be used against his line manager. This cannot be a convincing conclusion to

reach given the considerable medical evidence and interview evidence available to Mr Mellor, which described the claimant as being anxious and upset. he does not explain why he reached the conclusion that he did and he failed to demonstrate that he properly took account of the claimant's mental health.

66. The claimant said that he did not receive the conduct meeting notes until 24 April 2018 and he texted Mr Mellor that morning to say he had amendments and would send them later. They had been sent on 22 April 2018 to the claimant by email and he provided the amended version on 26 April 2018. By this time, Mr Mellor had sent out decision on 25 April 2018. Mr Mellor said when questioned, he had made his decision based upon what he had heard at the meeting and he felt it was pointless to wait longer given that the meeting had taken place and he had the evidence available. It would not have been unreasonable to wait a little longer, especially given the claimant's anxiety. He had also been very causal in his texts to the claimant as to time limits for a reply and gave the impression that he would wait for his reply with the amendments. However, in terms of whether he prejudged the conduct matter, we do not find that this was the case because he reached his decision following the hearing of all the evidence. It is not a case of deciding before evidence was heard. There was, however, poor management of the claimant's expectations. The amended note would not have actually made a material difference to the decision. However, it remained unreasonable for Mr Mellor to establish bad faith warranting the issuing of a 2-year serious warning.

Andy Cole
Issues 4.20-21

67. The claimant was reviewed by OH Assist and a further report was produced on 24 April 2018 and it noted how his symptoms related to depression and anxiety continued. Importantly, Ms Barnes Wellbeing Practitioner considered that the claimant *'may be considered as disabled under Equality Act. The conditions this relates to are recurring depression and anxiety'.*

68. The claimant appealed the conduct decision and Andy Cole who was then the DOM for Hyde DO, was appointed as the appeal hearing officer. Mr Cole no longer works for the respondent and did not attend to give evidence. However, the documentation in the bundle confirmed that on 9 June 2018 the claimant was invited to an interview with Mr Cole on 14 June 2018. This took place and the claimant attended with Mr Regan from the CWU. Mr Cole produced an investigation report which rejected the claimant's appeal and effectively reiterated the conclusions reached by Mr Mellor. It is very much a restatement that

the allegations made against Ms Baillie did not happen as alleged and that as the claimant did not raise the issues with management at the time they allegedly occurred, the claimant was building '*a vexatious case'*. No consideration seems to have again taken place concerning the health issues identified in Ms Nevin's report, the arguments made by Mr Byrnes in the appeal and the subsequent OH Assist evidence which by the time of the appeal clearly identified the claimant as being disabled due to depression and anxiety. Mr Cole does not give the impression that he had properly considered the case before him and questioned the reasoning given by Mr Mellor. As a consequence, we find that Mr Cole did not properly consider the appeal against the decision of Mr Mellor, as raised by the claimant.

Stuart Daniels
Issues 4.22-3, 12.7

69. Mr Daniels was alleged by the claimant to have advised him that he could not raise a further grievance concerning the same issue in June 2018 and that he would not arrange a transfer of the claimant to the Oldham DO in August 2018. The claimant did attempt to raise a grievance concerning the B&H decision and the conduct decision. While Mr Daniels did not attend to give evidence, the claimant argued that he refused this grievance and that the previous decisions had not been investigated properly. It was clear to the Tribunal that the B&H and conduct policies were separate to the grievance process and had their own procedure including the opportunity to appeal which is something that the claimant did and as such he exhausted those processes in question. Had he raised a grievance in relation to these processes, it would have been reasonable to reject them as it related to matters already considered and reviewed on appeal. Given the limited evidence available, we have no reason to disbelieve the claimant's evidence, that the incident happened as alleged. However, we do not find that he would have been treated differently to anyone else in such a situation.

70. the claimant when interviewed by Peter Kelly on 8 November 2018 regarding a return to work, did refer to Mr Daniels promising to transfer him to Oldham DO and to start a 'scoping exercise'. At the work-related stress meeting which took place on 6 August 2018 with Mr Daniels, he was informed by letter the same day, a '*number of options'* were discussed and the issues which prevented him from returning to work. However, the Tribunal did not see any specific evidence to support the contention made by the claimant that a promise was made by Mr Daniels to transfer the claimant to Oldham DO or alternatively, if he did, that he deliberately prevented this transfer from happening. His later meeting with Mr Kelly suggests that the real issue preventing a

transfer at that time, was the question of limited available posts at that DO.

Peter Kelly
Issues 4.24-30, 7.5-7.6, 12.9,16.15-19, 22.3

71. Mr Kelly is a Performance Coach and on 2 October 2018, he wrote to the claimant explaining that as he had been absent from work since 3 January 2018, it was necessary for management to consider how best to resolve this matter He explained that the continued absence remained *'untenable'* and invited him to a meeting on 5 October 2018 to discuss whether he intended to return to work. The Tribunal were informed that the process being used to manage the claimant ongoing absence at this point was known by the respondent's managers as the 'SOSR' process. However, the Tribunal recognised this as being part of a sickness absence management process designed to establish whether an employee on long term sick could return to work, if so when and with what adjustments put in place.

72. Mr Kelly confirmed to the Tribunal that he was aware that he had a disability. He said that he wanted to establish at the meeting what the 'blockers' were preventing the claimant from returning to work. He said that he did not regard the process as a means of dismissing the claimant, but one where he would seek to return him to work. The Tribunal did find that Mr Kelly was a credible and reliable witness, who also gave the clear impression that he wanted to help the claimant return to work.

73. The meeting took place on 5 October 2018 with Mr Regan from the CWU also attending and discussed the claimant's current health issues and what could be done to assist the claimant returning to work. The conclusion in the interview record was that he wanted to move to a different location, preferably Oldham DO or to be put on driving. However, he was very clear in stressing that he also needed the two-year warning removed. Mr Kelly wrote to the claimant on 5 November 2018 and invited him to a further meeting on 8 November under the SOSR process. This took place as arranged he was warned that dismissal was a potential option if a return to work could not be agreed. It also recorded that the claimant needed to return to work at a different location and the warning needed to be removed. A further meeting then took place on 8 January 2019. At this meeting, Mr Kelly provided details of numerous DOs. He felt unable to accept any of them other than East DO or North East DO. But the warning being removed remained an issue.

74. Further invitations to meetings under the process took place with another meeting taking place on 20 February 2020. The claimant was offered a return to work at East DO, with a stable role and regular hours of work, with the aim of days of work restricted to Monday to Friday each week. Nonetheless, the removal of the warning remained a sticking point. Mr Kelly then became aware that the claimant then commenced a grievance naming him and he was told by HR to hand the SOSR over to Paul Atherton.

75. We found no evidence that Mr Kelly said, *'I don't think it would be a good idea a suicidal postman driving a 7.5 tonne wagon',* and at worst he had questioned whether the claimant's then health issues would have prevented him from transferring to a driving role. Mr Kelly worked hard to find as many options as possible for the claimant to return to work. None of this was done in malice and emailing 22 offices as he described indicates somebody working very hard to ensure a return to work. The delays were understandable, especially as Mr Kelly also had leave commitment previously booked.

76. We do not find that Mr Kelly obstructed referrals to OH

77. It was reasonable to make sure the claimant was aware that there was a possibility of dismissal given that this was potential outcome in process. It is our judgment that Mr Kelly did everything to avoid the claimant's dismissal. Indeed, it is unfortunate that claimant raised a grievance against him because he would have been a real assistance to him in resolving the situation that he was in under process. The sticking point however, remained his request for the warning to be removed, which was outside Mr Kelly's control given that the conduct process had been exhausted.

Timothy Bulmer
Issues 4.31, 4.32, 4.33, 4.34, 4.37, 16.26,

78. Mr Bulmer was in January 2019, an Area Operations Manager. He was allocated to the claimant's grievance by HR because he was the senior independent manager in the Manchester at that time.

79. Following a number of emails, the grievance meeting took place on 15 March 2019. It was agreed that the claimant and his trade union representative, that the claimant would take the notes, instead of Mr Bulmer. These were prepared by the claimant and included in the hearing bundle and were provided by the claimant on 17 March 2019.

