EMPLOYMENT TRIBUNALS (SCOTLAND)

Cases nos 4123712/2018 and 4100596/2020

Held at Glasgow on 10, 11, 12, 13 and 16 March, 30 November and 1, 2, 3, 4, 7, 8, 9, 10, 11 and 23 December 2020 (P)

Employment Judge: W A Meiklejohn

Tribunal Members: Ms N Elliot
Mr A Grant

Miss Maureen Craig **Claimant**

Glasgow City Council **Respondent**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Employment Tribunal is that the claimant's claims of unlawful sex discrimination and victimisation do not succeed and are dismissed.

REASONS

1. These cases came before us for a final hearing on both liability and remedy. The claimant represented herself and Mr Miller appeared for the respondent.

2. Case no 4123712/2018 was originally listed for a ten day final hearing commencing on 9 March 2020, with that date being allocated as a reading day for the Tribunal. In the event, it was not possible for the Tribunal to convene on 9 March 2020 and accordingly the hearing started on 10 March 2020 with the first two hours being taken as reading time. We explain below why this hearing did not run its intended course.

3. Case no 4100596/2020 was combined with case no 4123712/2018 by my Order dated 6 October 2020 and these cases were listed for a ten day final hearing

commencing on 30 November 2020, with that date being allocated as a reading day for the Tribunal. This hearing was conducted in person with Mr Grant participating remotely by means of the Cloud Video Platform ("CVP"). Following written submissions, we convened for a final day on 23 December 2020 by means of CVP for closing statements and deliberation.

Nature of claims

4. In case no 4123712/2018 the claimant was pursuing claims of direct discrimination under section 13 of the Equality Act 2010 ("EqA") (the protected characteristic being sex) and victimisation under section 27 EqA. In case no 4100596/2020 the claimant was pursuing additional complaints of victimisation. These claims were resisted by the respondent.

Applicable statutory provisions

5. The relevant part of section 13 EqA (**direct discrimination**) provides as follows –

"*(1) A person (A) discriminates against another (B) if, because of a protected characteristic,*

A treats B less favourably than A treats or would treat others…."

6. The relevant parts of section 27 EqA (**victimisation**) provide as follows –

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

7. Section 136 EqA (burden of proof), so far as relevant, provides as follows –

"(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision….

(6) A reference to the court includes a reference to –

(a) an employment tribunal…."

Overriding objective

8. We reminded ourselves of the overriding objective in Rule 2 of the Tribunal Rules –

"*The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable –*

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising power given to it by, these Rules. The partiers and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

Procedural history

9. There had been three preliminary hearings before the substantive hearing in case no 4123712/2018 commenced on 10 March 2020. The first of these took place on 28 February 2019 (before Employment Judge Kemp). The only outcome of this was the adjournment of the hearing to a later date, agreed to be 9 May 2019.

10. The second preliminary hearing actually took place on 29 August 2019 (before Employment Judge Buzzard). The outcome of this was the fixing of a further preliminary hearing on 17 December 2019 to deal with (a) amendments to the claim and response and (b) time bar.

11. The third preliminary hearing took place on 17 December 2019 (before Employment Judge Whitcombe). The outcomes of this were (a) amendment of the claim and response, allowed by mutual consent, (b) refusal of an application made orally by the claimant to amend her claim further, (c) various case management orders and (d) the fixing of the final hearing dates referred to in paragraph 2 above. Although not expressly mentioned, we understood that the issue of time bar was left for determination at the final hearing.

12. Subsequent to the third preliminary hearing, the claimant submitted an application in writing to amend her claim. This application was refused by Employment Judge Whitcombe.

13. At the start of the evidence of Mr K Prentice it became apparent that there was an issue of alleged witness intimidation. Mr Miller indicated that he would need to seek instructions on this before cross-examining Mr Prentice about this allegation and would wish to call an additional witness. It was agreed that Mr Prentice would be recalled for cross-examination on this issue.

14. On 16 March 2020, Mr Grant was indisposed, having developed Covid like symptoms and having been advised to self-isolate. Mr Miller suggested that the case might proceed with the remaining members of the Tribunal but the claimant objected and so the hearing did not continue as originally scheduled. The Covid-19 pandemic then resulted in the suspension of face-to-face hearings.

15. In the meantime, the claimant had presented her claim in case no 4100596/2020 in which she brought two further complaints of victimisation. As mentioned above this was combined with case no 4123712/2020 following a preliminary hearing on 5 October 2020. The combined cases were then listed for a final hearing.

16. In the course of the final hearing it was agreed that the parties would provide the Tribunal with written submissions by 18 December 2020 and that there would be a further day of hearing conducted remotely by CVP on 23 December 2020 to allow (a) the parties to respond to each other's written submissions and make closing statements if they wished to do so, and (b) the Tribunal time for deliberation.

List of issues

17. One of the case management orders made following the preliminary hearing on 17 December 2019 was that the parties should co-operate to agree a list of issues. As a result, we had an agreed list of issues. This was amended on the first day of the final hearing as detailed below. It was further amended in the course of the continued hearing to reflect the complaints brought by the claimant in case no 4100596/2020. Following those amendments, the list of issues was as follows –

    1.1 Was the claimant treated less favourably than her colleagues, John Beaton and Kenneth Prentice, were or would have been when asked to visit the property in Bearsden Road, Glasgow on 10 October 2017?

    1.2 If so, was the claimant's sex the reason or part of the reason for that treatment?

2 *Did the claimant do a protected act/s prior to raising these Employment Tribunal proceedings and, if so, what and when?*

3 *Was the claimant given an "additional workload" in October 2017 and, if so, did that amount to a detriment?*

4 *Did Stephen Sawers fail properly to investigate the claimant's complaint and/or did he unreasonably decide to reject it, and if so did that amount to a detriment?*

5 *Did the respondent knowingly permit James Prescott to remain the claimant's leave approver between May and December 2018 and, if so, did that amount to a detriment?*

6 *Did the respondent knowingly permit James Prescott to act as the claimant's team leader on 20 December 2018* [we think this should read 24 December 2018] *and, if so, did that amount to a detriment?*

7 *Did James Prescott confront the claimant on the stairwell on 10 January 2019 and, if so, did that amount to a detriment?*

8 *Did the relocation of the claimant's geographical area amount to a detriment?*

9 *Did the referral of the claimant to Occupational Health on 19 March 2019 amount to a detriment?*

10 *Did Adam Clarke fail properly to investigate the claimant's allegation against Mr Prescott in relation to the incident on 10 January 2019 and/or did he unreasonably decide to reject it, and if so did that amount to a detriment?*

11 *Did the respondent subject the claimant to all or any of the following detriments because she did a protected act?*

11.1 *In paragraph 2 above, the commencement and pursuit of disciplinary action against her in October 2017.*

11.2 The rejection of her application for the post of Environmental Health Officer.

11.3 The circumstances described in paragraph 3 above (if they are deemed to amount to a detriment).

11.4 The circumstances described in paragraph 4 above (if they are deemed to amount to a detriment).

11.5 The circumstances described in paragraph 5 above (if they are deemed to amount to a detriment).

11.6 The circumstances described in paragraph 6 above (if they are deemed to amount to a detriment).

11.7 The circumstances described in paragraph 7 above (if they are deemed to amount to a detriment).

11.8 The circumstances described in paragraph 8 above (if they are deemed to amount to a detriment).

11.9 The circumstances described in paragraph 9 above (if they are deemed to amount to a detriment).

11.10 The circumstances described in paragraph 10 above (if they are deemed to amount to a detriment).

12 Was the omission to inform the claimant of the change in office location a deliberate omission by James Crawshaw because the claimant had done a protected act?

13.1 Did George Gillespie and Annemarie O'Donnell insist that James Crawshaw was a suitable person to conduct the claimant's absence management meetings?

13.2 If so, did they so insist because the claimant had done a protected act?

18. While not initially mentioned in the agreed list of issues (although added later), we understood, as mentioned in paragraph 11 above, that there was also an

issue of time bar. This was articulated in paragraph 46 of the respondent's amended response in these terms –

"*The ET1 was lodged with the Employment Tribunal on 18 December 2018. Paragraphs 2 to 8 and paragraph 20, 22 and 23 of the amended ET1 relate to matters occurring between 19 October and 14 December 2017. It is the respondent's position that the claimant's submissions regarding those matters are time barred and the tribunal therefore does not have jurisdiction to consider those parts of the claim."*

Preliminary matters

19. On 27 February 2020 the claimant submitted an application to amend paragraph 20 of her ET1 statement of claim by introducing Mr Beaton and Mr Prentice as her comparators for the purpose of her direct discrimination claim, in place of Mr T Banks. On 2 March 2020 the respondent objected to this. The matter was considered by Employment Judge Whitcombe who decided that it should be left for us to determine at the start of the final hearing.

20. At the start of the final hearing the claimant sought to amend further by adding an additional instance of alleged victimisation being the conduct and outcome of the investigation by Mr A Clarke relating to item 7 in the list of issues – the "*stairwell incident".* Mr Miller objected, arguing that while his report was in the joint bundle, Mr Clarke's conduct was not itself an act of victimisation.

21. We heard submissions from the claimant and Mr Miller on the claimant's applications to amend. The claimant argued that the respondent was not prejudiced as they had seen the witness statements of Mr Beaton and Mr Prentice, whereas her application for a witness order for Mr Banks had been refused.

22. Mr Miller explained that at the time he objected on 2 March 2020 there had been some uncertainty about Mr Prescott's attendance as a witness. However, Mr Prescott was now co-operating and Mr Miller sought permission to lodge his witness statement late (a reference to Employment Judge Whitcombe's case management order for simultaneous exchange of witness statements by no later than 24 February 2020). Mr Miller said that he would not object to the

amendment to change comparators provided this related only to the "*stated visits",* ie those disclosed in Mr Prescott's diary and/or referenced in the witness statements of Mr Beaton and Mr Prentice. Mr Miller indicated that he would ascertain Mr Clarke's availability to attend as an additional witness for the respondent.

23. On the basis of these submissions we agreed the substitution of Mr Beaton and Mr Prentice for Mr Banks as the claimant's comparators (for the purpose of her section 13 claim) and the addition of the conduct and outcome of Mr Clarke's investigation of the stairwell incident as a further allegation of victimisation (for the purpose of her section 27 claim). We also agreed to allow Mr Prescott's and Mr Clarke's witness statements to be lodged.

24. It is convenient to note here that in the course of cross-examination on the second day of the hearing, the claimant accepted that Mr Clarke had not known about her allegation of sex discrimination and that accordingly the conduct of his investigation into the claimant's allegation against Mr Prescott in relation to the stairwell incident and the outcome of that investigation could not be a detriment for the purpose of section 27 EqA. The claimant withdrew this aspect of her claim and therefore issues 10 and 11.10 (as detailed in paragraph 17 above) no longer required to be determined by us.

25. It is also convenient to deal here with a matter relating to Mr Prescott's witness statement. This was lodged on 12 March 2020, at the start of the third day of the hearing. At that time and subsequently, the claimant complained that it was unfair to her that this witness statement had been prepared after some of the evidence had been heard. Mr Miller disputed that there was any prejudice to the claimant.

26. We agreed with Mr Miller. We had already indicated at the start of the hearing when explaining how this would be conducted that witnesses could be asked questions supplementary to their witness statements. When Mr Prescott came to give his evidence, it would accordingly be open to Mr Miller to ask Mr Prescott supplementary questions. To the extent that Mr Prescott's witness statement might reflect matters covered by the evidence given before that statement was prepared it would (a) be providing evidence which Mr Miller would otherwise

have sought to elicit by supplementary questions and (b) give the claimant advance notice of such evidence. There was no prejudice to the claimant.

Evidence

27. For the claimant we heard evidence form –

- The claimant herself
- Mr Prentice, Technical Officer
- Mrs M Arnott, Technical Officer
- Mr J Beaton, Technical Officer
- Mrs G Ham, Strategic Human Resources Manager

28. For the respondent we heard evidence from –

- Mrs L Laurie, Assistant Manager, Neighbourhoods and Sustainability
- Mr Prescott, Team Leader
- Mr W Hamilton, Group Manager
- Ms D Hamilton, City Centre Manager
- Mr A Waddell, Director of Operations (formerly Head of Infrastructure and Environment)
- Ms J Dyer, Assistant Manager
- Mr S Sawers, Head of Finance and Employee Services
- Ms K Broadley, Assistant HR Manager
- Mr J Crawshaw, Assistant Manager
- Miss L McCoull, Team Leader
- Dr K Meechan, Head of Information and Data Protection Officer
- Ms M Walsh, Assistant HR Manager

- Mr A Ralston, HR Advisor

29. We had a joint bundle of documents extending to 881 pages. This was supplemented at the start of the continued hearing by an additional bundle initially extending to 52 pages and subsequently expanded to 60 pages. We refer to the documents by page number (using the suffix "A" in respect of documents in the additional bundle).

Findings in fact

30. The claimant is employed by the respondent as a Technical Officer ("TO") in the Public Health section of the department which used to be known as the Land and Environmental Services ("LES") and is now called Neighbourhoods and Sustainability. Her employment in that role commenced on 22 December 1997. She had previously worked between 1985 and 1995 as an Environmental Health Officer in New Zealand.

31. The respondent is the local authority for the city of Glasgow. It is responsible for the delivery of a range of services including those relating to environmental health. Environmental health encompasses food safety, health and safety and public health. The respondent's statutory responsibilities for public health include the enforcement of provisions such as section 79 of the Environmental Protection Act 1990 (statutory nuisances and inspections therefor). The respondent is also the enforcing authority under the City of Glasgow District Council Order Confirmation Act 1988 which gives the "*proper officer of the Council"* the right to seek access to any property which the officer has reason to believe is "*in a filthy or verminous condition"*. Such a property is referred to as a "*dirty house".*

Public Health reorganisation July 2017

32. With effect from 10 July 2017 the respondent's public health section was reorganised into two units – the Public Health team ("PHT") and the Environmental Improvement team ("EIT"). These units reported to Mr Hamilton as group manager. The assistant managers were Mrs Laurie (then Ms Gray but we will refer to her throughout as Mrs Laurie) for PHT and Mr J Crawshaw for EIT. The PHT was divided into two teams – north and south. Mr Prescott was

team leader of the north team. This team comprised Mr P Lavelle, environmental health officer, and seven TOs including the claimant, Mr Prentice, Mr Beaton and Mr Banks.

33. Shortly before this reorganisation took effect Mrs Laurie met with the PHT team and staff were told which electoral wards they would be allocated. The claimant was allocated wards 12, 13 and 14. Mrs Laurie told the staff that the ward allocations would be reviewed after three months with a view to ensuring an even distribution of work.

Uniform system

34. Mr Prescott had been the claimant's team leader since around 2009. Apart from (a) an incident in December 2015 and (b) a sense of injustice about the reallocation of ward 23 (described below) they had a normal working relationship until October 2017. As the claimant put it, "*things were fine*". The incident in December 2015 arose when the claimant took exception to Mr Prescott having raised with her an issue involving a plumbing contractor at the end of her performance review meeting a few days earlier. They exchanged emails about this on 2-3 December 2015 (470-471). We regarded this as a fairly trivial matter in itself. However, in terms of the claimant over-reacting (as it seemed to us that, from the terms of her emails to Mr Prescott at the time, she had done) it did foreshadow what was to occur in October 2017 and thereafter.

35. When service requests were received by the PHT they were logged on a computer system known as Uniform. The details of how the request was actioned would also be recorded in Uniform. The allocation of the service request to a particular TO was the responsibility of the team leader. Accordingly, in October 2017, it was for Mr Prescott to allocate work to the claimant and the other TOs in his team.

36. It would be normal for a service request to be allocated to the TO within whose ward the address of the service request was located. However, this was not automatic and could be varied by the team leader, for example if a TO was on leave or off sick. Mr Prescott as team leader could, if he chose to do so, direct what action he wanted the TO to take regarding a service request.

Reallocation of ward 23

37. At the time of the reorganisation which took effect in July 2017, ward 23 was allocated to Mr Banks. Mr Banks also covered ward 11 which Mr Prescott described as "*the busiest ward".* Mr Banks told Mr Prescott that he was struggling with his workload and Mr Prescott decided to reallocate ward 23 temporarily to the claimant and Mr Prentice (subdivided between them by reference to Great Western Road). Mr Prescott spoke to the claimant and Mr Prentice about this and *"both said they had capacity".* However, Mr Prentice subsequently complained to Mrs Laurie about Mr Prescott's reallocation of ward 23.

38. The evidence did not establish precisely when the reallocation of ward 23 occurred but it was no later than 3 October 2017. This was confirmed by extracts from Uniform (677-679) showing service requests within ward 23 allocated to the claimant, the earliest of which was dated 3 October 2017 (677).

39. Mr Prescott explained that the temporary reallocation of Ward 23 to the claimant and Mr Prentice subsequently became permanent. This was because one of Mr Prescott's team (Mr Beaton) was moved to Mr Innes' team. Mr Beaton's three wards were reallocated – two going to Mr Banks who by then was *"getting under control"* and one to Mr S Walker.

Bearsden Road

40. This was a tenement property which was well known within the PHT because there had been a history of complaints by a particular complainer about the occupier of the flat above. It was known that there was hostility between the parties. The complainer had been dissatisfied with the PHT response to the previous complaints. Police Scotland, the Information Commissioner for Scotland and the Local Government Ombudsman had been involved, and also the respondent's litigation department. There were ongoing criminal proceedings of which Mr Prescott was aware. The property was located in ward 14 (allocated to the claimant since 10 July 2017).

41. The complainer submitted a further complaint on 8 October 2017. The complaint details worksheet (85) was partially redacted but disclosed a

summary of the complaint – "*complaint of rubbish piled in the flat"*. This was a dirty house complaint. According to Mr Prescott, whose evidence we accepted on this point, this was the first dirty house complaint in respect of the property. Previous complaints had been about water ingress.

Discussion at desk pod

42. In October 2017 the PHT was based at Exchange House, 231 George Street, Glasgow. The staff used a flexible group of desks or "*desk pod".* On 9 October 2017 Mr Prescott approached the desk pod while the claimant, Mr Prentice, Mr Banks and Ms L Staunton were seated there. Mr Prescott said to Ms Staunton "*You will never believe what came in today".* This was a reference to the Bearsden Road complaint, and we were satisfied that it would have been understood as such by those present. Ms Staunton had dealt previously with issues at this property.

43. According to the claimant, she said to Mr Prescott "*You will need to accompany me to visit"* and Mr Prescott replied "*No".* According to Mr Prentice, the claimant said, "*Jim you will need to come with me to this one".* Mr Prentice also stated that Mr Prescott had replied "*No".* Mr Prescott's evidence was that the claimant had not asked him to attend the property with her. His position was that the complaint had not been allocated to the claimant at this point and that the claimant "*definitely didn't speak to me about it until it had been allocated to her".*

44. We had some difficulty with this conflict of evidence. On the one hand the versions given by the claimant and Mr Prentice were consistent with each other. The claimant knew from the address that the property was in a ward which was allocated to her and, even if the complaint had not been formally allocated by Mr Prescott at the time of the conversation, she would have expected it to come to her.

45. On the other hand, when the claimant and Mr Prescott spoke about the complaint the following day and exchanged emails (83-84), the claimant's objection was not that she was being asked to attend the property alone but that she as "*a junior member of staff*" was being "*asked to investigate this new complaint".* We came to the view that the claimant had said something about

wanting Mr Prescott to accompany her but we did not believe that Mr Prescott had refused to do so. This was because, when discussion between the claimant and Mr Prescott about how the matter should be handled took place the following day (as narrated below), the claimant's initial position was that the job should not be allocated to her as a junior member of staff, and not that she should not be asked to attend alone or that Mr Prescott should accompany her.

Events of 10 October 2017

46. On 10 October 2017 Mr Prescott allocated the Bearsden Road complaint to the claimant. According to Mr Prescott's evidence, which we accepted, the claimant came to speak to him about this. He described their conversation in these terms –

"*….after I had allocated the job to Maureen, she came to speak to me and verbally refused to attend the property. I offered a compromise whereby I would deal with the response to the complainant. At that time I was covering for the 2 other members of staff who were on annual leave. I told Maureen I couldn't physically get out to the property due to the volume of work I had at the time. As a compromise I asked her to go and do an initial visit, looking at the close and then to come back and let me know what, if anything, she had found and then I would speak to the complainant."*

47. Mr Prescott then sent the claimant an email (84-85) saying "*If you could go out and have a sniff at the first floor landing I shall respond to complainant".* The claimant replied by email (84) in these terms –

"*Given the unprecedented history with this complaint, level of escalation, and existing management involvement, I don't consider it appropriate that a junior member of staff is being asked to investigate this new complaint."*

48. Mr Prescott replied to the claimant on 10 October 2017 as follows –

"I am sorry but I disagree.

All I am asking you to do is visit the close and ascertain if there is a smell on the first floor landing indicating a dirty house. I am not asking you to enter any flat or engage with the complainant. I can confirm that Lynn is the officer who has always visited this property and I have not been required to visit in the past.

Please confirm that you shall visit as requested."

Claimant goes to Mrs Laurie

49. On 11 October 2017 the claimant sent an email to Mrs Laurie (96) to advise Mrs Laurie of her concerns. We considered that it was significant to record the terms in which those concerns were expressed at the time and so we set out the terms of the claimant's email to Mrs Laurie in full –

"*Jim Prescott has asked me to attend to a complaint as per the email below. I am raising this issue with yourself as I advised Jim that I did not think that it was appropriate that yet another Officer has been asked to be involved given the unprecedented history with this complainer in regard to the level of previous escalation.*

I understand that the Chief Executive Office, Information Commissioner (twice), Procurator Fiscal and Management within LES have been involved. A civil case has also been pursued by the complainer.

Therefore, I do not think it is fair for an Officer at my level to be involved given the persistence and previous history to this complaint. I consider this to be an issue for senior management to become involved in, since the complainer will inevitably continue to escalate this further up the chain of command as per previous dealings.

Furthermore I do not think the suggested investigation of this new complaint via "sniffing outside the door of the alleged property to determine if property is a dirty house" will suffice for this complaint. Once again I would reiterate that given the history of this address and contact from the complainer, I consider that any dealings should be at a higher level than myself."

50. Mrs Laurie spoke to Mr Prescott who confirmed that his instruction to the claimant was to go the property address and "*check on the close to see if there*

was any significant smell as that may have been an indication of a dirty house". Mrs Laurie understood that Mr Prescott was asking the claimant to carry out a *"fact finding exercise which would be well within the scope of her role".* During their conversation, Mr Prescott asked Mrs Laurie if she thought he was being unreasonable and, if Mrs Laurie thought so, he offered to apologise to the claimant. Mrs Laurie said that she did not think Mr Prescott was being unreasonable. Having spoken to Mr Prescott, Mrs Laurie arranged to speak to the claimant.

51. The claimant and Mrs Laurie provided evidence about their conversation (or conversations – there may well have been two) on 12 October 2017. The claimant's version was as follows-

"*I expressed my concerns in regard to the controversial nature of the complainer and what I considered a reasonable expectation of a senior member of staff to be involved to assist. Linda Laurie disagreed and suggested that another colleague of the same grade could attend. I questioned why not James Prescott since he was my team leader and he had been involved extensively with this property for a considerable period of time. Linda Laurie insisted that another colleague would suffice and her email after this meeting confirmed this. It was not for me as the junior officer to direct another colleague to attend with me, especially given the controversial nature of the complaint and at no time during this meeting did I state that I would not attend the complaint. The clear disagreement was who was to attend with me. There were two discussions with Linda Laurie this day. I went to great lengths to explain my reasoning for why I should be supported by a senior officer. I explained that in my opinion the complaint should be investigated thoroughly and the only way to determine if the alleged house was a dirty house in terms of the appropriate legislation was to gain access….My disagreement with Linda Laurie was twofold – I was putting forward my argument for how the complaint should be dealt with and reasons why and also my request to be supported by a senior officer and the reasons why."*

52. Mrs Laurie's version was as follows –

"*We had a general discussion about what Jim had asked her to do and she highlighted that she did not think that it was an appropriate way to carry out an investigation, particularly given the history at the property. Having spoken to Jim, I was aware that he was going to be dealing with the matter and that he just wanted to be appraised of what the close was like at the time. At that meeting, Maureen made it very clear to me that she thought she was a junior member of staff and that she should not be expected to attend the property in question. She also talked about how this complaint had escalated to the Ombudsman in the past and she thought she was going to get embroiled in a situation that would not reflect well on her. I explained to Maureen that she was just being asked to go and see if there was a smell or not in the close, nothing more. I told Maureen that, if she felt that her integrity may be called in to question, she could have a colleague accompany her as a corroborative witness. That would be normal practice in a situation where an officer did not want to attend a location on their own if they had concerns about the location or persons involved. Staff within Public Health are well aware that, where they feel it is appropriate to have a colleague with them, they can make those arrangements and then they would speak to their Team Leaders to let them know that 2 officers were going to attend a particular job. Maureen took that as me saying that I was happy to send 2 junior members of staff. At the meeting Maureen asked why Jim couldn't carry out the visit himself."*

53. It was apparent from this evidence that the claimant disagreed with the instruction given to her by Mr Prescott because she did not consider it was the right way to deal with a dirty house complaint. Where the claimant's and Mrs Laurie's accounts diverged was in relation to whether the claimant had said that she should be accompanied (that was what we understood her to mean by "*supported")* by a senior officer or whether the claimant had said that the complaint should be handled by a senior officer (ie Mr Prescott) rather than a junior officer such as herself.

54. We noted the terms in which Mrs Laurie had emailed the claimant on 13 October 2017 (94-95). The relevant paragraphs were in these terms –

"*Given your concerns that it wasn't the correct way to investigate the matter, I discussed with you that it was to get a up to date impression of the address/landing area and that this was not the investigation as such. I noted your concerns and suggested that this was perhaps one of those occasions when it would be appropriate to team up with one of your colleagues as a corroborative witness to go* [to] *the close and gather the requested information. We also discussed that joint visits were something that officers would usually arrange with each other as and when they felt necessary.*

Having discussed your concerns and taken account of the information gathering instruction, I do not feel that it was an unreasonable instruction and advised you of this during our meeting.

As previously indicated, I am happy for you to attend with another officer for corroborative purposes.

Can you please arrange to carry out the instruction to obtain the requested information and confirm that you are able to do so by end of business on Tuesday to allow Jim to provide a response?"

55. We noted from the correspondence up to this point that the claimant had in her emails made no reference to Mr Prescott attending the Bearsden Road property with her. Her complaint was that it was she as a junior officer who was being asked to investigate the complaint. Mr Prescott told the claimant that this was not what she was being asked to do. The claimant then escalated the matter to Mrs Laurie and, once again, her complaint was that it was an issue for senior management. Mrs Laurie asked the claimant to carry out the instruction and indicated she was happy for the claimant to do so with another officer. That was where matters stood as at 13 October 2017.

56. On Tuesday 17 October 2017 (being Mrs Laurie's deadline for visiting the property) the claimant responded to Mrs Laurie's email of 13 October 2017. In her email response (93) the claimant said –

"*Management are trying to trivialise this complaint.*

Management are not willing to take an active role from the outset and Jim Prescott is avoiding visiting the property at all costs. He does not however have the same reluctance with attending joint visits to investigate routine public health inspections with other Officers, or indeed joint visits with Team Leaders for equally routine inspections. Yet this complaint, known to be controversial, is passed to a junior member of staff and you are now suggesting that a further additional junior member of staff attends, which confirms to me that Management are well aware of the controversy with this complaint and are doing everything to distance themselves from the front line.

Not only do I consider it unreasonable that as a junior member of staff, I am being asked to become embroiled in an existing controversial complaint, I am uncomfortable that I am being asked to visit in any capacity, unsupported without a Senior Officer given the history of this complaint.

For this reason it is my intention to escalate this further within Senior Management as is my prerogative, and if necessary to the Director."

57. We considered that this was a change in the claimant's position from 13 October 2017. She had not previously asserted that Mr Prescott was avoiding visiting the Bearsden Road property. She had not previously referred to Mr Prescott's attendance at joint visits with other officers. We noted that she did not at this point link such visits with the sex of the officer who was accompanied by Mr Prescott on such joint visits.

Mr Hamilton becomes involved

58. There was an exchange of brief emails between Mrs Laurie and the claimant on 18 October 2018 (92). The claimant's email to Mrs Laurie stated "*I am not sure what else can be said after our discussion and I understood all avenues had been exhausted at your level".* Mrs Laurie then spoke to Mr Prescott and confirmed to him that he should carry out the visit to the Bearsden Road property.

59. There was a further meeting between Mrs Laurie and the claimant during the afternoon of 18 October 2018 at which Mrs Laurie advised the claimant of the possibility of disciplinary action.

60. The claimant sent an email to Mr Hamilton later on 18 October 2017 (127) forwarding the earlier exchange of emails between herself and Mrs Laurie. She stated, "*I would now like to escalate this matter to you as the next level of Management".* The forwarded emails contained no reference to alleged sex discrimination nor to bullying and harassment.

61. In the meantime, Mrs Laurie had spoken to Mr Hamilton about the position. She forwarded to him the emails between Mr Prescott and the claimant and between herself and the claimant (127-132) being the same emails as the claimant had sent to Mr Hamilton. Mr Hamilton formed the view that there had been a failure by the claimant to follow a reasonable request. He decided to invoke the respondent's disciplinary policy and arranged for an investigation to be carried out.

Mr Prescott visits Bearsden Road

62. When the claimant did not visit Bearsden Road despite Mrs Laurie's instruction to do so, Mr Prescott visited the property himself. He did so on the morning of 19 October 2017, on his way to work. He concluded that there were no grounds to proceed with the complaint.

63. When Mr Prescott arrived at the office on 19 October 2017 he received an email from the Claimant (88) –

"*I can visit this complaint at any time after 11am. Can you confirm if you are able to attend today to assist and provide support with the investigation of this complaint."*

64. Mr Prescott replied (88) –

"*I am not in a position to attend with you today.*

This one could not wait any longer and I have already attended."

65. Mr Prescott's reference to *"could not wait any longer"* reflected the service level requirement that the complaint should have been actioned within two days of receipt.

Mr Prescott makes other visits with technical officers

66. On the same morning (19 October 2017) Mr Prescott received an email from Mr Prentice asking him to attend a dirty house complaint with Mr Prentice. Mr Prescott regarded this as unusual because Mr Prentice had not asked him to do this before. Joint visits were necessary in certain circumstances, eg where there was an issue about obtaining or executing a warrant. However, solo visits were the norm.

67. Mr Prescott was not keen to accompany Mr Prentice due to pressure of his own work and asked if someone else could attend. Mr Prentice indicated not. He told Mr Prescott that he could not reschedule the visit and that he needed a witness as a warrant might be required. Mr Prescott did accompany Mr Prentice on this visit. It was a dirty house and Mr Prescott's evidence was that Mr Prentice had needed a witness with him on that visit. The visit was noted in Mr Prescott's diary (117).