80. Mr Bulmer reached his decision concerning the grievance and this was sent to the claimant by email on 25 April 2019. This was

acknowledged by the claimant, the same day. The decision considered 6 issues which were as follows:

a) Not being invited to sick absence review meetings every 28 days for first 17 months of claimant's current absence. This was upheld.

b) OH reviews not being arranged despite being requested by the claimant on a number of occasions. This was not upheld because it was felt that the claimant's absence was not because of his health but because of issues relating to work.

c) The appropriateness of the SOSR process in this case was upheld. Mr Bulmer felt that the claimant's absence was complex, and he felt it was claimant's misunderstanding and that the process was to get him back to work.

d) The claimant felt he was not offered regular updates by Ms Nevins in relation to his complaint against Ms Baillie. This was not upheld by Mr Bulmer because he said that Ms Nevins made regular phone calls to the claimant.

e) An allegation of discrimination against Mr Kelly regarding the comments which he is alleged to have made concerning '*a suicidal postman driving a 7 ½ ton lorry'.* Mr Bulmer said that Mr Kelly had been referring to concerns about the claimant being fit to drive a vehicle and that he had apologised for any unintentional offence. This complaint was upheld, and Mr Kelly would explore possible opportunities for transport jobs for the claimant. As mentioned above in relation to Mr Kelly's evidence, the Tribunal does find that this was not a discriminatory comment but a genuine concern that the claimant was not fit.

f) There was a 43 delay in allocating this grievance to Mr Bulmer. He accepted this was not acceptable and described a technical issue with the PSP system.

81. The question of the 2-year warning was not mentioned in this grievance decision despite being raised by the claimant at the grievance hearing. He confirmed that in evidence that the claimant had exhausted the appeal as part of the disciplinary process, and he was unable to deal with this as part of grievance. The Tribunal finds it would have been helpful to include this reasoning in the grievance decision. The claimant challenged the decision not to remove the 2-year warning and gave notice of an appeal to the grievance.

82. Mr Bulmer said he did not know claimant was disabled, although he conceded he was aware of mental health problem but did not know causing claimant distress. While this might be the case, it was unfortunate that he did not press OH to become more involved. It appears that despite his management role, Mr Bulmer was unable to investigate this matter further and consider how it might impact upon the grievance. This was all very process driven and Mr Bulmer gave the impression that he did not explore what the real issue was which gave rise to the grievance and how matters could be progressed.

Peter Robinson
Issues 4.35, 4.36, 16.21, 16.22, 16.29, 20.4

83. Mr Robinson was the DOM at Manchester East Delivery Officer from 1 May 2019 and was appointed to replace Ms Baillie when she moved workplaces. He became responsible for managing the claimant's ongoing sickness absence, although it is understood he became involved with the management of the claimant's sickness absence from March 2019.

84. He conceded that there was a delay in him contacting the claimant concerning his sickness absence until June 2019. He also accepted that there was a delay in arranging a wellbeing meeting with the claimant which he attributed to delays in a sickness absence 'storyboard' being provided to him.

85. He also accepted that he did not meet with the claimant every month and they *'usually took place every two months.* He went on to say that '*[s]ometimes John [claimant] would cancel so any delays were not always my fault'.* The Tribunal found that this was an acceptance of failure of his part as well as on the part of the claimant. The Tribunal did not find Mr Robinson to be a particularly cooperative witness and he appeared to be guarded and defensive. It is not clear why this was, but he gave a clear impression of recognising that he had not done what he should have done when managing the claimant, nor did he seem unconcerned about any omissions on his part.

86. Mr Robinson denied that he was aware of the claimant having a disability at this time, despite accepting that the claimant told him that he suffered from anxiety and depression at the time of his involvement with him. He did refer the claimant to OH and a report was provided by OH Assist on 12 July 2019. We did not feel that there was any delay in referring the claimant to OH by Mr Robinson.

87. What is more troubling is his interpretation of the report, which we understand that he received shortly after it was prepared. Under the

heading *Disability Advice,* the OH adviser Ms Jennifer Bilmes stated; *'In my opinion, disregarding the effect of treatment, [the claimant] would be considered as disabled under the Equality Act. The condition this relates to is anxiety and depression'.*

88. This is an unequivocal assessment of the claimant being assessed as disabled under the Equality Act 2010 as of 12 July 2019. Yet Mr Robinson argued in evidence that *'the report doesn't say you have disability'.* Given the evidence available to the Tribunal and to Mr Robinson at the material time, the Tribunal finds this argument raises serious concerns about his understanding of disability as a protected characteristic and it may well have affected his subsequent actions following his receipt of the report.

89. Mr Robinson said that he found the claimant to be aggressive and agitated and his main focus concerned the removal the two-year warning. Mr Robinson argued that the warning was something connected with conduct and not his return to work. While this might be the case, he gave the impression of a manager who had picked up a difficult line management matter and displayed no real interest or concern in exploring the possibility of a solution.

Mark Aspden
Issues 4.38, 4.41, 7.9 and 16.20

90. Mr Aspden is the Plant Manager at Manchester Mail Office and was appointed as the grievance appeal manager in or around June 2019. He described himself as having significant experience in dealing with disciplinary and grievance matters.

91. The appeal submitted by claimant on 25 April 2019. Mr Aspden wrote to the claimant that he had been appointed as appeal hearing manager on 28 June 2019. The delay was caused by another manager Paul Atherton being initially appointed, but then the file was re-assigned to Mr Aspden. The claimant asked for a delay in a meeting taking place as he was awaiting copies of all the paperwork from Mr Bulmer. Mr Aspden then had a 3-week period of leave and a meeting finally took place on 23 August 2019. The grievance procedure for the respondent provided that an appeal should be heard within 12 to 42 days. In this case, the appeal took approximately 100 days to be heard.

92. His decision letter was sent to the claimant, after the appeal hearing on 19 September 2019. He upheld Mr Bulmer's findings and did not find any discrimination on the part of managers. Mr Aspden said that he did not consider the claimant's issues concerning the two-year warning and explained that he could only review what was said in the grievance

outcome. The Tribunal understands the reticence that management had concerning the reopening of the warning. However, given that the claimant had raised this matter to Mr Bulmer at the grievance and as noted above, he had failed to make any reference to this in his decision, Mr Aspden gave the impression of being overly pedantic. It would not have been unreasonable for a manager of his undoubted experience to have discussed this issue with Mr Bulmer and once satisfied that the claimant had raised it as a complaint in the initial grievance, he could then have addressed it as part of the appeal.

93. While the Tribunal acknowledges that the likely outcome of this enquiry would have resulted in a refusal to deal with the warning given that it related to a previously exhausted process, Mr Aspden's failure to explore this matter fully, no doubt exacerbated the claimant's anxiety and belief that management were closing ranks.

94. Mr Aspden did not have any recollection of the claimant asking that he be referred to OH. There is no doubt that the claimant wanted to ensure that he continued to be referred to OH by the respondent and it is likely that he would have asked for a referral. Mr Aspden while disputing that he ignored the claimant's disability, he said that he did not have any evidence of it before him. Mr Aspden said that this was not something that was his responsibility. However, we accept that even if the claimant did ask Mr Aspden for a referral, his argument that he could not have done so under the PSP as he was not the claimant's line manager was a reasonable one. Nonetheless, having considered our findings of fact made in relation to Mr Robinson (above), it is perhaps not surprising that the claimant was seeking the support of other managers in respect of the further referrals to OH.

Paul Atherton
Issues 4.39, 4.40 16.24,

95. Mr Atherton was the DOM in Stockport Delivery Office and was asked by HR in May 2019 to manage the claimant's sickness absence. He confirmed that this was colloquially under the 'SOSR', but which was not a formal policy or procedure and described SOSR as being '*a means to attempt to resolve deadlocked or difficult absences from work'.* The Tribunal accepted that the SOSR was a means whereby employees on long term absence could be managed when the usual attendance policy or ill health policy could not be used.

96. Once appointed to this role, Mr Atherton wrote to the claimant on 17 June 2019, explained his role under SOSR and invited him to an interview. The claimant replied on 19 June 2019 and said that he did not want to attend the meeting as he was still awaiting a reply from Mr

Bulmer. Mr Atherton was simply doing what was expected of him and he confirmed that he had contacted HR following the claimant's reply and was told to agree to this request. Understandably, at this stage of the claimant's employment, he had become exhausted by the different processes and did not want to deal with a parallel process until the existing grievance process was resolved. The respondent behaved properly in not pursing this matter further at this stage.

97. The claimant did complain that Mr Atherton had not sent letters to him, but that enclosures were not attached to them. Mr Atherton advised in evidence that if he had failed to do so, he was sorry, but in any event, the Tribunal finds that this matter was not material to the claimant's claim even if enclosures were not sent.

Darren Banks
Issues 4.42, 4.43, 16.25, 16.28

98. Mr Banks is the Operations Manager for the respondent's Manchester area. He confirmed that he started to receive emails from the claimant in July 2018 but said that he did not become involved in the claimant's case until Christmas 2018.

99. Mr Banks explained that he did not engage with the claimant during this time, because he was not his line manager and was not appointed to deal with any of the processes which have been discussed above. He said that every email which he received from the claimant was forwarded to HR.

100. The Tribunal was asked to consider an allegation that Mr Banks and Mr Selby (see below), ignored the claimant's emails which he had sent to them in August 2019. However, the Tribunal noted that there were 14 emails which had been sent to the claimant between September and October 2019 and while Mr Banks said that he forwarded them onto HR, he did not send even a short reply to the claimant explaining what he was doing and why the claimant should not email him directly. The claimant asserted that Mr Banks should have recognised that he was distressed. It is fair to say that Mr Banks as a senior manager for the respondent, would have a great many duties and responsibilities as part of his role. Nonetheless, the Tribunal find it surprising that Mr Banks did not become alarmed by the frequency of the claimant's emails and/or their contents. The claimant was polite in the emails that he sent and as an overall manager of those managers dealing with the claimant's case, it would have been entirely appropriate and reasonable for the claimant to receive a short message from Mr Banks, even if it was just explaining who had responsibility for the issues being raised and who was an appropriate point of contact.

101. Mr Banks did send a letter to the claimant, which was undated, but which he said was sent in September 2019. The Tribunal is dismayed that someone of Mr Banks' level allowed a letter to be sent out without a date included. However, in the absence of any evidence to the contrary, we accept that this letter would have been sent at some stage during September 2019. The letter was described as relating to the claimant's complaint about bullying and harassment and subsequent conduct investigations. What the claimant had sought to do was to bring a grievance on 8 August 2019 concerning the earlier bullying and harassment and conduct matters which had given rise to his two-year warning and procedural failures that he believed existed. Mr Banks responded by saying that all of the earlier processes had been exhausted and a grievance could not be used to reopen them. He made no comment as to whether the processes had been followed correctly but emphasised that they had been concluded with his appeals being dismissed. In this respect Mr Banks did say that all processes had been followed correctly and advised that no further action would be taken.

102. While Mr Banks' response was perhaps understandable and applied correct procedural principles, it should have been clear to him that this letter would not have brought the claimant's sense of grievance to an end. It might have been better for him to arrange to meet with the claimant and his union representative and to explain the contents of his letter and to explain why he could not reopen the earlier decisions.

Steve Selby
Issues 4.42, 16.25

103. Mr Selby is a Service Delivery Leader at the Manchester Mail Centre. He was copied into most of the emails that Mr Banks was receiving from the claimant and which were discussed above.

104. He did not line manage the claimant, was not involved with the processes, and denied that he was aware that he had a disability. Most of the emails were not specifically addressed to him and his evidence was that he did not see this as a matter which affected him directly, although he said that on one occasion, he did raise the matter with Elly Campbell in HR. He said that Ms Campbell simply told him to forward the emails to HR and they would assist with a reply.

105. He said that HR told him that Mr Banks was going to respond to the claimant's emails and Mr Selby felt that he was the most appropriate senior manager given that he was within the claimant's management chain. The Tribunal accepts this evidence and understands why he did not reply, but it would not have been unreasonable for him to send the claimant a short email explaining why he did not need to be included in

any further email correspondence. This is reflective of an apparent reluctance of the part of senior managers to get more involved with issues involving individual employee issues, in event the most rudimentary of ways.

The Law

Time Limits

106. Section 123(1) of the Equality Act 2010 provides that a complaint may not be brought after the end of (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the Tribunal thinks just and equitable. Under section 123(3) conduct extending over a period is to be treated as done at the end of the period; and failure to do something is to be treated as occurring when the person in question decided on it. Under section 123(4) in the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something (a) when P does an act inconsistent with doing it; or (b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Disability Discrimination

Disability

107. Section 6 of the Equality Act 2010 provides that a person has a disability if he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his ability to carry out day-to-day activities. Section 212 provides that substantial means more than minor or trivial. Schedule 1 of the Act provides that the effect of an impairment is long-term if it has lasted for at least 12 months, it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person affected. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to correct it and but for that it would be likely to have that effect.

Direct Discrimination

108. Section 39 of the Equality Act 2010 provides that an employer must not discriminate against an employee of his by, amongst other things, subjecting him to a detriment.

109. Section 13 of the Equality Act 2010 sets out the legal test for direct discrimination. A person (A) discriminates against another (B) if, because of a protected characteristic (disability in this case), A treats B less favourably than A treats or would treat others.

Discrimination arising from a Disability

110. Section 15 of the Equality Act 2010 provides that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. However, this kind of discrimination will not be established if A shows that he did not know, and could not reasonably have been expected to know, that B had the disability.

111. In *City of York Council v Grosset* 2018 ICR 1492 the Court of Appeal held that where an employer dismisses a disabled employee for misconduct caused by his or her disability, the dismissal can amount to unfavourable treatment under S.15, even if the employer did not know that the disability caused the misconduct. The causal link between the 'something' and the unfavourable treatment is an objective matter that does not depend on the employer's knowledge. The Scottish EAT in *Sheikholeslami v University of Edinburgh* 2018 IRLR 1090 clarified the S.15 causation test. It held that an employment tribunal had erred in rejecting a S.15 claim on the basis that the reason for the claimant's dismissal – her refusal to return to her existing role – was not 'caused by' her disability. The test is whether the reason arises 'in consequence of' the disability, which entails a looser connection than strict causation and may involve more than one link in a chain.

112. Unfavourable treatment will not be unlawful under S.15 if it is objectively justified. In *Awan v ICTS UK Ltd* EAT 0087/18 the EAT overturned an employment tribunal's decision that the dismissal of a disabled employee on the ground of incapacity during a time when he was entitled to benefits under the employer's long-term disability plan was a proportionate means of achieving the legitimate aim of ensuring that employees attend work. The tribunal had wrongly rejected the employee's argument that an implied contractual term prevented his dismissal on the ground of incapacity while he was entitled to such benefits.

113. In (1) The Trustees of Swansea University Pension & Assurance Scheme *(2) Swansea University v Williams* UKEAT/0415/14/DM the Employment Appeal Tribunal held that the words "unfavourable treatment" and "detriment" were deliberately chosen when being included in the Equality Act 2010 and had distinct meanings. Unfavourable treatment involves an assessment in which a broad view is to be taken and which is to be judged by broad experience of life. It has the meaning of placing a hurdle in front of or creating a particular difficulty for or disadvantaging a person because of something which arises in consequence of their disability.

Discrimination arising from a failure to make reasonable adjustments

114. Sections 20, 21 and 39(5) read with Schedule 8 of the Equality Act 2010 provide, amongst other things, that when an employer applies a provision, criterion or practice ("PCP") which puts a disabled employee at a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled, the employer is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. Paragraph 20 of Schedule 8 provides that an employer is not expected to make reasonable adjustments if he does not know and could not reasonably be expected to know that the employee has a disability and is likely to be placed at the disadvantage.

115. In the case of the *Environment Agency v Rowan* [2008] IRLR 20, the Employment Appeal Tribunal held that in a claim of failure to make reasonable adjustments the Tribunal must identify:-

(a) the provision, criterion or practice applied by the employer;

(b) the identity of non-disabled comparators where appropriate; and

(c) the nature and extent of the substantial disadvantage suffered by the Claimant.

Harassment

116. Section 40 of the Equality Act 2010 provides that an employer must not, in relation to employment by him, harass an employee.

100.The definition of harassment is set out in section 26(1) of the Equality Act 2010. A person (A) harasses another (B) if:

(a) A engages in unwanted conduct related to a protected characteristic (race in this case); and

(b) the conduct has the purpose or effect of: -

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

101.Section 26(4) provides that whether conduct has the effect referred to in subsection 1(b), each of the following must be taken into account:

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

Victimisation

117. Under section 27(1) EQA, a person victimises another person if they subject them to detriment because that person has (a) does a protected act; or, they believe that that person has done, or may do, a protected act.

118. Under section 27(2), a protected act includes (a) bringing proceedings under the EQA; (b) giving evidence or information in connection with proceedings under the EQA; and, (c) doing any other thing for the purposes of or in connection with the EQA.

Discussion and Analysis

Disability

119. The claimant asserts that he has been disabled because of anxiety and depression since 2011 and argues that the respondent was aware of his disability since that date.

120. The respondent has asserted that the earliest date which it could have known that the claimant was disabled in relation to his identified condition of anxiety and depression was 24 April 2018 when OH Assist confirmed that the claimant was covered by the EQA.

121. The claimant had been subject to several meetings with a wellbeing practitioner at OH Assist. This practitioner was on each occasion asked to consider the application of the Equality Act 2010 and whether the claimant was disabled. There were reports produced in January and February 2018 which did not find that the claimant was covered by the EQA. The report of 24 April 2018, did however, determine that he was covered by the EQA.

122. It is fair to say that these reports were being prepared by a wellbeing practitioner by telephone during a counselling session. The respondent accepted that the qualification of the practitioner was unimportant and did not dispute the findings made about the application of the EQA. In any event, it put the respondent on notice of the EQA probably being relevant for stress and anxiety.

123. By this stage the claimant had recorded on his sickness absence record, a number of absences caused by stress. The claimant had 104 days off work 3 October 2011 until 14 January 2012 with stress. There followed a period of good health and attendance at work until he was

absent with 6 days off work due to stress in February 2016 and a further record of stress with no absence 3 September 2016.