68. Also in Mr Prescott's diary was a visit he made with Mr Beaton to an address in Lenzie Way on 12 September 2017 (115). Mr Prescott described this as a *"very complicated complaint"* relating to a property which Mr Beaton had visited several times before this date in relation to water penetration. Mr Prescott said that the complainant was "*getting shirty"* with Mr Beaton and that Mr Beaton *"didn't know where to turn".* Mr Prescott said that on a scale of 1-5 a water penetration complaint would generally be a 5 whereas the task he asked of the claimant at Bearsden Road would have been a 1.

69. Mr Prescott said that Ms Staunton had previously been accompanied to the property at Bearsden Road by a fellow officer when she thought a warrant might be required, or to enforce a warrant. Mr Prescott had never accompanied Ms Staunton to the Bearsden Road property but he had accompanied her to other jobs.

70. Mr Prescott accompanied Mr Prentice on another property visit on 3 November 2017. This was "*an alleged nuisance regarding commercial cooking odours pervading a domestic dwelling".* This was in the part of ward 23 allocated to Mr Prentice a few weeks earlier. Mr Prentice described this as a *"historic well-*

known controversial complaint" where the complainant had made representations to the Scottish Information Commissioner and the Local Government Ombudsman in relation to the respondent's Development and Regeneration Services. Mr Prescott and Mr Prentice also carried out a joint property visit on 6 November 2017 but this was different in the sense that Mr Prescott took the lead and Mr Prentice attended as a witness.

71. We found that there were significant differences between the circumstances in which Mr Prescott accompanied Mr Beaton and Mr Prentice, as described above, and the circumstances of the visit to Bearsden Road which Mr Prescott asked the claimant to undertake. In the cases of the visits with Mr Beaton on 12 September 2017 and with Mr Prentice on 3 November 2017 the nature of the visits merited Mr Prescott's attendance. In the case of the visit with Mr Prentice on 19 October 2017, the attendance of a second officer was merited but not necessarily Mr Prescott. Mr Prescott attended because Mr Prentice told him no-one else was available.

72. In contrast, while the Bearsden Road property was also well-known as the subject of historic and controversial complaints and complaints to Police Scotland, the Scottish Information Commissioner and the Local Government Ombudsman, we accepted Mr Prescott's evidence that (a) this had been the first dirty house complaint about the property, (b) from the time of his discussion with the claimant on 10 October 2017 he had intended to deal with the complainant himself and (c) he had told the claimant to visit the property to ascertain if there were any grounds which would merit an investigation. This would not involve meeting the complainant (as was the case with the 12 September 2017 visit with Mr Beaton) nor entering the property (as was the case with the two visits with Mr Prentice).

Disciplinary investigation

73. As Mr Hamilton would be the disciplinary officer and Mrs Laurie had instigated the matter, Mr Hamilton decided that one of the other assistant managers (Mr Crawshaw and Ms Dyer) should carry out the investigation. He chose Ms Dyer who was Assistant Manager, Business Regulation, another part of LES.

74. Ms Dyer was aware that the documentation which underpinned her investigation was the respondent's Discipline and Appeals Procedure (383-394) and Conditions of Service – Discipline and Appeals Procedure (369-382). She decided that, before speaking to the claimant, she would conduct interviews with Mr Prescott and Mrs Laurie. She met with Mr Prescott on 1 November 2017 and with Mrs Laurie on 2 November 2017. The notes of these meetings (89-90 and 101-102 respectively) formed part of her subsequent report.

75. In the note of her meeting with Mr Prescott, Ms Dyer recorded his recollection of his instruction to the claimant to visit the Bearsden Road property in these terms –

"*Because of the history I decided it would be better to gather as much information as possible and find out if complaint had any merit prior to speaking to the complainer about this. I spoke to Maureen on 9 October to explain this and asked her to visit to check if any evidence of a dirty house. Asked her to visit the 1st floor landing and check for any bags of rubbish, flies or smells and not to speak to complainant. Complainant is an absentee landlord and I meant that she would not encounter him on site and did not need to call him. I also advised not to try to get in to 1st floor flat. She said that intelligence gathering was not the way to investigate this and the complainer could question her professional competence. I told her she could take a colleague with her as a witness. I explained that once she had visited to check for evidence and reported back we would agree strategy and I would speak to the complainer."*

We believed that Mr Prescott's reference to *"9 October"* was simply a mistake on his part and that he meant to say 10 October because his conversation with the claimant about visiting to check for evidence of a dirty house took place on that date.

76. The note of Ms Dyer's meeting with Mrs Laurie was broadly consistent with Mrs Laurie's version of events as set out in paragraph 52 above.

77. In conducting these interviews Ms Dyer did not follow some aspects of the respondent's guidance for investigating officers. She did not have a notetaker present. We had no evidence to confirm whether she had advised Mr Prescott

and Mrs Laurie of their right to representation nor whether she had sent them letters in advance of the interviews to advise them of their role (in the investigation) and to confirm the date, time and location of the interviews.

78. Following her meetings with Mr Prescott and Mrs Laurie, Ms Dyer asked them to forward to her the emails to which they had referred during their interviews, and they did so. Ms Dyer reviewed these before meeting with the claimant.

79. On 2 November 2017 Ms Dyer wrote to the claimant (585) requiring her to attend an investigatory interview on 7 November 2017. This letter stated that the reason for the interview was –

"*….to investigate the allegation that you refused to carry out a reasonable instruction when you were asked to visit….Bearsden Road following receipt of a service request."*

80. The claimant was advised of her right to be accompanied.

81. Ms Dyer duly met with the claimant on 7 November 2017. The claimant was accompanied by Mr Prentice. Again there was no notetaker present. Ms Dyer described this meeting as "*fraught".* The claimant described Ms Dyer as "*hostile".* According to the claimant, Ms Dyer was reluctant to tell Mr Prentice what the allegations were and who had made them. According to Ms Dyer, she disclosed who had made statements. We were satisfied that the claimant knew that she was being interviewed because she had not attended at Bearsden Road when asked to do so.

82. The claimant gave Ms Dyer her version of events including her various conversations and emails with Mr Prescott and Mrs Laurie. The claimant maintained that she had not refused to visit the Bearsden Road property. She acknowledged the instruction Mr Prescott had given her but stated that "*I asked for assistance and wasn't given it".*

83. Ms Dyer asked the claimant if it was correct that grade 6s (a reference to the grade of a TO) visited dirty houses. The claimant was recorded in the interview note (at 104) as replying –

"*Yes, however Jim Prescott attends with other officers. He refused to attend with me, but attends with others. I am beginning to think the Jim Prescott has issues with women. I rarely ask Team Leaders to assist but where it is a known controversial complaint I expect assistance."*

84. This was the only reference in the note to the claimant allegedly being treated less favourably by Mr Prescott because of her sex. In her evidence the claimant said that Ms Dyer had *"listened to both Kenneth Prentice and I provide examples of alleged discrimination, bullying and harassment yet these key facts were ignored".* In his evidence Mr Prentice said that the claimant and he had intimated –

"*a. It was our opinion the interview and investigation was nothing other than an attempt by management to bully and harass.*

b. Raised issues of discrimination by James Prescott as he freely accompanied male colleagues when requested.

c. Refuted allegations of refusing a reasonable instruction.

d. Advised EHO's/Team Leaders do accompany TO on dirty house complaints and provided examples.

e. No response was received or witnesses interviewed in relation to Maureen Craig's allegations previously lodged in writing with William Hamilton on 18th October 2017."

85. We understood this last point to be a reference to the claimant's email to Mr Hamilton of 18 October 2017 (see paragraph 60 above). That email did not contain any allegations.

86. We noted that paragraph 42 of the claimant's witness statement contained language which was strikingly similar to that used by Mr Prentice, as quoted above. Mr Prentice's evidence under cross-examination was "*I typed up my own witness statement".* While we found no reason to doubt that, the extent to which the language used by the claimant and Mr Prentice was identical suggested a degree of collaboration between them.

87. After a short adjournment at the end of her interview with the claimant, Ms Dyer told the claimant that her recommendation would be that the matter should progress to a disciplinary hearing. The claimant subsequently declined to sign the interview note prepared by Ms Dyer because she believed it was not accurate. She did not tell Ms Dyer in what respect the note was inaccurate.

88. Ms Dyer prepared an investigation report (79-104) which included the interview notes and emails. The recommendation in her report itself (79-82) was expressed as follows –

"*I am of the opinion that Maureen's conduct in relation to the following issue should go forward for consideration at a Disciplinary Hearing:-*

- *Failure to carry out a reasonable instruction."*

Disciplinary hearing and outcome

89. Ms Dyer wrote to the claimant on 17 November 2017 (586) requiring her to attend a disciplinary hearing with Mr Hamilton on 23 November 2017 and enclosing a copy of the investigation report. Ms Dyer's letter stated –

"*The purpose of the hearing will be to discuss the allegation that you refused to carry out a reasonable instruction when you were asked to visit….Bearsden Road following receipt of a service request."*

90. The claimant was due to be on leave on 23 November 2017. She emailed Ms Dyer on 22 November 2017 (153) to advise this and to assert again that the note of the investigatory interview on 7 November 2017 was not accurate. The claimant stated that the disciplinary process was "*nothing more than continued bullying and harassment"*. She continued –

"*I have exercised my right to pursue a grievance through management, however this continues to be unaddressed."*

91. We had some difficulty in understanding this statement as the claimant's email to Mr Hamilton of 18 October 2017 made no reference to *"grievance".* However, we accepted that this was probably what the claimant had meant by "*escalate this matter to you as the next level of Management".*

92. The disciplinary hearing was rescheduled and took place on 30 November 2017. The hearing was conducted by Mr Hamilton. The claimant was accompanied by Mr Prentice. Ms Dyer was also present. Mr Hamilton took handwritten notes during the hearing (105-106). These included the following –

"*Jim attends with male officers. JP discriminates against women – Maureen in particular. JP attended several other visits with other officers."*

"Sexual discrimination – was this cited to LG? Not sure"

93. Mr Hamilton described the meeting as *"tense"* and asserted that the claimant and Mr Prentice "*were both unpleasant and aggressive".* He said that there had been "*real anger"* towards Ms Dyer from the claimant and Mr Prentice.

94. During the meeting Mr Prentice asked Mr Hamilton why he had not addressed the claimant's allegations of sexual discrimination. Mr Hamilton answered that it was his "*prerogative".* This was not recorded in Mr Hamilton's note but we believed that it happened, and that it was Mr Hamilton's way of telling the claimant that this was not the purpose of the meeting. Mr Hamilton's note did record the claimant stating that she did not think it had been a fair hearing. We believed that the claimant was of this view because Mr Hamilton had not been willing to talk about her allegation of sex discrimination.

95. At the end of the hearing Mr Hamilton told the claimant that she would be notified of the outcome later in the day. The meeting duly reconvened and Mr Hamilton told the claimant that no disciplinary action would be taken. In advance of doing so, Mr Hamilton prepared a further handwritten note (107) which was effectively his script for announcing his decision.

96. Mr Hamilton also prepared a *"Record of Disciplinary Action"* (588) in which he recorded the outcome in these terms –

"*Disciplinary action was deemed to be inappropriate. However, I concluded that Maureen had failed to follow a reasonable instruction from 2 line managers. The fact that she did not explicitly refuse to carry out the instruction and also made an Outlook meeting appointment at the address in question with her line*

manager, led me to believe that disciplinary action was not appropriate. I also took Maureen's long service into consideration."

97. Mr Hamilton relied on HR to prepare an outcome letter to the claimant. This was dated 14 December 2017 (157). The time taken to prepare the letter was down to HR and not Mr Hamilton. The letter contained the following paragraphs –

"*Having heard both the findings of the investigation and your own views on the matter, I determined that formal disciplinary action against you was not appropriate. This decision was primarily founded on the fact that you had not explicitly refused to carry out the instruction and that you had, in fact, sought to meet with your line manager at the address in question.*

I would advise, however, that it is my view that you clearly failed to carry out the aforementioned instruction. I accept that you disagreed with the request, however, having had an opportunity to discuss the matter with your line manager and with Linda Gray, Assistant Group Manager, you continued to defy the expressed requirement of Environmental Health managers."

98. The claimant had an overseas holiday booked from 15 December 2017 until 23 January 2018. As a result of this she did not receive Mr Hamilton's letter until her return. The claimant asserted that this was "*a deliberate delay to prolong any process of further escalation by me"*. We did not agree. The claimant was at work on 14 December 2017 and so conceivably the letter could have been handed to her, depending on when it was provided to Mr Hamilton to sign. However, while the delay in the claimant receiving Mr Hamilton's letter was unfortunate, it was not deliberate.

99. The claimant described Mr Hamilton's letter as "*contradictory"* because "*On one hand I was exonerated and then further Mr Hamilton states the opposite".* The claimant also stated, "*My allegations were dismissed outright".*

100. We did not agree that Mr Hamilton's letter was contradictory. The claimant had been instructed by both Mr Prescott and Ms Laurie to visit the Bearsden Road property. Mr Hamilton was correct when he said that she had <u>failed</u> to do so. Mr Hamilton was also correct when he concluded that the claimant had not

expressly refused to comply with the instruction, her position in effect being that she would have attended if Mr Prescott had accompanied her.

101. We also did not agree with the claimant's assertion that "*her allegations were dismissed outright"* by Mr Hamilton. The purpose of the meeting on 30 November 2017 was to deal with the disciplinary allegation against the claimant and not to deal with the claimant's allegations of sex discrimination on the part of Mr Prescott nor her allegations of bullying and harassment.

Claimant contacts Mr Walker

102. Prior to her disciplinary hearing, the claimant sent an email to Mr G Walker, Head of Community Safety and Regulatory Services, on 10 November 2017 (252). Mr Walker was Mr Hamilton's line manager. The claimant forwarded to Mr Walker her email to Mr Hamilton of 18 October 2017 along with the same chain of emails (127-132).

103. In her email to Mr Walker the claimant complained of "*bullying and harassment".* She said "*From the outset of my complaint process, coercion and intimidation have been evident"* which indicated that the claimant believed that she had at that time initiated a "*complaint process".* We did not believe that this was understood by the respondent at this stage, almost certainly because the claimant had not invoked any of the respondent's policies and procedures.

104. Mr Walker responded to the claimant on 14 November 2017 (251-252) explaining that as matters were being dealt with through the respondent's disciplinary process, it was not appropriate for him to comment.

105. The claimant replied to Mr Walker on 20 November 2017 (251) including this paragraph –

"*I initiated a complaint concerning lack of support from Management in regard to a controversial complaint. In response to this, both Linda Gray and Billy Hamilton have chosen to ignore significant issues and instead have initiated disciplinary procedures against me as a means to deflect these concerns."*

Claimant contacts Mr Waddell

106. On 29 November 2017 the claimant sent an email to Mr Waddell (283). In this the claimant stated –

"*I have recently raised a number of issues with Management within Environmental Health. These concerns relate to lack of support, sexual discrimination, bullying and harassment. These matters have escalated to the level of Gary Walker, however remain unaddressed."*

107. Mr Waddell discussed the matter with Mrs G Ham, Strategic HR Manager, and it was agreed that it was not appropriate for him to get involved at this stage. Mr Waddell told the claimant that Ms K Broadley , a member of the LES HR team, had been identified to meet with the claimant.