124. The question that the Tribunal has considered in relation to the claimant's disability, is at what point did his employer know or should have been expected to know when this condition amounted to a mental impairment which had a substantial adverse effect on his ability to carry out normal day to day activities and that this impairment had a long-term effect on the his ability to carry out these activities i.e. has lasted or is likely to last at least 12 months or for the rest of the worker's life.

125. In reaching our decision, we have not assumed that the respondent simply had to rely upon its OH advisors and the point in time when they deemed the claimant to be disabled under the EQA. The respondent was aware of the claimant suffering from stress related anxiety and depressive problems as early as 2011. There are letters in the hearing bundle from the claimant's GP that describe the claimant's medical history in relation to his mental health and that he continued to suffer with serious impairments from 2011. The GP letters are admittedly produced in 2018 and 2019 once the respondent had become aware of the claimant's disability following the conclusion reached by OH Assist in April 2018.

126. Nonetheless, in 2011 the respondent was aware of long-term sickness absence resulting from, the claimant's anxiety and depression. The sickness absence record is by its very nature a basic means of recording absences, but the then OH provider Atos Healthcare identified stress and anxiety between November 2011 and January 2012, with the claimant being granted a leave of absence once it became clear that he would not be able to return to work for some time. while it may be the case that during this period the claimant was having to deal with a sensitive and stressful personal matter, it was clear that his mental state was of a long-term nature and that it was likely it would or could last for at least 12 months or recur at some stage in the future.

127. When he returned from work from his leave of absence on 20 May 2012, the claimant would have been absent from work for reasons connected with stress and anxiety and this meant that this problem had lasted for 7 ½ months. Even if the stressful event had resolved, the respondent would have been on alert of a potential reoccurrence of the impairment in subsequent years. The failure by OH Assist to identify the claimant as being disabled earlier in 2018 was unfortunate given that they would have had access to his sickness record. But those reports do nothing to undermine the existing long-term mental health issues experience by the claimant and there is no suggestion that they sought permission from the claimant to investigate his GP records.

128. Accordingly, it is our judgment that the respondent could reasonably have been expected to conclude that he was covered by EQA from January 2012 when the leave of absence was required.

Direct discrimination

129. This is a case where the claimant listed 43 occasions where he says he was subjected to treatment by his managers. The alleged treatment ran from January 2017 involving Ms Baillie and concluded on 19 September 2019 referring to Mr Banks.

130. A theme in this case was the way in which the claimant would email himself and would sometimes copy in his partner, with a particular event that took place during that date. To some extent, it was understandable as he was unhappy with his treatment by managers in the workplace and he wanted to record when they took place and what happened. To some extent they do constitute of a contemporaneous note of what he ultimately alleged in his complaints of direct discrimination (and indeed harassment as will be discussed below).

131. The Tribunal noted that Mr Byrne in his hearing of the appeal to the B&H process decision of Ms Nevins commented that the claimant had developed a practice of diarising every event that he believed had happened to him. He remarked that the claimant had failed to report any concerns that he had with managers in order that they could have addressed, and this had the effect of him building up a sense of grievance as to how he was treated. The Tribunal's judgment is that had the claimant dealt with these matters as they arose, it is likely that these issues could have been resolved, probably informally and it may well have reduced the unhappiness that he was feeling towards his managers.

132. It is acknowledged that his mental health at that time may have precluded him from feeling resilient enough to challenge in this way, but nonetheless, Mr Byrne made a fair observation concerning this pattern of behaviour.

133. The Tribunal has considered each of the forms of treatment identified by the claimant in his list of issues relating to the complaint of direct discrimination. It has discussed them in detail in the finding of fact and we do not propose to discuss each one individually within our analysis of this case. It is fair to say however, that our findings in this judgment have ranged from finding that (i) the event did not happen as alleged, (ii) did happen but with some misunderstanding on the part of the claimant, or (iii) they did happen as alleged but constituted a reasonable management decision.

134. The claimant clearly believed that the treatment identified was less favourable and that he was treated differently when compared with others in not materially different circumstances. In this respect, he did not really place much emphasis on named comparators and instead believed he was being singled out Ms Baillie, who had an ability to 'micromanage' other managers, including others more senior than her. The claimant accepted during the hearing that the term 'micromanage' could be equated to 'undue influence' and it was clear to the Tribunal that a significant part of his claim arose from his relationship with this person.

135. The one occasion where a comparator was named, the claimant alleged that Ms Baillie treated him differently to a colleague called 'Ryan' by not threatening him with conduct in November 2017. However, as we were unable to accept that this incident happened as alleged by the claimant, we are left with hypothetical comparators when considering less favourable treatment.

136. The claimant worked in a hectic working environment and many of the allegations that he made against Ms Baillie related to treatment when carrying out his job. As a large employer, the respondent had a large workforce with many staff working flexibly with shorter hours. The claimant was an experienced employee who worked full time and there were occasions that he would be asked to do particular duties. While this might be the case, we do not accept that he was treated less favourable than comparable employees working the same hours as he did. There were instances where he was no doubt shouted at by Ms Baillie and there were a number of occasions such as where he took mail home with him where he was subject to criticism by management. As we have stated in our findings of fact however, we did not see anything untoward which suggested that the claimant was being singled out and being treated less favourably.

137. In relation to the other forms of treatment which the claimant identified involving the various processes which began with the B&H investigation, the Tribunal does not find that any of the treatment (which is found to have occurred as alleged), amounted to less favourable treatment of the claimant when compared with other hypothetical comparators. If anything, as will be seen from the findings of fact, the Tribunal's criticism of the respondent lies not with singling out the claimant for special treatment, but in their failure to apply a more considered approach to the claimant's complaint under the B&H and the way in which the imposition of a two-year sanction under the conduct process created a problem that became extremely difficult to resolve. The respondent actually treated the claimant during these processes like anyone else and if anything, attempted to use more 'niche' methods such as the SOSR process to try and find a resolution. This did not amount to less favourable treatment to support a claim of direct discrimination, but it clearly had implications

which will be considered in relation to the other forms of discrimination below.

138. Even if the Tribunal is wrong in reaching this conclusion, its judgment is that none of the treatment arose because of the claimant's disability. The claimant no doubt displayed to the respondent a pattern of behaviour that could be considered stubborn or obstinate, especially with regard to the conduct matter and the imposition of the two-year warning. But the real issue within these proceedings is the failure to appreciate the particular reasons why the claimant may have raised the B&H complaint in the first place and how consideration could have been given to treating him differently. The Tribunal may well have criticisms of how the respondent behaved in this process, but it does not find that it behaved in such a way because of the claimant's disability.

139. The problem was that while the claimant made a contemporaneous note of what he believed had happened in his emails, he was describing his emotional assessment of what happened and as we have found, this did not necessarily equate with what *actually happened* and *why* it was done. The curating of a series of events which were perceived negatively by the claimant without any referral to management, simply increased his belief that he was being targeted and there was no way 'to clear the air' or to consider alternative explanations as to what had had happened and why.

140. Finally, there is the question of time limits in relation to this complaint. Mr Foster for the respondent argued that all complaints of treatment which occurred prior to 7 April 2018 must be out of time. The claimant was still employed by the respondent when he presented his first claim form on 14 August 2018. Considering early conciliation from 6 July 2018 until 1 August 2018, the Tribunal agrees with Mr Foster.

141. However, while allegations 4.1 to 4.17 are therefore potentially out of time, consideration must be given as to whether there are any continuing acts which commenced before 7 April 2018, but where the last event in that series concluded after that date. The judgment of the Tribunal is that a key date in this case is when the claimant presented his B&H claim to the respondent on 19 May 2017. All procedural matters which arose from that date occurred because of the B&H complaint and therefore form part of a series of continuing acts. Therefore, issues 4.5 onwards are in time.

142. Considering the nature of the complaints raised in the B&H and their relationship with the alleged incidents which took place earlier, the Tribunal does find it just and equitable to extend time for issues 4.3 and 4.4. However, in relation to this complaint, it is of course of academic

interest only, given that none of the allegations of direct discrimination are successful.

Discrimination arising from disability

143. The Tribunal does accept that the stress related absence which took place from 3 January 2018 was a 'thing' which arose in consequence of his disability.

144. There are of course several allegations of unfavourable treatment in the list of issues which pre-date this sickness absence and which therefore if they did happen, could not have happened because of this sickness absence. We would refer to issues 12.1 to 12.6 in this regard.

145. It is acknowledged that in relation to the remaining issues (12.7 to 12.9), relating to this complaint, some did happen. Mr Mellor wrote to claimant in early 2018 and did invite him to attend meetings. This took place while the claimant was absent from work due his sickness. However, the judgment of the Tribunal is that the OH Assist Report dated 31 January 2018 had considered the importance of progressing the conduct matter which the claimant remained unhappy about. Mr Mellor clearly took into account this recommendation and balanced the question of whether the claimant was fit to attend work with the provision of an opportunity for a meeting to take place. He did write to him on 3 occasions in this respect, but ultimately advised the claimant that he was unable to attend, he would determine the matter on papers.

146. As is often the case in sickness absence cases of this nature, an employer and an employee will find themselves in a position where an effective return to work can only take place once a grievance or process is completed, but which the employee feels unable to participate in. This can create what might appear to be an impossible situation to resolve. The Tribunal's judgment in this case was that Mr Mellor behaved reasonably in how he attempted to navigate his way through this apparent 'conundrum' and as such he did not pressure the claimant to attend conduct meetings while off sick. There were not detriments, but normal management practice in a situation such as this.

147. Similarly, Mr Kelly did not 'threaten' the claimant with dismissal while he was on sickness absence. He did express a concern that the continued absence remained *'untenable'*, but the Tribunal recognised he was simply using appropriate language as being part of a sickness absence management process designed to establish whether an employee on long term sick could return to work. It is not unreasonable to warn an employee that long term sickness absence could become a

matter of capability which could give rise to a termination of employment. Indeed, it would be unreasonable *not* to give this caution. As the Tribunal noted in the findings of fact, Mr Kelly was a sympathetic and considerate manager who did his best to assist the claimant and his treatment of him as alleged, did not amount to a detriment.

148. It is correct that all of the relevant detriments alleged did take place because of the claimant's sickness absence which arose from his disability, but none of them amounted to pressure or threats and as such, they cannot amount to detriments.

149. If, however, the Tribunal is incorrect in its findings and this treatment did amount to a detriment, it must still consider whether these matters happened because the respondent had a legitimate aim, and it exercised a proportionate means of achieving that aim.

150. The respondent relies upon the Royal Mail's 'Universal Service Obligation' ('USO') as its legitimate aim in this case. In simple terms, these are the minimum standards required of the Post Office by Parliament and it requires certain delivery and processing standards for post which the respondent handles. One of the necessities to achieve the USO is the employment of a workforce who can maintain regular attendance. Naturally, the USO must be achieved using a proportionate means as employees will fall sick and require time off work and some employees with disabilities may have heightened sickness absence levels because of their disabilities. The respondent has a duty to comply with its obligations under the EQA 2010 and must act in a reasonable way which takes into account the particular vulnerabilities disabled employees face when trying to maintain good attendance.

151. The respondent had in place elaborate sickness absence processes and allowed employees generous sick leave and sick pay without any sanction. They sickness absence process was lengthy and included the SOSR process to deal with cases of long-term sickness absence and the Tribunal finds that the respondent behaved in a way which really did treat dismissal as a matter of last resort. The claimant had a number of issues which prevented his return to work and the Tribunal has expressed its concerns regard the lack of flexibility in how it considered them. However, regardless of these concerns, the respondent has the right to carry out a sickness absence process, because the purpose of the EQA to assist disabled employees in being able to work despite the challenges that they faced. The respondent was patient in how it afforded the claimant an opportunity to participate in processes and the steps that which they took concerning his absence, were necessary. In terms of this complaint, the respondent behaved appropriately and proportionately in managing the claimant's sickness and attempting to achieve the legitimate aim of the USO.

152. Of course, considering our previous findings concerning time limits, all of the alleged treatment which happened as a consequence of the absence which commenced in January 2018, were presented in time.

Failure to make reasonable adjustments

153. For the reasons given above, the respondent knew or could reasonably have been expected to know that the claimant was a disabled person at the relevant times for this complaint.

154. In terms of the relevant provision, criterion or practice ('PCP') which existed at the material time, the claimant identified a number of potential PCPs and these can be identified in section 6.1 to 6.9 of the list of issues. The Tribunal's finding in relation to each of these is as follows:

a. The Tribunal accepts that the claimant was assigned to different delivery duties on a day-to-day basis as this was part of his job, (issue 6.1).

b. It also accepts that Mr Kelly attempted to conduct several formal meetings with the claimant while he was absent while sick. This is slightly different to the assertion that the Mr Kelly acted outside of the respondent's standard procedures. These did not take place outside of the respondent's procedures but reflected the way in which the SOSR procedure would try to resolve the particular difficulties existing with certain employees on long term sickness absence, (issue 6.2).

c. The Tribunal accepts that the respondent had a practice in place of applying misconduct sanctions in a case where an employee was determined to have brought a B&H complaint in bad faith. This happened to the claimant because of B&H complaint that he raised against Ms Baillie, (issue 6.3).

d. The Tribunal was unwilling to accept the claimant's assertion that the respondent *'failed to adhere to the policy regarding the timing and frequency of wellbeing meetings'*, as being a PCP. It might have had certain expectations in its policies concerning the timing of these meetings, but the Tribunal was unaware that there was a practice of the respondent failing to adhere to their own policies. Delays existed in a number of the processes which involved the claimant, but these related to matters of annual leave and sickness absence and also the claimant's inability to engage with the process at times. But none of the failings that might involve management, fell into a pattern which could amount to a PCP, (issue 6.4).

e. The Tribunal does not accept that there was a PCP of stress assessments being carried out by managers. There may have

been one occasion where a line manager dealing with the claimant suggested that he could do a stress assessment himself, but this was done in a flippant manner and while unfortunate, did not represent a workforce practice and it was certainly not a PCP, (issue 6.5).

f. There was a PCP in place where the respondent failed to re-open the claimant's complaint after the conclusion of the grievance process. The Tribunal understood this to mean that the respondent had a practice of treating each procedure which had its own initial determination and appeal process as being self-contained. This meant that once exhausted, the claimant could not bring a grievance to have these processes reopened. Management in evidence gave a clear indication that they did not see the re-opening of the claimant's complaints about the B&H and conduct processes as being possibilities and indeed, saw the request as contrary to policy. For this reason, this issue does amount to PCP, (issue 6.6).

g. For similar reasons, the Tribunal acknowledges that there was a PCP in place where the 2-year serious warning imposed during the conduct process would be maintained without review. Management during subsequent processes, believed that the conduct process had been exhausted with the appeal being heard. The 2-year warning remained in place for that reason, it was not reviewed, and this was a PCP, (issue 6.7).

h. The Tribunal also accepts that the SOSR process was used rather than managing the claimant's sickness absence. But what it understands the claimant meant in relation to this alleged PCP, is that the SOSR was used instead of the sickness absence policy. It was a PCP, as it was applied to those cases where an employee was on long-term sickness absence and had particular issues which needed resolving. While it appeared to be separate from the sickness absence process, it did follow a process of engaging the employee and seeking to find solutions to the absence. This was perfectly illustrated by the way that Mr Kelly supported the claimant, before the claimant brought a grievance against him, (issue 6.7).

i. Although there was a gap in referrals to OH between between 21 August 2018 and 12 July 2019, the Tribunal does not accept that this particular gap amounted to a PCP. There was a system in place of referrals being made by the line manager using the PSP system. This did mean that there was a difficulty with other managers being unable to refer the claimant to OH because the PSP system did not allow them to do so. But nonetheless, despite these 'process' managers being unable to refer the claimant, the claimant's line managers made a number of referrals and the OH Assist evidence is an indication that referrals were taking place.

For this reason, there was no PCP in place concerning a continued to failure to refer the claimant to OH, (issue 6.9).

155. The claimant then identified a number of ways in which the PCPs placed him at a substantial disadvantage when compared with persons who are not disabled. They were worded in a way that mainly described 'things' which gave rise a substantial disadvantage, rather than identifying what the actual disadvantage was. They can be found at sections 7.1 to 7.11 of the list of issues. However, in relation to those that are relevant to this complaint, the Tribunal's finds as follows:

a. It is correct that the claimant did face a substantial disadvantage in that the assignment of different delivery duties made it difficult for him to manage his condition and added to the stress and anxiety that he felt because of disability, (issue 7.1).

b. Those PCPs which have been found to have existed as described above, did place the claimant at a substantial disadvantage in that they increased his anxiety and depression, (issue 7.8).

c. The imposition of a two-year warning also placed the claimant at a substantial disadvantage in that he was unable or unwilling to take a pragmatic view as to its implications and that it would conclude in relatively short period of time. His disability meant that this warning became the focus of his sense of grievance with the respondent and this exacerbated his impairments arising from this disability, (issue 7.10).

156. The respondent ought to have known that the relevant PCPs placed the claimant at a substantial disadvantage because he articulated them in his grievance and as part of the SOSR process.