108. On 13 December 2017 Mr Waddell sent the claimant an email (288) referring to emails between Ms Broadley and the claimant and noting that the claimant had declined to meet with Ms Broadley, and that Ms Broadley had sent the claimant details of the respondent's Bullying and Harassment Procedures. Mr Waddell continued –

"*You refer to serious issues and I am concerned that instead of providing the relevant information in the recognised format, which would allow the issues to be assessed by our trained officers, you are insistent on a meeting outwith the agreed process. I do not accept that I am unwilling to acknowledge or address any issues you wish to raise as I have made arrangements for you to raise them through the appropriate procedures, which is your right as a Council employee and I would encourage you to do so, as soon as possible. You can contact Karen at any time and she will meet with you or you can submit your completed form."*

109. The claimant replied to Mr Waddell by email on 14 December 2017 (287) expressing her lack of confidence in HR and disputing that she declined to meet with Ms Broadley. The claimant said that she was "*endeavouring to try and resolve this informally in the first instance as is my right to do so as an employee".* She concluded "*I would ask once again for a meeting with you to progress the serious issues I have raised".*

110. Mr Waddell replied on 3 January 2018 (286-287). He told the claimant that Ms Broadley was "*an appropriate person for you to meet with".* He concluded –

"*I would reiterate that it is not appropriate for me to meet with you outwith the recognised procedures and I would again urge you to utilise the correct format to allow your concerns to be assessed."*

111. In a further exchange of emails with the claimant on 24-25 January 2018 (285-286) Mr Waddell told the claimant much the same in response to her saying "*are you refusing to accommodate me with a meeting to discuss issues relating to staff you manage?"*

Claimant contacts Mr Gillespie

112. On 26 January 2018 the claimant sent an email to Mr G Gillespie, then Acting Executive Director of Land and Environmental Services. We did not have that email but the date was confirmed in the claimant's follow up email to Mr Gillespie on 30 January 2018 (582) and in her subsequent email to Mr Gillespie on 13 February 2018 (749). With her email to Mr Gillespie of 30 January 2018 the claimant forwarded her email to Mr Hamilton of the same date (582-584).

113. In her email to Mr Hamilton, the claimant repeated her assertion that Mr Hamilton's disciplinary outcome letter of 14 December 2017 was *"contradictory"*. She said –

"*My concerns, misgivings of predetermined bias, unfair and unjust treatment for merely asking for support from a senior officer in dealing with a controversial complaint have been further validated with the contents of this letter.*

and

"In my opinion, the purpose of the disciplinary hearing was to deflect and intimidate me in regard to the serious allegations I raised of sexual discrimination, lack of support, bullying and intimidation, this further demonstrates the predisposition of Environmental Health Management."

114. Not having heard from Mr Gillespie, the claimant sent him a further email on 13 February 2018 (749) indicating that she had "*no other option but to take this*

matter out with LES to the Chief Executive Department, and if need be to the relevant councillors".

115. Mr Gillespie replied to the claimant by email on 14 February 2018 (750) taking the same line as Mr Waddell had done, telling the claimant that it was "*not appropriate for your complaint to be raised at personal meetings with senior management, which would be outwith the policies and procedures determined by the Council".* However, he also advised the claimant that he had arranged for her to meet with Ms J MacAskill, Corporate HR Officer, on 21 February 2018 to "*assess the scope of your complaint and support you by providing guidance on the available routes within our employee arrangements".*

116. The claimant responded by email on 16 February 2018 (752) requesting that a management representative above the level of Mr Hamilton also be in attendance. This was agreed by the respondent and when the meeting took place (on 22 February 2018 rather than 21 February 2018), Mr Waddell was in attendance with Ms MacAskill.

Claimant meets Mr Waddell/Ms MacAskill

117. When the claimant met with Mr Waddell and Ms MacAskill on 22 February 2018 she was accompanied by Mr Prentice. Mr Waddell's evidence was that "*At Maureen's request this was an informal meeting".* The claimant "*brought written documentation and evidence"* of her allegations but Mr Waddell declined to consider this as he did not believe it was appropriate to do so when the matter was at an informal stage. Mr Prentice said that when the documentation was offered to Mr Waddell and Ms MacAskill it was "*refused outright"* but we found Mr Waddell's explanation to be plausible and credible.

118. The claimant told Mr Waddell that she felt Mr Prescott's treatment of her and behaviour towards her was a form of bullying and that Mr Prescott was treating her differently because she was a woman. Towards the end of their meeting Mr Waddell asked the claimant whether mediation might be an appropriate solution but the claimant did not take this up.

119. Not having heard from Mr Waddell, the claimant emailed him on 7 March 2018 (293). Mr Waddell responded on 9 March 2018 (291-292) and advised the

claimant that he was "*unable to identify or recommend any management actions at this time".* He referred again to mediation. He advised the claimant that, if she chose to submit a formal complaint which met the relevant criteria, he would ensure that this was "*handled by a Bullying and Harassment Investigator outwith Land and Environmental Services".*

120. The claimant responded by email on 14 March 2018 (290-291). She said –

"*In terms of resolving the issues I have raised, I want a thorough and comprehensive investigation with all the evidence documented and a clear decision on each specific aspect/points of my complaint and then the appropriate action taken as per GCC policy."*

121. Mr Waddell replied to the claimant by email on 20 March 2018 (289). He said that the investigation sought by the claimant went "*beyond any informal process".* He invited the claimant to –

"….*submit your grievance complaint and bullying and harassment allegations in the appropriate forms which will allow them to be assessed accordingly."*

Claimant submits documentation

122. The claimant wrote to Mr Waddell on 13 April 2018 (109) in these terms –

"*I do not consider that my informal grievance has been resolved adequately in regard to my allegations of sexual discrimination/lack of support/bullying and harassment since these matters have not been investigated thoroughly.*

I have now submitted you with credible evidence as to my allegations, making you fully aware of the conduct of the Managers you manage.

You are now in possession of the full facts and supporting evidence of my allegations and as such I expect you as Senior Management and Corporate HR, to make an informed decision and be accountable for the decision you make.

Failure to act in regard to these allegations results in further complicity through all levels of Management.

I await your written response."

123. With her letter the claimant sent Mr Waddell a 5 page document (110-114) detailing her allegations along with 21 appendices (115-157) which included email correspondence with Mr Prescott and Mrs Lawrie relating to Bearsden Road and with Ms Dyer and Mr Hamilton relating to the disciplinary investigation and outcome.

124. Mr Waddell sent an email to the claimant on 25 April 2018 (159) acknowledging her written submission. Mr Waddell advised the claimant that he had arranged for her complaint to be assessed by a Bullying and Harassment Investigator outwith LES. The complaint was then allocated to Mr Sawers who was Head of Finance and Employee Services for Customer and Business Services ("CBS"), which was part of the respondent's Financial Services department.

Mr Prescott changes team

125. In May 2018 Mr Prescott moved from the PHT to the EIT. Mr Prescott said that he had asked for the move, which was confirmed by his email to members of his team on 14 May 2018 (478). The decision to move him was taken by Mr Hamilton and Ms Hamilton. The reason for the move was their perception of how Mr Prescott was being treated by the claimant and Mr Prentice. Mr Prescott remained in the EIT until he retired in July 2019 having worked for the respondent for 43 years.

126. The claimant asserted that the reason for Mr Prescott moving from PHT to EIT was to facilitate his working with women for a period of time before Mr Sawers concluded his report. In support of that, the claimant pointed out that Mr Sawers had obtained statements for Ms Staunton and Ms Miller who were part of the EIT. We believed that Mr Prescott's move was connected with the behaviours of the claimant and Mr Prentice and unconnected with the composition of the EIT, ie we found the evidence about this from Mr Hamilton and Ms Hamilton to be credible and preferable to the claimant's conjecture. This was supported by the evidence of Mrs Laurie who described Mr Prescott as *"fed up with Maureen and Kenny's behaviour".*

Meeting on 17 May 2018

127. Mr Sawers had undertaken training as an investigator. He had experience of some 10/15 investigations. His evidence, which was supported by the evidence of Ms Walsh and Mr Ralston both of whom had experience of dealing with bullying and harassment cases, was that the first stage in the investigation process was an informal meeting with the complainant to assess the complaint and to decide whether, and if so how, it should be progressed.

128. Mr Sawers' investigation of the claimant's complaint was conducted under the respondent's Bullying and Harassment Policy (361-368) which described the investigation process in these terms –

"*The investigator will complete a through* [thorough?] *impartial investigation to find out if bullying and harassment has taken place and decided what action needs to be taken. They'll keep an open mind, looking at all the information and evidence which supports the complaint and evidence against it. They will consider the welfare of everyone involved and will act with sensitivity and respect for the rights of everyone with an aim to complete this within 30 working days."*

129. Mr Sawers met with the claimant on 17 May 2018. He intended that this should be the informal meeting at which he would explain the process and timescale. The claimant was accompanied by Mr Prentice. Normally the investigator would have a complaint form to work from. According to Mr Sawers the claimant "*was difficult to deal with resisted to fill in form".* According to the claimant "*Mr Sawers explained that I did not have to submit a form for his investigation".*

130. On 18 May 2018 the claimant sent an email to Mr Sawers (163) in which she said –

"*Subsequent to our meeting on Thursday 17th May 2018, I can confirm that it is not my intention to complete the harassment complaint form."*

131. If Mr Sawers had told the claimant that she did not have to submit the complaint form there would have been no need for the claimant to confirm her intention not to do so. Due to a problem with his email, Mr Sawers did not receive the

claimant's said email until 22 May 2018 and, before he did so, he sent an email to the claimant on 22 May 2018 (609) saying –

"*We agreed that you would reflect on the meeting with a view to contacting me the following day. Specifically it was regarding the complaint being written on the Bullying and Harassment complaint form which I mentioned whilst not critical it would assist me in structuring the investigation."*

132. Our view of this evidence was that Mr Sawers had made the claimant aware that he preferred to have a complaint form completed by her and the claimant had been resistant to this.

133. In her witness statement, the claimant's evidence about the meeting on 17 May 2018 was that "*Mr Sawers proceeded with extensive questioning of me and he attempted on several occasions to dismiss my allegations regarding James Prescott".* In his witness statement Mr Prentice's evidence about the meeting was that Mr Sawers "*proceeded with an extensive question and answer session with Maureen Craig whereby he attempted to dismiss Maureen Craig allegations regarding James Prescott".* We refer to our observation in paragraph 84 above – this similarity of language again suggested a degree of collaboration between the claimant and Mr Prentice in the preparation of their witness statements.

134. There was a disconnect between Mr Sawers' purpose at the meeting on 17 May 2018 and the claimant's perception of how that meeting was conducted. For Mr Sawers, it was an initial assessment of the complaint to decide how best to take it forward (if indeed it was to be taken forward). For the claimant, it was an interrogation designed to persuade her against pursuing the complaint. We were satisfied that Mr Sawers did what he was expected to do at the initial meeting with a view to getting a better understanding of the complaint. However, we could also understand why that might have felt to the claimant as if she was being challenged to justify her complaint.

135. With her email of 18 May 2019, the claimant sent Mr Sawers various emails (164-194) which related to Mr Prentice. Mr Sawers did not consider these as they fell outwith the scope of his investigation. In determining what that scope

was, Mr Sawers said that he was guided by the HR officer who assisted him, Ms C Craig. He said that the advice he received was to focus on the claimant's allegations against Mr Prescott and that the other issues raised by the claimant "*would take an alternative route".*

Correspondence between Mr Sawers and claimant

136. Between 29 May and 1 June 2018 there was a lengthy exchange of emails between Mr Sawers and the claimant (615-621). This started with Mr Sawers telling the claimant that he was now *"looking to formally investigate your complaint"* and seeking to arrange a meeting. The claimant asked about the *"purpose/agenda"* and Mr Sawers responded that he felt the claimant's complaint "*merits a full investigation under the bullying and harassment framework".*

137. The claimant then asked again what was "*the purpose and agenda of the meeting and who would be present".* Mr Sawers replied that the *"purpose of the meeting is to conduct a full investigation via the bullying and harassment process".* He advised the claimant that he would conduct the meeting with HR support and that the claimant would be entitled to attend with a representative.

138. The claimant's response was to press Mr Sawers to be "*specific with the purpose and agenda of this proposed meeting in order that I prepare".* She accused Mr Sawers of being *"reluctant"* to provide these. Mr Sawers replied explaining that the initial meeting (on 17 May 2018) had been informal, and to enable him to make a decision on what should happen next. He said that he had decided there should be a full investigation. He would meet with the respondents to the complaint but first needed to meet with the claimant and *"take minutes that you can approve before I proceed with meeting respondents".* Mr Sawers told the claimant that the agenda would "*focus on the key elements of your complaint"* and that the purpose of the meeting and the subsequent meetings with the respondents was "*to make an assessment and deliver a clear outcome"* to the complaint.

139. The claimant then asked Mr Sawers to submit his questions by email. Mr Sawers responded by sending the claimant a link to an employee's guide and

explained why he did not consider it was appropriate to proceed by way of email. In her reply the claimant continued to resist Mr Sawers' request for a face-to-face meeting , concluding –

"*May I remind you I am not under investigation and to date I understand you have not met with the other Officers, which I would question."*

140. The claimant repeated her concern that Mr Sawers had not met with the other parties involved in a further email to him on 1 June 2018. Later the same day the claimant emailed a letter to Mr Sawers (625-626) in which, after listing the information in Mr Sawers' possession –

"*Given the aforesaid, there is no* ***credible*** *reason why any questions/enquiries you have can't be submitted and responded to in writing.*

I consider this persistent approach by you to interrogate me, excessive and wholly unnecessary and a further attempt to cause stress and anxiety.

It is unacceptable that you as a Senior Manager have not yet interviewed your fellow Managers in regard to my allegations, however you have met with me and are now requesting a second interview despite the said extensive information already in your possession."

141. Mr Sawers wrote to the claimant on 4 June 2018 (627-628) stressing the need for her to "*fully comply with the process and procedures which will enable a full and thorough investigation to take place".* He invited her to meet on 13 June 2018. He advised the claimant that –

"….*should you fail to engage with the agreed process and given the serious nature of your complaint, then I will conduct the investigation without any additional input from you."*

142. The claimant confirmed in her email to Mr Sawers on 6 June 2018 (629) that she would attend the meeting on 13 June 2018. Mr Sawers responded on 7 June 2018 (629) asking the claimant who would be her representative "*as it is important that you are aware that they will not be able to be called as a witness in this case".*

143. The claimant then emailed Mr Sawers on 11 June 2018 (631) stating –

"*If Mr Prentice in his capacity in his capacity as my representative, has witnessed events or became the subject of victimisation/harassment, and you consider this precludes him from fulfilling either role, then you are compromising my position to meet with you further. I consider an approach as such, nothing less than strategic manoeuvring and an attempt to disadvantage my case.*

As previously stated, I am agreeable to meet with you in order to provide answers to any factual questions you have relating to my case, as long as I am not disadvantaged further in any way.

May I suggest, to circumvent any consequential determent or any perceived conflict you may see, that you have the option of opening up a two way dialogue via email, whereby you will be in receipt of a formal response.

It is clear by the consistent evasive tone of your emails that you neither wish to disclose your questions or intended topic of discussion despite my repeated written requests for you to do so.

Given the aforesaid and the concerns raised in previous correspondence with you, I consider your method of investigation neither clear, transparent or without bias."

144. Mr Sawers described the claimant's behaviour at the meeting on 17 May 2018 as "*very combative".* The same phrase would be apt to describe the claimant's tone throughout this correspondence.