157. The claimant identified a number of adjustments that he believed were reasonable and could have been employed to alleviate the disadvantage he experienced. The Tribunal finds as follows:

a. Once it became known to the respondent that the claimant required his own delivery duty, Mr Kelly worked hard to find a duty of this nature for him. It was a reasonable adjustment, and the Tribunal finds that the respondent attempted to find an appropriate duty for him. Mr Kelly confirmed that this was in place and only the removal of the two-year warning was the sticking point that prevented his return to work. There was no failure here, (issue 9.1).

b. Similarly, it was reasonable that the claimant be returned to Manchester East DO as this would have afforded him some

stability. It needs to be considered that the initial discussions with Mr Kelly involved a number of possible options and the claimant did consider some of them. However, the respondent did accept that the claimant should return to Manchester East DO and this was especially the case once Ms Baillie moved from there. For the reasons given above, it is understood that the respondent put in place this adjustment, but the two-year warning remained an impediment to the claimant's return to work. There was no failure here, (issue 9.2).

c. There was no dispute that the respondent refused to remove the 2-year serious warning despite it being a key part of the claimant's ongoing grievance with the respondent concerning his treatment. The Tribunal understood the respondent's reasons for not wanting to reopen procedures which had provided for an appeal, but which had been exhausted. However, given that the respondent should have been aware of the claimant's disability and his mental health issues, the finding of bad faith in the B&H process and the imposition of the 2-year warning in the conduct process were not appropriate and did not serve to resolve the matters between the claimant and Ms Baillie. Indeed, Ms Nevin's decision in the B&H report appeared to focus upon reconciliation and mediation. It is unfortunate that the conduct process took place and the appropriateness of imposing a warning was not determined to be a barrier to improving circumstances in the workplace between the claimant and Ms Baillie. It placed him in a position where he felt he was being punished for something that he had been encouraged to do when the H1 form was submitted. While it is understood that errors can happen and also that an appeal process should provide sufficient protection, for an organisation the size of the respondent, it would have been a reasonable adjustment to remove the 2-year warning, especially as Mr Kelly's hard work had resulted in the other issues being largely resolved. But for the 2-year warning, the claimant would have returned to work. Accordingly, this was a reasonable adjustment that the respondent failed to implement, (issue 9.3).

d. A set working week on Monday to Friday would have helped the claimant, but it is understandable that in providing a 6-day postal delivery service, this might have been difficult to achieve. Nonetheless, it was understood that this was something which the respondent considered possible and it appeared that it could be achieved. In this respect, the Tribunal accepts that the respondent was seeking to provide this adjustment, but that it would only become reasonable to do so, once the opportunity arose in the Manchester East DO. However, had the claimant returned to work, it was anticipated that the claimant would have been offered the working pattern he sought. Ultimately, this was not the issue which prevented his return to work and in effect the respondent was committed to that adjustment, (issue 9.4).

e. The Tribunal does not accept that it would not have been appropriate for a senior manager to review Ms Nevin's investigation. It was not reasonable for endless reviews to take place as this would create an uncertain situation in the workplace and would make it very difficult for management to function effectively. However, this should be contrasted with the removal of the 2-year warning which could have been a discrete and effective act which would not have had a destabilising effect on workplace practices. A proper consideration of the claimant's circumstances would have identified potential problems with the B&H and conduct processes and in this case, it would have been a reasonable adjustment to carry out. This is especially the case as it would have enabled the respondent to manage the claimant back into the workplace, (issue 9.5).

f. The respondent's practice was that wellbeing meetings should have taken place every 2 months. The claimant felt it should have been every 28 days. The Tribunal noted that the respondent tried to hold wellbeing meetings with the claimant, but he was not always available. Additionally, while the Tribunal accepts that this was an adjustment that could be made, it is not convinced that it was a reasonable adjustment because it was not a key feature in the claimant's grievance and one which would have had a material impact upon whether or not he returned to work, (issue 9.6).

g. The claimant felt that the respondent should have conducted a stress risk assessment. This is a common practice in many large employers where an employee is absent on long term sickness with stress related symptoms and the configuration of the job description may well have been an impediment to an employee returning to work. The respondent did not appear to have formally carried out a risk assessment , despite the claimant being absent due to mental health issues which included stress. This would normally have been carried out by specialist personnel from HR or OH. While a formal stress risk assessment did not take place, it was clear that Mr Kelly as part of the SOSR effectively carried out this exercise with the claimant and looked at how his existing job affected him and what steps could be taken to support him. Mr Kelly and other managers therefore explored ways in which the claimant could be returned to work. However, the Tribunal does not believe that a formal stress risk assessment was a reasonable adjustment as it was not that which would have alleviated the disadvantage the claimant was suffering, any more than the steps being taken informally by Mr Kelly, (issue 9.7).

h. In terms of the reasonable adjustment of referring the claimant to OH, the Tribunal finds that this was a reasonable adjustment to

assist the claimant with his stress and anxiety. However, in reaching this finding, it accepts that the respondent referred the claimant to OH where it was appropriate and possible, (issue 9.8).

i. The claimant argues that the respondent should have re-investigated his complaint of B&H against Ms Baillie. The Tribunal understands the respondent's concern that it would be unreasonable to reopen the investigation for the reasons given above. It is fair to say that it would have been unreasonable to allow the claimant to reopen every single process that he was unhappy with and he could not and should not expect this to happen as a matter of course. However, the claimant maintained a real unhappiness with the decision to find bad faith in the B&H process, the decision to subject him to a conduct process and the sanction imposed. The respondent was made aware of this throughout the claimant's subsequent grievances and during the management of his sickness absence. They were aware or should have been aware of his mental health difficulties and should have questioned whether what happened in relation to the bad faith allegation caused more harm than good. It was clear that by the time the matter reached Mr Kelly, the respondent was within a small margin of getting the claimant back to work. It had made a number of adjustments and all it needed to do was to reconsider the initial processes that gave rise to the claimant's ongoing absence to ensure a return to work. It would have been reasonable for management to re-read the report of Ms Nevin when considering the removal of the 2-year warning, which would have served to give some insight as to whether a conduct process was appropriate. The Tribunal finds that the respondent's failure to re-examine the decision to consider this issue was a reasonable adjustment that should have been made.

j. The claimant argues that the sickness absence process should have been managed without the SOSR process. the Tribunal does not accept that this was a reasonable adjustment. An employer should be able to manage sickness absence affectively in a non-discriminatory way. The use of the SOSR did not place the claimant at a substantial disadvantage and the claimant's suggestion does not amount to a reasonable adjustment.

158. Finally, in terms of time limits, as the respondent became aware of the substantial disadvantage experienced by the claimant during the SOSR and because of the initial B&H complaint in May 2017, all of these issues within this complaint are presented in time.

Harassment

159. The claimant identifies a range of conduct from 16.1 to 16.29 of the list of issues. To some extent, these allegations of conduct are repeated from the allegations of direct discrimination.

160. In terms of the conduct identified in 16.1 to 16.13 and attributed to Ms Baillie, the Tribunal has found that some of them may happened as alleged. Some of those found to have taken place may have been unwanted. However, the Tribunal is unable to find that any of them related to the claimant's protected characteristic of disability, or that it had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

161. As had been already discussed in the Tribunal's findings concerning direct discrimination above, we agree with Mr Byrne's concerns that the claimant's system of emailing himself and sometimes his partner concerning events which arose at work and which he had upset him, served to aggravate his feelings as it recorded his perception of what had happened, rather than what happened. His failure to raise his concerns informally or formally with management aggravated his unhappiness at work. Where we found that incidents had happened broadly as alleged in the findings of fact, it was because Ms Baillie was simply trying to manage the claimant in the workplace in a way that all of his colleagues would have been managed. He was clearly unhappy with Ms Baillie, but we did not find any evidence that she was mean to him or targeted him. We were not satisfied that Ms Baillie made abusive comments such as she *'…can't stomach'* the claimant. She simply managed him in a way that was in accordance with his duties and in accordance with any conduct matters that arose.

162. In relation to the other allegations of conduct concerning other managers from issue 16.12 to 16.29, the Tribunal found that some of the issues arose as alleged. However, many cannot be described as being because of the claimant's disability or that they had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, even if they were unwanted. Any of failures to progress matters quickly or to the claimant's liking, were not because of deliberate delay, but because of annual leave or sickness absence or perceived restrictions placed on managers by processes. None of these delays or unwillingness to do certain actions, amounted to deliberate acts with the purpose of harassing the claimant.

163. The one allegation from a manager other than Ms Baillie which might potentially give rise to a successful allegation of harassment, is Mr Kelly allegedly saying it would not be a good idea for a *'suicidal postman driving a 7.5 tonne wagon'*. However, for the reasons given in the findings of fact, the judgment of the Tribunal is that these comments were not made as alleged or with the intent that the claimant ascribed to them. As part of a discussion regarding what jobs the claimant could do, Mr Kelly

wanted to caution the claimant about his competence to carry out a driving job involving a heavy vehicle while he continued to suffer with mental health problems of the degree that he was experiencing. While it might have related to his disability, it was not said to degrade or humiliate the claimant and cannot amount to an act of harassment.

164. Insofar as time limits are concerned, only those alleged acts of harassment which occurred after 19 May 2017 were in time. However, applying the same approach to that which was used in relation to direct discrimination, the Tribunal does accept that it would be just and equitable to extend time for issues 16.7 to 16.9 and 16.11. This is because of their proximity to the claimant's lodging of the H1 B&H complaint form to the respondent and that they therefore are connected with that complaint, even if not forming part of a series of continuing acts. This means allegations 16.1 to 16.6 were not presented in time. These findings do not materially affect this complaint as the claimant did not succeed with any of his allegations of harassment.