Meeting on 13 June 2018

145. The claimant and Mr Prentice attended for the meeting with Mr Sawers on 13 June 2018. Before the meeting started, Mr Sawers told the claimant that Mr Prentice could not be both her representative and a witness in the investigation. This was what the respondent's Bullying and Harassment Policy stated (367) –

"*Anyone involved in the process at any stage has the right to representation by a trade union representative, line manager or colleague of their choice. This*

person must not have an active role in the investigation process, for example as a witness."

146. When they entered the meeting room, Mr Sawers was accompanied by Ms C Craig, HR manager. Mr Sawers again explained that Mr Prentice could not be both the claimant's representative and a witness. The claimant maintained the position that she wanted Mr Prentice to fulfil both roles and Mr Sawers maintained his position that this was not possible. Accordingly the meeting did not proceed.

147. Mr Sawers wrote to the claimant on 19 June 2018 (195-196) recording what had happened on 13 June 2018. His letter included the following paragraphs –

"*You attended the scheduled investigation on 13 June 2018 with your colleague Mr Prentice whom you advised is also a witness. The B&H Policy (Page 7) clearly advises that you may be represented by a trade union representative or colleague of your choosing however states that this person must not have an active role in the investigation process, for example as a witness. In addition, Carolann Craig, HR and myself reminded you again that it was not appropriate for a witness to act as a representative and asked whether you wished to proceed with Mr Prentice as your representative or whether we should re-schedule for an alternative representation to be found.*

You continued to request that Mr Prentice acted as a representative and a witness despite the conflict in roles. In addition you continued to request that the investigation be conducted via email despite my reasons for informing you that this would not being [sic] *beneficial or helpful to the investigation process which I am attempting to conduct thoroughly.*

You felt that you have provided enough information for me to continue my investigation without further face to face input from yourself. You were therefore advised that it is my intention to investigate the matter as best I can with the information you have provided to date and with no further input from yourself. Thereafter you will be notified of my findings, in writing, in due course."

Mr Sawers' investigation

148. Mr Sawers then proceeded with his investigation. He met with Mr Prescott on 5 July 2018 (217-220). He then met with Ms L Staunton (235-236), Ms S Miller (239) and Mrs Gray (237-238) on 11 July 2018 and with Mr Prentice on 24 July 2018 (241-242).

149. Prior to meeting with Mr Sawers, Mr Prescott had received from Mr Sawers a copy of the claimant's complaint against him (110) and some of the appendices to the complaint (115-121). This was part of the documentation which had accompanied the claimant's letter to Mr Waddell of 13 April 2018 (109).

150. When Mr Sawers met with Mr Prescott, he formed the impression that Mr Prescott was "*genuinely shocked"* to be a respondent in the investigation. Mr Prescott had prepared and provided Mr Sawers with a written response to the claimant's complaint (221-225). This included statistics about work allocation within the PHT (224) and a list of witnesses (225). Included in Mr Prescott's list of witnesses were Ms Staunton, Mrs Laurie and Ms Miller who he described as "*female officers with whom I have attended joint visits".*

151. The accuracy of the notes of Mr Sawers' meeting with Mr Prescott (217-220) was confirmed by both. However, in his evidence to us, Mr Prescott sought to correct an inaccuracy. He had told Mr Sawers that there had been no other visits which the claimant had asked him to attend with her (218). He told us that he recalled three occasions when he had accompanied the claimant on property visits, and two further occasions when he had invited her to accompany him but she had declined as these involved pest control.

152. The notes of his meeting with Mr Sawers' record Mr Prescott saying of the claimant that she was "*competent* "and that there were "*no issues with her work"* and that she was "*a really good officer".* He said that he and the claimant "*had a good working relationship up to this point".*

153. Mr Sawers asked Mr Prescott about work allocation and Mr Prescott explained the circumstances in which ward 23 had been re-allocated from Mr Banks to the claimant and Mr Prentice. Mr Prescott told Mr Sawers that neither the claimant nor Mr Prentice had complained at the time.

154. In the notes of her meeting with Mr Sawers (235-236), Ms Staunton is recorded as saying that she had "*never seen anything untoward"* in Mr Prescott's behaviour towards the claimant. She described Mr Prescott as "*fair and supportive towards all his team members".* She also confirmed that Mr Prescott had "*no issues in accompanying any member of staff that required it".*

155. In the notes of her meeting with Mr Sawers (239), Ms Miller is recorded as stating that she had worked with Mr Prescott "*for approximately 16 years".* She described Mr Prescott as "*very approachable".* She said that she had "*never witnessed any discrimination"* by Mr Prescott "*with either herself or anyone else".* When asked by Mr Sawers if Mr Prescott had ever accompanied her on any jobs, she "*confirmed that there was no reluctance on JP's part if a job required him to attend it with her".* She described the claimant as "*a well-respected officer".*

156. In the notes of her meeting with Mr Sawers (237-238), Mrs Laurie is recorded as refuting the claimant's assertion that Mr Prescott had attended similar cases (to Bearsden Road) with other members of staff. She said that Mr Prescott had "*shown great expertise in ascertaining when a Team Leader's input is required".* She also told Mr Sawers that Mr Prescott "*does not differentiate between male and female staff, he only looks at the job requirements".*

157. Mrs Laurie was critical of the claimant and Mr Prentice. The notes record –

"*LG brought up that she perceives there has been a couple of issues within JP's team. Two members of staff have been trying to make life difficult for JP. Over recent times MC and Kenny Prentice (KP) have been trying to undermine JP in his role as team leader, in a passive aggressive way. JP has been nothing but polite and pleasant when dealing with these two members of staff."*

158. In the notes of his meeting with Mr Sawers (241-242), Mr Prentice is recorded as saying –

"*KP believes he has witnessed JP discriminate between male and female employees, in situations of controversial complaints. KP believes JP did not provide the same level of support to Maureen Craig that he has for male employees in these situations."*

159. When asked by Mr Sawers about "*any incidents when he witnessed discrimination against Maureen Craig",* Mr Prentice referred to Mr Prescott declining to accompany the claimant on the visit to Bearsden Road. He gave no other examples. He then said that "*he felt he had also been the target of discrimination since supporting Maureen following this incident".*

160. Before Mr Sawers had completed his investigation, he received an email from the claimant dated 25 July 2018 (201-202). The claimant made reference to a further complaint relating to the Bearsden Road property in June/July 2018 where two team leaders (Mr N Herbertson and Mr G Innes) had attended and investigated. She also described as "*further discrimination by James Prescott"* the allocation of extra workload to herself and Mr Prentice, before Mrs Laurie's promised review.

161. The claimant was critical of Mr Sawers' choice of witnesses. She alleged that Mr Sawers had chosen to interview female employees for whom Mr Prescott had only recently become line manager (Ms Staunton and Ms Miller) following his move to EIT. Before that move, Mr Prescott had managed a team in which the claimant was the only woman. Following the move, he managed a team which included three women. We believed that the validity of that criticism was undermined by Ms Staunton having worked with the claimant "*for approximately sixteen years".*

162. The claimant accused Mr Sawers of *"double standards"* in his interpretation of the Bullying and Harassment Policy in that while he insisted Mr Prentice could not fulfil two roles, he allowed Mrs Laurie to do so – both as a respondent to the complaint and as a witness. We considered that criticism to be unfounded (as, by the same logic, Mr Prescott was both a respondent and a witness and the claimant did not suggest that he should not have been interviewed), but it did beg the question of the capacity in which Mrs Laurie had participated. Mr Sawers described her as one of the three "*female witnesses"* he interviewed. However, he also said that he felt it was proper for Ms Dyer, Mr Hamilton and Mrs Laurie to be named as *"respondents"* in his report. We were satisfied that Ms Laurie was interviewed as a witness, and not as a respondent.

163. In those circumstances (ie naming Ms Dyer, Mr Hamilton and Mrs Laurie as respondents), it was surprising that (a) Mr Sawers had not chosen to interview Ms Dyer and Mr Hamilton and (b) Mrs Laurie and Ms Dyer were unaware that there was a complaint naming them as respondents (and Mr Hamilton appeared only vaguely aware). We could understand that a view might reasonably have been taken that (i) Mrs Laurie had simply acted as line manager of Mr Prescott and the claimant and (ii) Ms Dyer had simply carried out Mr Hamilton's instruction to undertake an investigation. The decision as to whether there was a statable complaint against Mr Hamilton was more finely balanced and we return to this below.

Outcome of Mr Sawers' investigation

164. Mr Sawers wrote to the claimant on 13 August 2018 (201) advising that his decision was to reject her complaint. He enclosed a summary investigation report (203-208) in which the identities of the witnesses he had interviewed were not disclosed. Mr Sawers also prepared an investigation report dated 14 October 2018 (209-215) which was accompanied by minutes of meetings and other supporting materials (217-242). This was not sent to the claimant. We understood that both reports were prepared at the same time but the one bearing the later date was initially simply filed. Mr Sawers' reports recorded that (a) he found no evidence of sexual discrimination/lack of support in the case of Mr Prescott and (b) he formed the view that there was no case to investigate against the other officers (Mrs Laurie, Mr Hamilton and Ms Dyer).

165. The conclusion which Mr Sawers reached in the case of Mr Prescott was one which he was entitled to reach on the evidence before him. It would have been preferable if Mr Sawers had made it clear to the claimant at the outset of his investigation (ie after the assessment meeting on 17 May 2018) that there was no case to investigate against the other three respondents to the claimant's complaint, and had explained why he was of that opinion.

Claimant contacts Mr Gillespie (again)

166. In his outcome letter to the claimant, Mr Sawers advised that she could appeal his decision by writing to Mrs Ham. Instead, the claimant sent an email to Mr Gillespie on 14 September 2018 (718) which included the following –

"*I did not raise this matter through formal channels and therefore will not be going through the appeal process. Prior to me raising my concerns with the Chief Executive and thereafter with the Elected Members, I am giving you the opportunity to confirm if you concur with Mr Sawers findings or if you will be taking any action in regard to my complaint."*

167. Mr Gillespie replied to the claimant on 14 September 2018 (717-718) stating that her submission to senior officers, including himself and the Chief Executive, "*does not reflect your suggestion that you wished the matter to be resolved informally. It has therefore been investigated formally".* Mr Gillespie advised the claimant that the appeal procedure was "*the appropriate route, in line with Council Policy"* and that he could see "*no recourse to the Chief Executive or Elected Members".*

168. The claimant responded to Mr Gillespie on 15 August 2018 (717) disagreeing with him and on the same date emailed Mrs A O'Donnell, the respondent's chief executive (716). Around the same time, the claimant emailed Mr R Anderson, the respondent's head of human resources on 14 August 2018 (710) by way of follow up to her earlier email to Mr Anderson of 31 July 2018 (711) enquiring if he was investigating her complaint (about LES management). Mr Anderson replied on 14 August 2018 (710) stating that it would be inappropriate for him to comment "*as a process is still continuing".*

169. The claimant subsequently emailed a number of the respondent's elected members – Councillor M Balfour on 12 September 2018 (732-733), 3 October 2018 (731-732) and 11 October 2018 (731), Councillor A Wilson on 12 September 2018 (735-736), 3 October 2018 (735) and 9 October 2018 (734) and Councillor F Scally on 12 September 2018 (738), 3 October 2018 (737-738) and 11 October 2018 (737). Some of these emails were copied to the Leader of the Council, Mrs S Aitken.

Claimant applies for EHO position

170. As mentioned in paragraph 30 above, the claimant had worked as an EHO in New Zealand for 10 years. Her qualification as an EHO in New Zealand did not allow her to work in the same capacity for the respondent.

171. Undertaking the study in her own time, the claimant gained a BSc Hons in Health Studies in 2014. In February 2016 she approached Mr Crawshaw seeking to undertake work shadowing in her own time in the context of submitting a training plan to the Royal Environmental Health Institute of Scotland ("REHIS"). Mr Crawshaw's response on 16 February 2016 (799-800) was negative based on staff resource issues, although he indicated to the claimant that he, Mr Hamilton and Ms Dyer might be happy to discuss her plan for how this could work.

172. The claimant and Ms Arnott met separately with Mr Crawshaw, Ms Dyer and Mr Hamilton on 7 March 2016 to seek support to progress to gain the Diploma in Environmental Health. The outcome was that both were allowed to work shadow other officers in their own time. The claimant gained her diploma in October/November 2017 and Ms Arnott did so in October 2018.

173. In March 2018 the respondent advertised for a part time food safety officer (139). The advertisement indicated that a Higher Certificate in Food Standards Inspections would be essential from April 2019, adding that "*candidates who do not currently possess this qualification will be considered and the appropriate training will be provided".* The claimant emailed Mr Gillespie on 12 March 2018 (807-808) complaining that the same level of support was not offered when she was studying to gain EHO status.

174. Mr Gillespie responded on 3 April 2018 (809) explaining that the legislative change effective from 1 April 2019 and the timing of the last available exam in October 2018 (prior to which there was a requirement for 6 months on the job training) were the reasons for the offer to provide training in "*this current (unusual) situation".* There was further email correspondence between the claimant and Mr Gillespie from 4 April to 23 May 2018 about this matter (813-827).

175. The claimant applied for one of a number of promoted posts advertised by the respondent in August 2018. The respondent was seeking to appoint EHOs and Food Safety Technical Officers. The claimant was interviewed by Ms Dyer and Miss McCoull on 5 September 2018. The interview was based on three competency questions.

176. Both Ms Dyer and Miss McCoull commented on the high standard of the candidates interviewed for these posts. Miss McCoull said that the 6 successful candidates (subsequently reduced to 5) "*stood out because of the amount of experience that they had".* The claimant was ranked 9th amongst the 15 candidates interviewed. Ms Dyer commented on the claimant's "*lack of experience in food safety enforcement".*

177. On 6 September 2018 the claimant emailed Mr Gillespie (836-837) stating that she was "*astounded"* that Ms Dyer had been a member of the interview panel and that it was *"wholly inappropriate"* that Ms Dyer was in a "*position of influence given the current status of my complaint".* The claimant said that –

"*The flawed decision to permit Jane Dyer to be involved in the interview selection process further serves to validate and confirm my concerns raised in regard to LES Management and the continued blatant lack of transparency, accountability and insidious bullying within this Section".*

178. Mr Gillespie replied on 7 September 2018 (835-836) including the following –

"*I now note that you are raising further issues of a bullying and harassment nature in relation to an officer within Environmental Health, that you are questioning her appropriateness for being involved in a recruitment process and that you are threatening to escalate the matter to the Elected Members.*

Taking all of the above into account, I am satisfied that your complaints have been responded to and that your Bullying and Harassment claims have been fully investigated and concluded.

It is clear that you are not able to accept the processes put in place to investigate and respond to complaints/allegations and equally you are not respectful of the

responses and of the findings of Senior Officers within the Council and this Service. I therefore see no benefit in elaborating any further on these matters."

179. Ms Hamilton was asked by Mrs Ham to review the decision making process and did so. She was provided with the application forms which had been anonymised. She told Mrs Ham that the "*short leeting was right"* and that "*decisions around lack of experience were absolutely correct".*

Mr Prescott remains claimant's leave approver

180. The respondent used an electronic system called My Portal for leave approval (and also storage of some personal data of employees). Before Mr Prescott moved to EIT in May 2018 he was the leave approver for the team of which the claimant was a member. This should have changed to Mr N Herbertson when he became the new team leader.

181. The claimant became aware that Mr Prescott was still her leave approver on MyPortal despite no longer being her team leader. She raised this with Mrs Laurie by email on 17 May 2018 with a follow up on 4 June 2018 (763-764). Mrs Laurie responded on 5 June 2018 (762-763) having spoken with Ms A Devine in HR. She (Mrs Laurie) understood that the change had to be made by CBS and that there might be some delay.

182. The claimant then raised the matter with Mr Hamilton and they exchanged emails on 25-26 June 2018 (761-762). Mr Hamilton advised the claimant that all he and Mrs Laurie could do was to advise HR and CBS "*where the ability to make these changes lies".*

183. The claimant was unhappy with this explanation and, having become aware that team leaders could access employees' personal data in MyPortal, she raised this with LES HR on 19 September 2018 (878-879). This led to an exchange of emails between the claimant and Ms J McEwan, assistant HR manager, in September/October 2018 (876-878). Ms McEwan initially told the claimant that a team leader did not have access to personal data on My Portal but then corrected this, explaining that the screen within MyPortal containing such data was "*not readily visible"* and was not a screen of which she as a portal user had been aware. Ms McEwan said that, to resolve the claimant's concern,

responsibility for authorising leave requests for her group would transfer to Mrs Laurie.

184. There was then an exchange of emails between Mrs Laurie and Ms Devine in October 2018 (243-247), the outcome of which was that from 23 October 2018, Mrs Laurie became the leaver approver for employees within the Public Health sections.

185. The claimant remained unhappy that her personal data was accessible by team leaders within MyPortal and engaged in further correspondence with Ms McEwan between 22 October and 8 November 2018 (263-267). She also exchanged emails with Mr Gillespie between 23 October and 12 November 2018 (269-272). Mr Gillespie advised the claimant that he would ask Mr Walker *"to respond to your issues in relation to MyPortal".*

186. Mr Walker emailed the claimant on 12 November 2018 (273-274) accepting that there had been a delay in reflecting her change of team leader on MyPortal. He continued –

"*While I can acknowledge this administrative delay, I cannot accept that this was done to bully or intimidate you. As you are aware your previous claims were investigated by a trained, independent Bullying and Harassment investigator and rejected.*

I sense from your emails to Senior Officials that you remain dissatisfied and unable to accept this outcome and I worry that should that continue, despite being offered various supports to assist you with this, it will have a detrimental impact on working relationships. In addition I feel that the continual raising of concerns in relation to EH Managers may be viewed as malicious and vexatious particularly on matters that have previously been investigated. I would therefore like to offer you the opportunity to meet me informally to discuss how we can move forward and improve working relations to benefit both you and the Service. Should you wish to meet with me then please confirm by return email and I will make the necessary arrangements."

187. The claimant replied on 14 November 2018 (273) –

"*Given that I approached you prior to contacting Directorate in 2017 regarding my concerns and you dismissed me out of hand, and given that I have lodged the matter with ACAS, I feel it would not be appropriate at this time to meet with you."*

24 December 2018

188. Prior to Christmas 2018 Mrs Laurie sought to make arrangements for annual leave cover for the holiday period. Mr Prescott advised her that he was happy to cover Christmas Eve.

189. The claimant emailed Mrs Laurie on 19 December 2018 (249-250, also 309) stating that she objected to Mr Prescott acting as her team leader on 21 and 24 December 2018. Referring to her Tribunal claim, she said –

"*It is not only wholly inappropriate that James Prescott has any involvement with either myself or my representative Kenneth Prentice, I am now viewing this as further harassment."*

190. Mrs Laurie told us that Mr Prescott was not in the office on 21 December 2018. The claimant had told her in the email of 19 December 2018 that two of the EHOs had previously allocated complaints when the team leader was on annual leave and that this was "*custom and practice".* This was to some degree supported by the evidence of Mr Beaton, and Mrs Laurie accepted in her own evidence that EHOs would have allocated jobs in the past "*to help out".*

191. Mrs Laurie met with the claimant and Mr Prentice on 20 and 21 December 2018. They maintained their objection to Mr Prescott covering as their team leader on 24 December 2018. Mrs Laurie decided that Mr Prescott should allocate work for the PHT and EIT on 24 December 2018 but any work being allocated to the claimant or Mr Prentice would be approved by her in the first instance. She confirmed this in an email to the claimant on 21 December 2018 (249).

192. The claimant described Mrs Laurie's "*insistence"* on Mr Prescott acting as her and Mr Prentice's team leader on 24 December 2018 as *"a further attempt to continue to antagonise and intimidate"*. Mrs Laurie said in relation to the objection raised by the claimant and Mr Prentice that she "*accepted that this is*

something they might genuinely believe and be getting distressed about and I would want someone to listen to me and if something could be done to make the situation less stressful I would try to do it". She also said that she did not think it was "*appropriate for Maureen to dictate to me what members of staff should be doing".*

193. Our view of this was that putting Mr Prescott in a position to allocate work to the claimant for one day was not, as contended by the claimant, an attempt "*to antagonise and intimidate".* It was a routine administrative matter.

Stairwell incident

194. The claimant alleged that an incident occurred on a stairwell on 10 January 2019 when Mr Prescott had confronted her. In the witness statement she provided with her letter to Mr Gillespie on 15 April 2019 (322-323) the claimant described the incident in these terms –

"*On the 10th January 2019 between 9-10am I was descending the stairs between the first floor and ground floor of 231 George Street. Two colleagues were in front of me, David McLaren who was leading then Kenneth Prentice. A colleague Thomas Banks was directly behind me.*

I was descending the stairs on the right hand side of the staircase with my view obstructed by Kenneth Prentice. James Prescott was ascending on the left hand side of the stairs and we met directly after the turn of the stairs.

The confrontational stance taken by James Prescott made me feel uncomfortable and intimidated; I therefore had to move out of his way when it was clear he was not going to move."

195. The claimant had earlier referred to this incident in an email sent to Mrs Laurie at 15.53 on 10 January 2019 (311-312) in these terms –

"*I feel I have to also make you aware of an incident this morning whereby James Prescott's confrontational stance of effectively "facing me up" on the internal stairs as I was descending from the first floor, forced me to move out of his path. This situation was awkward and made me feel uncomfortable."*

196. There followed an exchange of emails between Mrs Laurie and the claimant (311 and 313-317). Mrs Laurie asked the claimant to come and discuss the matter, and the claimant responded that it was not appropriate for Mrs Laurie to be involved in view of her "*implication in my current legal case".* Mrs Laurie provided the claimant with a link to the respondent's Bullying and Harassment Policy and also the complaint form as the claimant had suggested that Mr Prescott's behaviour was *"inappropriate"* and was "*harassment".* She subsequently advised the claimant on 1 February 2019 to provide information to Mr Hamilton as she (Mrs Laurie) was about to depart on annual leave.

197. The claimant emailed Mr Hamilton on 5 February 2019 (313), describing the stairwell incident in broadly similar terms as she had done to Mrs Laurie. Mr Gillespie then emailed the claimant on 8 February 2019 to advise that an investigation would be undertaken in line with the respondent's disciplinary policy. Mr A Clarke, performance and compliance manager, was appointed as the investigating officer.

198. Mr Clarke's investigation involved meetings with Mr McLaren and Mr Banks, obtaining a statement from Mr Prentice (who, like the claimant, was on sick leave during the period of Mr Clarke's investigation), and follow up meetings with Mr McLaren and Mr Banks (the latter conducted by phone by Ms K Broadley, assistant HR manager). Mr Clarke lastly met with Mr Prescott.

199. Mr Clarke prepared in investigation report (325-336). He found that Mr McLaren, Mr Banks and Mr Prescott had been unaware of any incident on the stairwell. Only Mr Prentice described an incident –

"*Between the 1st and ground floor I observed James Prescott, on his own, proceeding to ascend the stairs. Rather than waiting at a wider point for the group to pass I thought it peculiar he was also holding to the inner turn of the stairs despite the number of people descending albeit there being ample space on the outer turn to pass comfortably.*

After stepping aside to give way and being mindful of the ongoing issue, I turned my head to look back observing both Maureen and James stationary on the staircase. Eventually Maureen stepped aside and I heard her say "how rude".

At that time I was perplexed why James Prescott had taken this confrontational stance given the aforesaid, his senior position, and the ongoing complaints against him."

200. Mr Clarke observed that the claimant had not mentioned saying "*how rude"* in her own statement. We note that the claimant also made no mention of this in her own witness statement before us. None of Mr McLaren, Mr Banks and Mr Prescott heard the claimant say "*how rude".*

201. The claimant was critical of Mr Clarke going back to Mr McLaren and having Ms Broadley speak with Mr Banks after receiving Mr Prentice's statement. We saw nothing untoward in this. In particular, it was entirely appropriate for Mr Clarke to explore with Mr McLaren and Mr Banks whether they had heard the claimant say "*how rude".*

202. Mr Clarke's conclusion as to the stairwell incident was that "*any impasse between Maureen and James was momentary".* He formed the view that if Mr Prescott had taken *"a significant confrontational stance",* Mr McLaren and Mr Banks would likely have noticed and "*either commented or intervened".* He expressed his decision in these terms –

"*I cannot determine or establish reasonable belief that Mr Prescott has acted inappropriately towards Maureen and therefore have no justification to consider misconduct under the Council's Discipline and Appeals Procedure."*

203. This was a conclusion which Mr Clarke was entitled to reach on the basis of the evidence before him. In effect, he decided that Mr Prescott had not "*confronted"* the claimant on 10 January 2019.

Relocation of claimant's geographical area

204. On 14 January 2019 the claimant wrote to Mr Gillespie (281-282) complaining that she had been *"singled out"* as the only technical officer to be relocated to a new geographical location in the context of a restructure. She alleged that this was *"a further example of victimisation and harassment".* Her evidence in chief about this was as follows –

"I was the only Technical Officer within Public Health to relocate to a new geographical area. I was relocated from the west of the city to the south side and I consider this was a further demonstration by management of victimisation as a result of my allegations of discrimination."

205. Mrs Laurie's evidence in chief about this restructure was as follows –

"*There was a restructure of the service in February 2019. Maureen was not the only technical Officer to be moved during this restructure. The service was moving from 4 teams to 3 teams for the neighbourhood model so there were always going to be some officers who had to move area. The other Technical Officers moved were Graham True, Lesley Yeates, John Beaton, Kenneth Prentice and Derek Brown. There were a number of other officers moved including 2 Environmental Health Officers and a Team Leader."*

206. Mr Hamilton's evidence was that the restructure involved changes of geographic location for a number of TOs in addition to the claimant. He referred to Mr G True, Ms L Yeates, Mr D Brown, Mr Beaton and Mr Prentice. This was confirmed in the evidence, under cross-examination, of Ms Arnott and Mr Beaton.

207. The claimant's position under cross-examination was that it was only after she had complained to Mr Gillespie in January 2019 that further changes took place. At that time, she was the only TO being moved. She agreed that Mr True, Ms Yeates and Mr Beaton had then moved area. The claimant agreed that her change of area took effect from 14 January 2019.

208. We preferred the evidence of Mrs Laurie, Mr Hamilton, Ms Arnott and Mr Beaton and found that the claimant had not been "*singled out"* for a change in geographic area at the time of the restructure.

Claimant's absence/referral to Occupational Health

209. Both the claimant and Mr Prentice commenced a period of sickness absence on 11 February 2019. The reason for the claimant's absence was stated on her certificates of fitness for work as "*work related stress".*

210. The respondent deals with employee absence under its Maximising Attendance Policy (401-410). This includes (at section 5.1) a requirement that the employee should report absence as per the Conditions of Service on the 1st, 4th and 7th day of absence and on every 7th day thereafter. Long term absence is stated (at section 15.1) to be *"any single spell of absence of 20 or more working days".*

211. Section 17 of the policy deals with Managing Long Term Absence. It provides that *"management will meet with the employee on a regular basis throughout the period of absence".* There is no definition of "*regular basis"* but the policy states that the "*frequency of meetings will be dependent upon the circumstances of the specific absence".* We understood that a frequency of 4-6 weeks was regarded as normal.

212. The policy provides (at section 9) for Early Intervention where *"an employee reports absent due to a psychological or musculoskeletal condition".* This takes the form of an early intervention discussion meeting. Ms Walsh said that she would hope that a meeting with the absent employee would take place "*within 7 to 14 days of the start of the absence".*

213. The claimant was by letter dated 14 February 2019 (350) invited to such a meeting with Mrs Laurie and Mr Ralston on 19 February 2019. This letter bore Mrs Ham's name but was actually sent by Mr Ralston who had been nominated by Ms Walsh to assist management in relation to the claimant's absence. By letter dated 16 February 2019 (351) the claimant declined the offer to attend an early intervention meeting. Mr Ralston referred to the claimant having "*rejected the invitation"* to this meeting but we were satisfied that she was not under any obligation to attend and this was not regarded as unusual in the case of absence due to work related stress.

214. Mr Ralston wrote to the claimant on 26 February 2019 (352) asking her to attend a first absence management meeting on 7 March 2019. This was to be a meeting with Mr Crawshaw and Mr Ralston as the claimant had *"highlighted concerns in relation to the involvement of your line manager"* (ie Mrs Laurie). The claimant responded on 4 March 2019 (353) stating that her attendance was "*compromised"* because her representative Mr Prentice was absent due to work related stress. She did not attend on 7 March 2019.

215. Mr Ralston wrote to the claimant on 13 March 2019 (354-355) advising that she was to be referred to the respondent's occupational health advisors, People Asset Management ("PAM"). He said that when the respondent had a report, a long term absence meeting would be arranged. He enclosed a copy of the Employee Guide in relation to absence management which "*clarifies the acceptable method of contact during an absence"* and states that *"email is not sufficient".*

216. This reflected the fact that the claimant had been fulfilling her obligation to maintain contact with management by means of voicemail and email to Mr Crawshaw on every 7th day of absence. Because her absence commenced on a Monday, every 7th day of absence fell on a Sunday. The respondent's expectation was that in such circumstances the employee would telephone their line manager each Monday to provide an update. The claimant complied with the letter but not the spirit of the policy.

217. Mr Crawshaw called the claimant back on a number of occasions. He described these conversations as "*difficult and awkward".* In so finding we preferred this to the evidence of the claimant that Mr Crawshaw had called her only once, on 5 March 2019, to enquire ask if she would be attending the meeting scheduled for 7 March 2019. We noted that Mr Crawshaw provided some information as to the content of his conversations with the claimant which supported the view that there was more than one such conversation. We believed however that Mr Crawshaw had not persevered and that the conversation on 5 March 2019 was probably the last telephone contact.

218. An appointment with PAM was made for 27 March 2019. The claimant attended but, when advised that she needed to consent for PAM to be able to send a report to the respondent, she did not provide her consent. As a result the appointment did not go ahead. PAM sent an email to Mr Ralston on 27 March 2019 confirming this (357). The claimant wrote to Mr Gillespie on 27 March 2019 (358) stating that she viewed "*this"* (which we understood to mean the referral to PAM) as *"nothing more than further victimisation".* She observed that Mr Prentice, who was also absent due to work related stress, had not received the same instruction "*demonstrating that I have been singled out in this regard".*

219. The claimant submitted a request to the respondent under the Freedom of Information (Scotland) Act 2002 in which she sought information about how many of the respondent's Environmental Health employees had in the last 5 years been referred to Occupational Health within the first 5 weeks of their sickness absence. The respondent's reply on 10 April 2019 (500-502) stated "*Nil".* We accepted the evidence of Ms Walsh that the decision to refer the claimant to PAM was unrelated to her Employment Tribunal claim and was "*because we had an employee who wasn't engaging with us".* That was the respondent's perception based on (a) the claimant declining the early intervention meeting, (b) the claimant not attending the first absence management meeting and (c) the claimant's method of compliance with her obligation to maintain contact.

Absence management meetings

220. Mrs Ham wrote to the claimant on 1 April 2019 (359) advising her to attend a meeting with Mr Crawshaw and Mr Ralston on 5 April 2019. Mrs Ham's letter told the claimant that if she failed to attend without prior approval, her occupational sick pay would be withheld as from 5 April 2019.