Victimisation

165. The claimant refers to two possible acts that might be protected and which are as follows:

a. A complaint against Ms Baillie in May 2017. This was assumed to be the complaint under the B&H procedure. The respondent does not accept that this was a protected act.

b. The presentation of Tribunal proceedings in July and August 2018. The respondent accepts that this was a protected act.

166. The complaint made against Ms Baillie was initially one that alleged unhappiness with her behaviour but did not suggest that it was connected with the claimant's disability. On this basis, the Tribunal cannot find that it falls within section 27(2) of the EQA.

167. The Tribunal proceedings were clearly a protected act because they included complaints of disability discrimination and accordingly, it is subject to section 27(2)(a) of the EQA.

168. The claimant identified a number of detriments which he says arose because he made a complaint under the B&H procedure about Ms Baillie. Naturally, these must fail if the Tribunal finds that there was no protected act. For the avoidance of doubt however, the Tribunal does not find that the failure to uphold the complaint under that procedure, applying the 2-year warning or the way in which his sickness absence was managed, were detriments connected with the B&H complaint.

169. In relation to the detriments allegedly applied to the claimant because of the Tribunal proceedings, the Tribunal's judgment is that they were not detriments arising from that protected act.

170. It is true that the management did not deal with some of the processes as quickly as they should have done, and this applies to issue 22.1 and 22.2. While some of the delays were felt by the claimant to be deliberate, the simple fact was that the managers who were dealing with them were trying to complete their investigations while doing other work for the respondent, taking annual leave and on occasion having sickness absence themselves. Mr Kelly was simply trying to progress the SOSR process and while he was aware of the claimant's ill health, he was also aware of the OH Assist advice that the longer the claimant's issues remained unresolved, the longer it would take to get him back to work. None of his actions alleged in 22.3 and 22.4 where he invited the claimant to a number of meetings were detriments and nor were they because of the protected act. Similarly, Stuart Buckley was not subjecting the claimant in holding an SOSR meeting with the claimant in early 2020. This was simply a means of returning an employee with a lengthy sickness absence history back to work and was not a detriment or connected with the Tribunal proceedings.

171. For completeness, the Tribunal confirms that as all of the issues relating to victimisation are either the alleged protected act of bringing the B&H complaint or events that took place after that, they were all presented in time. However, the claimant's complaint of victimisation is unsuccessful for the reasons given above.

Conclusion and next steps

172. The Tribunal therefore finds the following:

a. The claimant was disabled within meaning of section 6(1) Equality Act 2010 and the respondent was or should have been aware that the claimant was disabled from January 2012.

b. The complaint of direct discrimination on grounds of disability contrary to section 13 Equality Act 2010, is not well founded and is dismissed. This means that this complaint is unsuccessful.

c. The complaint of discrimination arising from disability contrary to section 15 Equality Act 2010, is not well founded and is dismissed. This means that this complaint is unsuccessful.

d. The complaint of discrimination arising from a failure by the respondent with its duty to make reasonable adjustments contrary

to section 20 & 21 Equality Act 2010, is well founded insofar as it relates to the failure of the respondent to remove the 2-year serious warning from the claimant's record and to review Ms Nevin's investigation. This means that this complaint is successful.

e. The complaint of harassment arising from the claimant's disability contrary to section 26 Equality Act 2010 is not well founded and is dismissed. This means that this complaint is unsuccessful.

f. The complaint of victimisation contrary to section 27 Equality Act 2010 is not well founded and is dismissed. This means that this complaint is unsuccessful.

173. The case will now be listed for a remedy hearing to determine the successful complaint under section 20 & 21 Equality Act 2010 on **a date to be advised** in the Manchester Employment Tribunal, with a hearing length of 1 day.

174. The claimant shall provide the respondent with an updated schedule of loss by **18 January 2021.**

175. The claimant and the respondent shall exchange lists containing all relevant documents relating to remedy and shall provide copies of those documents to each other by **1 February 2021.**

176. The claimant and the respondent shall agree which documents will be included in the remedy hearing bundle by **15 February 2021** and the respondent shall provide the claimant with a hard copy and an electronic copy of the bundle by **22 February 2021.**

177. The claimant and the respondent shall exchange witness statements dealing with the issue of remedy only by **8 March 2021.**

178. The respondent shall ensure that 4 hard copies of the hearing bundles and the witness statements together with an electronic copy are lodged with the Tribunal no later than **7 days before the remedy hearing.** This will ensure that in the event the case is to be heard as a hybrid CVP hearing with one or both Non-Legal members working remotely, they can receive the papers in good time before the hearing takes place.

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Employment Judge Johnson

Date: 21 December 2020

Case Number: 2414528/2018 & others

Sent to the parties on:

4 January 2021

For the Tribunal Office

Claimant		**Respondent**
Mr J Parnell	**v**	Royal Mail Group

Appendix 1 (to judgment on liability)

List of Issues

Jurisdiction

1. Did the claimant present his claim within the 3-month time limit in accordance with section 123 Equality Act 2010?

2. Is it just and equitable to extend the time limit for presenting the claim?

3. If not, is the claimant able to rely upon a series of continuing acts and, if so, was the most recent act complained of presented in time?

Direct discrimination

4. Did the following acts occur:

   4.1 Antoinette Bailee neglecting the claimant whilst he was on sick leave (January 2017);

   4.2 Antoinette Bailee not holding a return-to-work meeting with the claimant (18 February 2017);

   4.3 Antoinette Bailee shouting “you’re getting conducted” across the office floor (4 of May 2017);

   4.4 Antoinette Bailee threatening the claimant with conduct proceedings in relation to 25 items of mail being returned the office (9 May 2017);

   4.5 Gaynor Nevins not upholding the claimant’s bullying and harassment complaint;

   4.6 Gaynor Nevins not following procedure, delaying the bullying and harassment complaint and not organising a well-being meeting (July 2017);

4.7 Gaynor Nevins not completing a full investigation into the bullying and harassment complaint and fabricating a conduct case against him (September 2017);

4.8 Gaynor Nevins recommending conduct action be taken against the claimant (September 2017);

4.9 Peter Byrne not contacting claimant for two weeks (October 2017);

4.10 Peter Byrne not considering a full investigation into the conduct case and changing his mind about recommending conduct action be taken against the claimant (October 2017);

4.11 Gaynor Nevins lying about resolving the matter informally (November 2017);

4.12 Antoinette Bailee not threatening Ryan with conduct (November 2017);

4.13 Peter Byrne not upholding the claimant's bullying and harassment appeal;

4.14 The claimant being charged with misconduct following the presentation of the bullying and harassment appeal;

4.15 Christopher Mellor not contacting the claimant for 34 days (March 2018);

4.16 Christopher Mellor stating that he would move the conduct case forward anyway if the claimant did not attend a meeting (March 2018);

4.17 Christopher Mellor prejudging the conduct case decision making a decision without sight of the claimant's amended meeting notes (April 2018);

4.18 The claimant being issued with a serious warning and a compulsory transfer;

4.19 Andy Cole refusing to deal with the claimant's 30 issues raised (June 2018);

4.20 Andy Cole not upholding the claimant's conduct appeal;

4.21 Stuart Daniels advising the claimant that he was unable to raise a further grievance relating to the same issues (July 2018);

4.22 Stuart Daniels not arranging a transfer to Oldham delivery office for the claimant (August 2018);

4.23 Peter Kelly considering the claimant's dismissal and saying "I don't think it would be a good idea a suicidal postman driving a 7.5 ton wagon" (October 2018);

4.24 Peter Kelly offering the claimant's transfer to Manchester North delivery office (November 2018);

4.25 Peter Kelly blocking the claimant referral to a wage for counselling (January 2019);

4.26 Peter Kelly delaying sending the message notes to the claimant even after he made him aware that it was causing him distress;

4.27 Peter Kelly threatening the claimant with dismissal;

4.28 Peter Kelly confirming that the claimant was not going to be dismissed, causing him unnecessary stress;

4.29 Peter Kelly failing to refer the claimant to OH;

4.30 The former delaying in sending the grievance notes to the claimant;

4.31 Timothy Bulmer failing to refer the claimant to OH after informing him during a meeting on 15 March 2019 that he would make such a referral;

4.32 Timothy Bulmer failing to respond to the claimant's questions regarding evidence divided in his grievance case and then delaying in sending copies of the evidence obtained;

4.33 Timothy Bulmer failing to mention the claimant request to remove the two-year serious warning from his record in his grievance decision outcome;

4.34 Peter Robinson delaying contacting the claimant in relation to a sickness absence in June 2019 failing to conduct well-being meetings with him once a month;

4.35 Peter Robinson delaying the claimant's OH report;

4.36 Timothy Bulmer failing to conduct fact-finding interviews as part of his grievance investigation;

4.37 A delay in processing the claimant's appeal against his grievance outcome (Mark Aston);

4.38 Paul Atherton inviting the claimant to attend a follow-up meeting before the grievance appeal meeting;

4.39 Paul Atherton sending a letter saying that there were enclosures but not including them;

4.40 Mark Aston saying that he could only investigate points raised in Timothy Bulmer's grievance outcome as part of the grievance appeal;

4.41 Darren Banks and Steve Selby ignoring the claimant's emails in August 2019; and,

4.42 Darren Banks sending the claimant a letter dated 19 September 2019 saying that all processes had been followed correctly.