221. The first absence management meeting took place on 5 April 2019 after the venue had been changed twice at the claimant's request. It was attended by Mr Crawshaw and Mr Ralston with the claimant being accompanied by Mr Prentice. A record of meeting form (25A-26A) was completed by Mr Ralston with some additions by the claimant. It was signed by Mr Crawshaw, Mr Ralston and the claimant. The expected date of return was "*Unknown".*

222. The claimant attributed her work related stress to "*ongoing discrimination, victimisation and bullying and harassment".* She accused the respondent of "*game playing"* regarding the venue of the meeting, an allegation which we did not consider to be well founded. We accepted Mr Ralston's evidence that it was "*completely normal to suggest meeting an absent employee at their work location".* There was a difference of opinion between the claimant and Mr Crawshaw as to whether or not the claimant was engaging in the process.

223. The second absence management meeting took place on 7 June 2019 with the same attendees. A record of meeting (27A-28A) was completed, again with some additions by the claimant, and signed off. The expected date of return section stated "*Not at present, will discuss with GP".* Mr Crawshaw indicated that the claimant could be referred to PAM if her position regarding consent had changed but the claimant responded that her position was unchanged. The claimant was issued with an HSE stress risk assessment form.

224. The third absence management meeting took place on 8 August 2019 with the same attendees. A record of meeting (29A-30A) was completed, once more with some additions by the claimant, and signed off. We were satisfied that this and the earlier record forms provided a reasonably accurate summary of what was discussed at the absence management meetings. The expected date of return section stated "*Will follow advice from GP though don't envisage at this stage, GP appt w/c 12/8/19".* The stress risk assessment form, completed jointly by the claimant and Mr Prentice, was returned (31A-33A).

225. The record of meeting form recorded that "*Options of redeployment, ill health retirement and termination explained".* We regarded it as normal that the possibility of dismissal on grounds of capability should feature in a discussion about long term absence. The form also recorded Mr Ralston asking the claimant "*does tribunal process have to run course before RTW?"* with the claimant replying "*think so, only process that can be trusted but up to GP".* The claimant criticised this as a leading question by Mr Ralston but we did not agree. In each of the meeting record forms Mr Ralston recorded the claimant as having "*raised concerns"* which we understood to include the matters of which she complained in case no 4123712/2018.

226. Mr Crawshaw wrote to the claimant on 16 August 2019 (531-532) confirming the matters discussed at the meeting on 8 August 2019. The claimant replied on 27 August 2019 (534-535) responding to a number of points in Mr Crawshaw's letter and questioning Mr Crawshaw's neutrality –

"*It has been apparent since your involvement, and validated from this meeting that you James, are not neutral in your opinion, given your comment on the Council's position during the said meeting. This concern has been stated*

repeatedly and yet continues to be ignored. However, this has recently been raised with the Chief Executive Officer."

Claimant complains about Mr Crawshaw

227. Shortly after an application for extension of full pay during sickness absence was declined (per Mrs Ham's letter to the claimant dated 5 August 2019 – 530) the claimant and Mr Prentice sent a joint letter dated 21 August 2019 (533) to Mrs O'Donnell, the respondent's Chief Executive Officer. This contained an appeal against the decision not to extend full pay and also stated –

"*A recent sickness absence meeting on 8th August 2019 further confirmed James Crawshaw's unsuitability for such meetings when he expressed a clear predetermined bias of opinion in regard to the current claims at the Employment Tribunal. This lack of impartiality is reminiscent of our claims to date which can be demonstrated throughout the grievance process and further highlights Management's unwillingness to provide objective evaluation and be open and transparent."*

228. Mrs Ham replied to the claimant on 4 September 2019 (536) and dealt with the criticism of Mr Crawshaw's suitability in these terms –

"*In relation to James Crawshaw, Assistant Manager Public Health (North East & North West), managing your current absence from work, I have sought advice from our legal department who confirmed that James Crawshaw is not named in your current Employment Tribunal claim. Given that he is not named and has not been involved in the Employment Tribunal proceedings, it was appropriate for Mr Crawshaw to manage your absence and he will continue to do so."*

229. The claimant responded to Mrs Ham's letter by writing again to Mrs O'Donnell on 12 September 2019 (537). She stated –

"*Mr Crawshaw has demonstrated his predilection* [sic] *to discrimination in relation to training/personal development and has expressed this clearly in written documentation. Mr George Gillespie has been made aware of this in writing a considerable period of time ago, however did not address these claims."*

and

"*Senior Management continually refuses to address concerns in regard to the suitability of James Crawshaw as the Manager for sickness absence meetings. As already stated in previous correspondence, Kenneth Prentice has highlighted these concerns in writing earlier this year. Comments/opinion made by James Crawshaw at the most recent sickness absence meeting further confirmed his predetermined bias towards both of our cases and not only substantiates our allegations but unfortunately adds to further stress and anxiety. It is important to note that James Crawshaw claims that he does not have full knowledge of our cases, and yet he felt more than confident to state a clear and biased opinion. We are aware of colleagues within Public Health who have either been relocated to another section and/or reassigned to another Line Manager outwith Public Health as a result of grievances that we understand involved James Crawshaw. Given the aforesaid it is our opinion that this further questions his suitability."*

230. Once again it was Mrs Ham who replied to the claimant on 3 October 2019 (542) –

"*James Crawshaw's role is to manage your absence in line with Council Policy with the aim of assisting you in achieving a return to work. As detailed above Mr Crawshaw has not been approached by legal in relation to the Employment Tribunal claim. On this basis I believe that James Crawshaw remains impartial in the absence management process and I refute that James Crawshaw has predetermined bias towards you in respect of the aforementioned claim. Mr Crawshaw has referenced his understanding of the Council's position in relation to the claim and not a personal opinion."*

231. We understood that Mrs Ham wrote to Mr Prentice on 3 October 2019 in similar terms and we had within the bundle Mr Prentice's reply, addressed to Mrs O'Donnell, dated 10 October 2019 (546-547). In this he alleged predetermined bias on the part of both Mr Crawshaw and Mr Hamilton and enclosed emails dating from March/April 2016 (549-553) in support of this allegation.

232. The issue in March/April 2016 involved preference being given to REHIS members over attendance at a REHIS event. Mr Prentice alleged that this discriminated against non-members. The line taken by Mr Crawshaw based on cost (non-members were charged more by REHIS) was supported by Mr Hamilton but overruled by Mr A Brown, Head of Sustainability & the Environment & Chief Officer for Resilient Glasgow. We did not consider that this indicated predetermined bias on the part of Mr Crawshaw and Mr Hamilton. Mr Crawshaw's explanation, relating to budgetary constraint, was entirely credible.

Claimant returns to work

233. On 11 November 2019 the claimant and Mr Prentice returned to work. They arrived at 231 George Street at 7.30am only to find that the Environmental Health team, including Public Health, had relocated to Eastgate, London Road. They left voicemail messages for Mr Crawshaw which were not returned because Mr Crawshaw had not yet arrived for work. Mr Prentice also emailed Mr Gillespie. According to the claimant the receptionist at 231 George Street spoke to Mrs Laurie. Mrs Laurie's evidence was that this did not happen but we preferred the evidence of the claimant who said that she overheard the conversation.

234. Ms Walsh and Ms Broadley, who remained based at 231 George Street, then met the claimant and Mr Prentice and took them to a meeting room. Thereafter the claimant and Mr Prentice collected their personal effects from their lockers and were taken by taxi to London Road. When clearing her locker the claimant found that a handwritten notice had been placed on the door (24A) stating "*On long term sick leave. Do not touch"* along with Mr Ralston's name and telephone extension. We accepted Mr Ralston's evidence that he had not placed the notice.

235. On arrival at London Road the claimant and Mr Prentice were met by Mr Hamilton and taken to a meeting room. Apart from a brief encounter with Mrs Laurie in a lift they had no interaction with operational mangers and were told in a conversation with Ms Broadley later in the day that they should go home.

236. It was unusual but not unheard of for an employee to return from long term sickness absence without making their line manager and/or absence manager aware of their intention to do so. In the claimant's case her return was not anticipated in light of the impression she had given at the absence management meeting on 8 August 2019 that the Employment Tribunal process would need to run its course before a return to work.

Office move

237. The relocation of the Environmental Health team to London Road took place on 16 September 2019. Mr Crawshaw and Mrs Laurie were both designated as a "*Move Champion"* and as such were responsible for managing the move of the PHT and dealing with employee questions. There were emails sent to staff in advance of, and following, the move between 26 March and 18 October 2019 (847-863). The recipients included the claimant but she was unaware of these because she did not access her work email account while she was absent. No communication about the office move was sent to the claimant at her home address.

238. Both Mr Crawshaw and Mr Ralston had the opportunity to tell the claimant about the office move during the absence management meetings, particularly the meeting on 8 August 2019 which was the same date as Public Health staff were invited to visit the new office. Mr Crawshaw said that he had not intentionally failed to tell the claimant about the office move. His understanding was that the claimant would not be returning to work until her Employment Tribunal claim was concluded. He made reference to this in his letter to the claimant of 16 August 2019 (531-532).

239. Both Mr Crawshaw and Mr Ralston accepted that the claimant should have been told about the office move. Mr Ralston said that this should ideally have been done by Mr Crawshaw during his weekly contact with the claimant. However, that was not going to happen as the claimant persisted with making contact by voicemail and email each Sunday and Mr Crawshaw did not persevere with calling back after 5 March 2019.

240. We agreed that the claimant should have been told. Mr Crawshaw should have done this during the meeting on 8 August 2019 or during his exchange of correspondence with the claimant after that meeting which continued until 22 October 2019 (557). We considered that the failure to tell the claimant about the office move was an oversight. It was not a deliberate act – if the respondent had wanted deliberately to keep the office move from the claimant she would not have been included in the emails referred to at paragraph 233 above.

Return to work interview

241. The respondent's Maximising Attendance Policy provides (at sections 6 and 17.5) for an informal return to work discussion. The claimant attended this with Ms Hamilton and Ms Walsh on 13 November 2019. The purpose was to have the claimant sign a self-certification form (of fitness to return to work). It was Ms Hamilton's decision to deal with this herself, in respect of both the claimant and Mr Prentice. She referred to the claimant and Mr Prentice as a "*challenge"* and her wish to "*ensure consistency".* Ms Hamilton regarded this as a decision which she, as a member of the senior management team, was entitled to make. There was no formal record of this meeting.

Attendance review meeting

242. The respondent's Maximising Attendance Policy also provides (at sections 7 and 17.5) for an attendance review meeting. This was arranged for 12 December 2019. The date was affected by Ms Walsh being on annual leave in late November/early December 2019. The claimant and Mr Prentice attended and met with Ms Hamilton and Ms Walsh. Prior to this meeting there was some correspondence between the claimant and Ms Hamilton (435-438) culminating in the claimant's email to Ms Hamilton of 11 December 2019 (439) posing a number of questions.

243. There were to be consecutive meetings for each of Mr Prentice and the claimant. Mr Prentice's meeting, with the claimant attending as his representative, commenced first. According to the claimant, following refusal of a request for the meeting to be audio recorded or for an independent notetaker, *"the attitude adopted at this meeting by Mrs Hamilton and Mrs Walsh was*

without question an attempt to frustrate and antagonise and to elicit an adverse response which would be used against either or both of us". According to Ms Walsh the mood of the meeting deteriorated following the refusal of audio recording/independent notetaker. Mr Prentice pointed at her and called Ms Hamilton a "*liar".* The meeting was abandoned and the claimant's attendance review meeting did not take place.

244. In the aftermath of the abandoned meeting (a) the claimant emailed Mrs O'Donnell on 12 December 2019 (448-449) to complain about Ms Hamilton and Ms Walsh and (b) Ms Hamilton wrote to the claimant on 16 December 2019 (570-571) enclosing a copy of the respondent's Code of Conduct for Employees and stating that "*Any future instances of such unacceptable behaviour will be the subject of formal investigation".*

Alleged protected acts

245. We found that the claimant did the following protected acts –

(i) On 7 November 2017 she said to Ms Dyer that she was beginning to think Mr Prescott had issues with women.

(ii) On 10 November 2017 in her email to Mr Walker she complained of bullying and harassment.

(iii) On 22 November 2017 in her email to Ms Dyer she referred to bullying and harassment.

(iv) On 29 November 2017 in her email to Mr Waddell she referred to sex discrimination and bullying and harassment.

(v) During the disciplinary hearing on 30 November 2017 she alleged sex discrimination.

(vi) On 30 January 2018 in her email to Mr Hamilton, copied to Mr Gillespie and Mrs O'Donnell, she referred to her allegations of sex discrimination and bullying and intimidation.

(vii) On 22 February 2018 at her meeting with Mr Waddell and Ms MacAskill she alleged bullying and difference of treatment because she was a woman.

(viii) On 13 April 2018 with her letter to Mr Waddell she produced the documentation which formed the basis of her complaints of sex discrimination and bullying and harassment.

(ix) On 17 May 2018 at her meeting with Mr Sawers she referred to her allegations of sex discrimination and bullying and harassment.

(x) On 25 July 2018 in her email to Mr Sawers she alleged "*further discrimination"* by Mr Prescott.

(xi) On 12 September 2018 in her emails to Councillors Balfour and Scally she referred to *"a matter of discrimination"* and *"serious allegations of sexual discrimination".*

Alleged detriment 1

246. This was the *"commencement and pursuit of disciplinary action"* against the claimant in October 2017. We have dealt with this at paragraphs 72-98 above.

Alleged detriment 2

247. This was stated to be the rejection of the claimant's application for the post of environmental health officer ("EHO"). We have dealt with this at paragraphs 166-175 above.

Alleged detriment 3

248. This was the claimant being given an "*additional workload"* in October 2017. We have dealt with this at paragraphs 37-38 above. We understood the claimant to argue during the hearing that Mr Prescott's subsequent decision to make the reallocation of Ward 23 permanent had been a detriment but (a) that was not the detriment about which the claimant was complaining in her ET1 and (b) Mr Prescott provided a reasonable explanation for this.

Alleged detriment 4

249. This was that Mr Sawers failed properly to investigate the claimant's complaint and/or unreasonably decided to reject it. We have dealt with this at paragraphs 124-159 above.

Alleged detriment 5

250. This was that the respondent knowingly permitted Mr Prescott to remain the claimant's leave approver between May and December 2018. We have dealt with this at paragraphs 176-183 above.

Alleged detriment 6

251. This was that the respondent knowingly permitted Mr Prescott to act as the claimant's team leader on 24 December 2018. We have dealt with this at paragraphs 184-189 above.

Alleged detriment 7

252. This was the stairwell incident on 10 January 2019 when the claimant alleged that Mr Prescott had confronted her. We have dealt with this at paragraphs 190-199 above.

Alleged detriment 8

253. This was that the relocation of the claimant's geographical area in January 2019 amounted to a detriment. We have dealt with this at paragraphs 200-204 above.

Alleged detriment 9

254. This was the referral of the claimant to occupational health on 19 March 2019. We have dealt with this at paragraphs 205-215 above.

Alleged detriment 10

255. This was that Mr Clarke failed properly to investigate the claimant's allegation against Mr Prescott in relation to the incident on 10 January 2019 and/or unreasonably decided to reject it. For the reason explained in paragraph 24 above, this aspect of her claim was withdrawn by the claimant.

Alleged detriment 11

256. This was whether the omission to inform the claimant of the change in office location was a deliberate omission by Mr Crawshaw because the claimant had done a protected act. We have dealt with this at paragraphs 233-236 above.