5. If so, was this because of the claimant's disability?

Failure to make reasonable adjustments

6. Did the respondent apply the following provisions, criterion or practice ("PCP"):

6.1 assigning the claimant to different delivery duties on a day-to-day basis;

6.2 Peter Kelly being tasked with and conducting a series of formal meetings with the claimant during the course of sickness absence to review the future of his employment, outside of the respondent's standard procedures or capability or performance ("SOSR");

6.3 the respondent's practice of applying misconduct sanctions in circumstances where it determines that a grievance and/or bullying and harassment complaint had been raised in bad faith;

6.4 failing to adhere to the policy regarding the timing and frequency of well-being meetings;

6.5 assessment being conducted by managers rather than by OH;

6.6 failing to reopen the claimant's complaint after the conclusion of the grievance process;

6.7 maintaining the two-year serious warning without review;

6.8 using the "SOS are" process rather than managing the claimant's sickness absence; and,

6.9 continued failure to refer the claimant's case to OH for assessment.

7. If so, did the operation of the PCP the claimant at a substantial disadvantage in relation to persons who are not disabled?

   The claimant relies on the following examples of a substantial disadvantage:

   7.1 he was unable to manage his condition due to his delivery day being moved all the time;

   7.2 Refusing to refer him to OH;

   7.3 Not locating a suitable place of work for the claimant;

   7.4 Failing to create a plan for the claimant returned to work;

   7.5 Peter Kelly blocking the claimant's referral to OH;

   7.6 Peter Kelly delaying his decision on the claimant's dismissal;

   7.7 The pronounced impact that a misconduct sanction has on the claimant, due to his disability, giving rise to an inability to return to work with with the two-year sanction in place;

   7.8 Increasing the claimant's anxiety and depression; 7.9 Mark Aston refusing to refer him to OH on 23 April 2010;

   7.9 The claimant's disability item less resilient to the two-year serious warning, and caused him sick leave and put him at risk of dismissal; and,

   7.10 His continued sickness absence put him at risk of dismissal.

8. If so, did the respondent know or ought to have known that the claimant was put to such a disadvantage?

9. If so, did the respondent take such steps as were reasonable to alleviate that disadvantage?

   The claimant avers that the respondent should have:

   9.1 signed him his own delivery duty;

   9.2 allow the claimant to return to Manchester East delivery office for stability;

   9.3 Remove the two-year serious warning from his record;

   9.4 Allow the claimant to have a set working week (Monday to Friday);

9.5 A senior manager conduct a review of Gaynor Nevin's investigation;

9.6 Held well-being meetings with him every 28 days;

9.7 Conducted a stress risk assessment;

9.8 Referred him to OH;

9.9 reinvestigated is complaint of bullying and harassment against Antoinette Bailee from May 2017; and,

9.10 managed to sickness absence without using the "SOS" process.

Discrimination arising from disability

10. Did the respondent treat the claimant unfavourably because of something arising from the claimant's disability?

11. If so, what was the something arising from the claimant's disability?

The claimant relies on:

11.1 his stress related sickness absences.

12. What was the unfavourable treatment?

The claimant relies on the following examples of unfavourable treatment:

12.1 Antoinette Bailee neglecting the claimant whilst he was on sick leave (January 2017);

12.2 Antoinette Bailee not holding a return-to-work meeting with the claimant (18th of February 2017);

12.3 Antoinette Bailee threatening the claimant with conduct proceedings upon his return to work (9 May 2017);

12.4 Antoinette Bailee not organising a well-being meeting (July 2017);

12.5 Peter Byrne not contacting the claimant for two weeks (October 2017);

12.6 Peter Byrne failing to implement recommendations of mediation, the claimant being given his own duty and a referral to OH Assist;

12.7 Chris Mellor pressurising the claimant to attend a conduct meeting whilst off sick in January 2018;

12.8 Chris Mellor pressurising the claimant to attend conduct meetings whilst off sick in March 2018; and,

12.9 Peter Kelly threatening the claimant with dismissal whilst on sickness absence in November 2018. A7

13. If so, was the respondent's treatment of the claimant a proportionate means of achieving a legitimate aim?

14. If so, what is the legitimate aim?

15. What is the proportionate means of achieving that aim?

Harassment

16. The following acts occur:

16.1 Antoinette Bailee failing to set the claimant keep safe up properly in May 2015;

16.2 Antoinette Bailee making threats of conduct towards the claimant in May 2015;

16.3 Antoinette Bailee only giving the claimant Tuesday is his day off in November 2015;

16.4 Antoinette Bailee subject in the claimant to verbal abuse on 30 November 2015;

16.5 Antoinette Bailee "coaching" the claimant following a delivery mistake on 12th of September 2016;

16.6 Antoinette Bailee making the claimant's work on IPS sorting on 2 December 2016;

16.7 Antoinette Bailee saying she "can't stomach" the claimant on 29 April 2017;

16.8 Antoinette Bailee threatening the claimant with conduct on 16 May 2017;

16.9 Antoinette Bailee saying "John just pick the mail up and put it in the frame" on 17 May 2017;

16.10 Antoinette Bailee assigning the claimant to different duties on 22 May 2017;

16.11 Antoinette Bailee threatening the claimant with conduct and then not implementing it on 31 May 2017;

16.12 Gaynor Nevins knowing that the claimant will be issued with a two-year serious warning before the formal procedures had ended in September 2017;

16.13 Antoinette Bailee handing the claimant to conduct letter on 30 December 2017;

16.14 Christopher Mellor harassing the claimant to attend conduct meetings on 26 March 2018;

16.15 Peter Kelly saying “I don’t think it will be a good idea suicidal postman driving 7.5 ton wagon” (October 2018);

16.16 Peter Kelly asking the claimant to meeting on 1 April 2019, despite there being an outstanding grievance against him;

16.17 Peter Kelly accusing the claimant are refusing to attend meetings within;

16.18 Peter Kelly attempting to contact the claimant by telephone, despite there being an outstanding grievance against him;

16.19 Peter Kelly holding meetings of the claimant on 5/4/2018, 18/11/2018, 8/1/2019 and 20/2/2019;

16.20 Mark Aston saying that he could only investigate’s raised intimate the fullness grievance outcome as part of the grievance appeal

16.21 Peter Robinson failing to conduct well being meetings of the claimant once a month

16.22 Peter Robinson delaying the claimant report;

16.23 Stuart Buckley holding an SOS our meeting with the claimant in early 2019;

16.24 Paul Atherton inviting the claimant to a meeting by way of letter dated 17 June 2020

16.25 Darren Banks and Steve Selby ignoring the claimant’s emails in August 2019;

16.26 Timothy Paula delaying in dealing with the claimant’s grievance;

16.27 Peter Robinson delaying in dealing with the claimant sickness absence;

16.28 Darren Banks sending the claimant a letter dated 19 September 2019 single processes have been followed correctly; and,

16.29 Peter Robinson deliberately using the "SOS" process to manage the claimant, despite him asking for it to stop.

17. If so, what is conduct on wanted and did it have the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

18. If yes, what is conduct related to the claimant's disability?

Victimisation

19. Claimant's complaint against Antoinette Bailee in May 2017 constitute a protected act?

    The respondent does not accept that this amounted to a protected act.

20. If so, was the claimant subject to the following detriments as a result of a protected act:

    20.1 Failing to uphold that complaint;

    20.2 applying a two-year serious warning for raising a complaint in bad faith;

    20.3 Managing his sickness absence in a detrimental manner; and,

    20.4 Peter Robinson failing to manage the claimant sickness absence properly and "closing ranks" with the other managers.

21. Did the claimant's issuing of tribunal proceedings in July/August 2018 amount to a protected act?

    The respondent accepts that this amounted to a protected act.

22. If so, was the claimant subjected to the following detriments because he had done a protected act:

    22.1 not being invited to a well-being meeting for a period of 17 months;

    22.2 A delay in dealing with the claimant's grievance raised in January 2019;

    22.3 Peter Kelly asking to meet with the claimant on four occasions of and a 24-week period;

    22.4 Peter Kelly holding meetings of the claimant on 5/10/2018 18/11/2018, 8/1/2019 and 20/2/2019; and,

22.5 Stuart Buckley holding an SOS our meeting with the claimant in early 2020