Alleged detriment 12

257. This was whether Mr Gillespie and Mrs O'Donnell insisted that Mr Crawshaw was a suitable person to conduct the claimant's absence management meetings. We have dealt with this at paragraphs 223-228 above.

Allegations of witness intimidation

258. In the course of the hearing the claimant made a number of allegations of intimidation of her witnesses. These related principally to Mr Prentice and so we will deal with him first.

259. At the preliminary hearing on 17 December 2019 the claimant disclosed that Mr Prentice was to be one of her witnesses at the final hearing. On 22 December 2019 officers from Police Scotland attended at Mr Prentice's home address, including an armed response unit. They removed guns belonging to Mr Prentice, his wife and one of his sons. They also removed ammunition and the relevant gun licences. Mr Prentice attended at a police station the following day. The guns, ammunition and licences were returned.

260. The sequence of events which led to the police involvement started with an email sent at 11.42 on 19 December 2019 (the "first email") to Mrs Ham and Ms B Robertson, a solicitor within the respondent's legal department. Ms Robertson spoke to Dr Meechan and forwarded the first email to him at 10.05 on 20 December 2019. Dr Meechan spoke to Mr J Dawson who was the liaison officer between the respondent and Police Scotland. Dr Meechan sent an email to Mr Dawson at 12.18 on 20 December 2019 containing Mr Prentice's name and address and his GP details. Mr Dawson forwarded this to DCI F Hutcheson at 12.32 on 20 December 2019.

261. The first email expressed concerns about Mr Prentice in terms of his gun ownership and his perceived demeanour at work. It would be fair to describe the terms of the first email as alarming but not indicative of any immediate danger.

262. The email from Mr Dawson to DCI Hutcheson referred to Mr Prentice as being "*presently on long-term sick leave in terms of mental wellbeing/health".* This

was incorrect as Mr Prentice had returned to work on 11 November 2019. Dr Meechan accepted responsibility for this, indicating that it was probably a mistaken assumption on his part which he had communicated to Mr Dawson.

263. The existence of the email chain commencing with the first email was disclosed to the Tribunal on 13 March 2019. At that time the participants were referred to as A, B, C, D, E and F. Mr Miller advised the Tribunal on 16 March 2020 that he anticipated providing the email chain in anonymised form. When the email chain was eventually provided, only the identities of the sender and recipients of the first email were redacted. Following a process which we describe below, the email chain was provided to us unredacted except that the identity of the sender of the first email remained redacted.

264. This reflected the terms of the redaction order referred to below. I issued an instruction that parties should be advised of the terms of the redaction order but regrettably that did not happen so that, at the start of the resumed hearing, they were unaware of what we had decided. We explained the terms of the redaction order and the email chain was produced (50A-53A). The claimant had concerns about the email chain and this led to the application for reconsideration which we deal with below.

265. We understood that there was a complaint made to Police Scotland about alleged intimidation of Mr Prentice as a witness in these proceedings. We ascertained in advance of the continued hearing that Police Scotland were taking no action in respect of this.

266. We found that the decision to refer the matter to Police Scotland was taken by Dr Meechan. We accepted Dr Meechan's evidence that he was not aware of the claimant's Employment Tribunal claim when the first email was forwarded to him and he decided to escalate the matter to Police Scotland via Mr Dawson. Dr Meechan had no recollection of any previous dealings with the claimant or Mr Prentice. We were satisfied that his decision was not taken with a view to intimidation of Mr Prentice as a witness for the claimant.

267. Ms Ham as the other recipient of the first email spoke with Ms Robertson and was told that the matter had been referred to the police. She reported this to

Mr Waddell. She indicated she might have had more than one conversation with Mr Waddell about this matter. She did not respond to the sender of the first email.

268. The claimant also alleged intimidation of Mr Beaton and Ms Arnott. In Mr Beaton's case there had allegedly been a threat of termination of employment at an absence management meeting on 19 December 2019. Given the view we expressed above (at paragraph 221) that we regarded it as normal that the possibility of dismissal on grounds of capability should feature in a discussion about long term absence, we saw no connection between this and disclosure that Mr Beaton was to be a witness for the claimant in these proceedings.

269. In Ms Arnott's case there had been an offer of a promoted role communicated by telephone on 9 March 2020. The background was that Ms Arnott had been interviewed in December 2019 for a position where food hygiene experience was desirable and had been unsuccessful. Subsequently, because two people were to be retiring, she was offered a position to "*backfill"* one of these posts. We understood that this was normal practice where there had been a recent competitive interview process and would be sanctioned by HR. We found nothing which connected the offer of promotion with her forthcoming attendance as a witness for the claimant.

Comments on evidence

270. It is not the function of the Tribunal to record all of the evidence presented to it and we have not attempted to do so. We have focussed on those parts of the evidence which we considered to have the closest bearing upon the issues which we had to decide. We have paid particular attention to the email correspondence as recollection of events, some of which took place more than three years ago, might be not be as precise as more recent events.

271. We felt that the claimant's evidence was given through the prism of her belief that she had been had been unfairly treated by Mr Prescott, then by Mrs Laurie, then by Ms Dyer, then by Mr Hamilton and thereafter by every officer of the respondent who had any involvement with her case.

272. Mr Prentice's evidence was unfailingly supportive of the claimant. He shared her perception of unfair treatment by management. The evidence of Mr Beaton and Ms Arnott added little when we came to deal with the issues we had to decide.

273. The respondent's witnesses all gave their evidence in a straightforward and credible manner. There were some lapses in recollection of events but given the passage of time since some of those events, that was to be expected and did not impact adversely on their overall credibility.

Tribunal's rulings on various matters

274. In the course of the continued hearing we had to decide a number of issues and we will record these here. In the case of the application for witness orders for Mr Dawson and DCI Hutcheson, we do so in terms which reflect the fact that we had still to hear evidence from Dr Meechan and Mrs Ham when we dealt with the matter.

Application for witness order – Mrs Ham

275. We dealt with this initially at the start of the continued hearing on 1 December 2020. The claimant had sought a witness order for Mrs Ham. We expressed our concern to the claimant that Mrs Ham's evidence might not be favourable towards her. We believed that this was something the claimant should reflect on and we indicated that we would revisit this the following day.

276. When we did so on 2 December 2020 the claimant maintained her application for a witness order. Mr Miller indicated that the respondent had established that Mrs Ham would attend voluntarily. In these circumstances we explained to the claimant that a witness order for Mrs Ham would not be required.

Application for witness orders – Mr J Dawson and DCI F Hutcheson

277. We understood when we dealt with this that Mr Dawson was the liaison officer seconded by Police Scotland to the respondent. He was the recipient of an email from Dr Meechan on 20 December 2019 (51A-52A). DCI Hutcheson was the recipient of an email from Mr Dawson on 20 December 2019 (50A-51A). The claimant submitted an application for witness orders for Mr Dawson and

DCI Hutcheson which we considered on 2 December 2020. She argued that there had been collusion between the respondent and Police Scotland.

278. We understood that the claimant was concerned that (a) Mr Dawson had misrepresented to DCI Hutcheson that Mr Prentice was *"presently on long-term sick leave in terms of mental health/wellbeing"* when in fact he had already returned to work on 11 November 2019 and (b) Mr Dawson had sought to influence the Police Scotland response by referring to their providing advice *"on the next steps, be that status quo, or warrant or a change in licence status".* We noted that in terms of his witness statement Dr Meechan was accepting responsibility for the error in relation to Mr Prentice's sick leave position as at 20 December 2019, and the claimant would be able to cross-examine him about this.

279. We took the view that the correct focus, in respect of the allegation of witness intimidation towards Mr Prentice, was on what the respondent had done. We understood that Dr Meechan was the last employee of the respondent to deal with the matter before it was passed to Police Scotland. Mrs Ham was also involved as one of the recipients of the redacted email dated 19 December 2019 (52A). Both she and Dr Meechan were to be giving evidence. If there had been an improper intention on the part of the respondent to intimidate Mr Prentice because he was to providing evidence as a witness for the claimant it would be found in the evidence of these witnesses, and not Mr Dawson or DCI Hutcheson. Accordingly, we refused the claimant's application.

280. In the course of Dr Meechan's evidence, it became apparent that our understanding of Mr Dawson's status at the time we refused the claimant's application for witness orders for him and DCI Hutcheson had been incorrect. He was an employee of the respondent and not of Police Scotland. In his liaison role he worked part-time for Police Scotland and there was a financial arrangement for partial reimbursement of his salary. On 10 December 2020 the claimant asked us to note this but did not revisit her application for a witness order in respect of Mr Dawson.

281. Notwithstanding that, we felt it was appropriate to review our decision to refuse a witness order in respect of Mr Dawson given that (a) our understanding of his

employment status when we dealt with the claimant's application was incorrect, (b) we had indicated that the focus was on what the respondent (ie officers of the respondent) had done and (c) Dr Meechan was not in fact the last employee of the respondent to deal with the matter before it reached Police Scotland; that had been Mr Dawson.

282. Having done so, and as stated above, we were satisfied that the decision to pass on the first email to Police Scotland was made by Dr Meechan. That was the key decision which resulted in the police visiting Mr Prentice's home on 22 December 2019.

283. The claimant was concerned about the language in Mr Dawson's email to DCI Hutcheson as quoted at paragraph 274 above. We noted this email followed on from a telephone conversation between Mr Dawson and DCI Hutcheson and we considered that the language we have quoted ("*on the next steps….")* was likely to reflect that conversation. We did not believe it should be read as an attempt to influence Police Scotland to act in a particular way. Accordingly, we came to the view that if the claimant had made a fresh application for a witness order in respect of Mr Dawson, we would have refused that application.

Application for reconsideration

284. At the start of proceedings on 4 December 2020 I dealt with an application by the claimant for reconsideration of the redaction order so as to require disclosure of the identity of the sender of the first email. I indicated that I was refusing this under Rule 72(1) of the Tribunal Rules on the basis that there was no reasonable prospect of the original decision being varied or revoked. Mr Miller pointed out that this was not the appropriate way to proceed as only a Judgment could be reconsidered.

285. The claimant also argued that the respondent had not complied with the redaction order as the email chain produced in response to the redaction order (50A-53A) was incomplete. This was a reference to some apparent anomalies within the email chain which Mr Prentice had highlighted during his evidence at the continued hearing. Mr Miller disputed that there had been any non-

compliance. The emails had already been produced and the only difference in the version at 50A-53A was in the extent of the redaction.

286. We retired to consider these matters and when the hearing resumed we accepted that Mr Miller had been correct in saying that reconsideration was not appropriate, and explained that we were treating the claimant's application for reconsideration as if it were an application under Rule 29 of the Tribunal Rules for a case management order varying or setting aside the redaction order. We considered that doing so was in accordance with the overriding objective. The claimant wanted the redaction order varied and her application would have been competent if brought under Rule 29.

287. We decided to refuse the claimant's application. We had held a judge and members meeting on 5 October 2020 after which we invited and received written submissions on the redaction issue. We held a further judge and members meeting on 23 November 2020 after which we made the redaction order. It was unfortunate that (a) our decision reflected in the redaction order had not been communicated to the parties in advance of the continued hearing as we had instructed and (b) the redaction order itself only became available to the parties on 3 December 2020. However, we took the view that we had already given the matter due consideration and would not come to a different view if we did so again.

288. In relation to the email chain, Mr Miller submitted that if an expanded version was required it should be produced only after Dr Meechan had given his evidence. In that way he would be able to deal with it "*blind"* rather than being primed about the issue. We decided that the respondent should provide forthwith an unedited version of the email chain and I issued an Order to that effect (but excepting (a) matters not relevant to these proceedings, (b) personal data of any third party and (c) anything which might disclose the identity of the sender of the first email). The provision of the version of the mail chain in documents 54A-60A was in compliance with this Order.

289. A supplementary matter was the extent to which the claimant was permitted to question the respondent's witnesses about the redacted emails. We explained to the claimant that it would not be appropriate for her to ask questions which

had the purpose or effect of disclosure of the identity of the sender of the first email. To do so would be an attempt to circumvent the redaction order.

Microphone issue

290. Before the hearing resumed on 4 December 2020 it was brought to our attention that the claimant had overheard a mobile phone conversation between Mr Grant and Ms Elliot in the retiring room because Mr Grant's microphone had not been muted. When we did resume I asked the claimant what she had overheard and she said that it had been in relation to Mr Prentice's ownership of guns, discussion of this within the office and whether it was a matter of general knowledge. She described it as *"a bit of a debate".* The claimant said that she had tried unsuccessfully to get Mr Grant's attention and had then contacted the clerk.

291. I was not in the retiring room during the overheard conversation. I apologised for what had happened, as did Mr Grant. There was a discussion around the availability of the recording of the proceedings which would include the overheard conversation. Mr Miller said that if there was anything which gave rise to "*colourable concerns"* to the claimant, she should say so.

292. We retired again to consider the matter. When we resumed, the claimant pointed out that the public (ie anyone participating via the virtual public gallery for a CVP hearing) would have heard the discussion about one of her witnesses. She indicated that she might wish to seek advice about the matter.

293. I explained that discussions of the Tribunal were private and the recording of the proceedings, to the extent that it included such discussions, would not be released unless some good reason was shown. If the claimant wanted disclosure of the relevant part of the recording it would be necessary for her to make an application setting out the grounds upon which disclosure was sought. The Tribunal would then deal with that application. No such application was made.

Submissions – claimant

294. The claimant provided her written submissions in advance of the final day of the hearing, conducted by CVP, on 23 December 2020. These are available within the case file. We refer only to a number of the points made by the claimant rather than attempt to summarise all of her submissions. We do so broadly in chronological order rather than in the order addressed within the claimant's submissions. We assure the claimant that we read through and considered her submissions before and indeed after the CVP hearing when deliberating over our decision.

295. The claimant alleged that there was historic predetermined bias on the part of Mr Crawshaw, Ms Dyer and Mr Hamilton in relation to her personal development and training. She argued that this influenced decisions in regard to promotion despite her qualifications and experience.

296. The claimant criticised Ms Dyer for failing to produce any additional evidence at the disciplinary hearing on 30 November 2017. She alleged that Ms Dyer had not conducted an impartial and thorough investigation.

297. The claimant questioned the timing of and motive for Mr Prescott's change of team in May 2018. The move had taken place while Mr Sawers' bullying and harassment investigation was ongoing. The motive, the claimant alleged, was to facilitate a favourable report by placing Mr Prescott in a team where there were more women.

298. The claimant was critical of Mr Sawers' investigation in a number of respects. She asserted that he had chosen to narrow the scope of his investigation. He had alleged that this was based on HR advice, but this had been contradicted by Mrs Ham. He had not disclosed the narrowed scope of his investigation until his summary report was produced. His choice of witnesses had been selective, focussing on female colleagues in Mr Prescott's new team. The claimant's allegations of discrimination and bullying and harassment against a number of managers had not been addressed.

299. The claimant referred to Mr Prescott continuing to be her leave approver after his change of team in May 2018. She argued that the conflicting explanations

about this cast doubt on the credibility of Mrs Laurie and Mr Hamilton. The claimant also referred to Mr Prescott being her acting Team Leader in December 2018. This, she contended, flew in the face of custom and practice that an EHO would carry out this role in the absence of the team leader.

300. The claimant argued that she was the only TO who suffered detriment at the time of the restructure in January/February 2019. She alleged that the revised structure had been published in October 2018 and the other TO moves described in evidence had come about only after she complained.

301. The claimant referred to Mr Crawshaw's failure to tell her about the office move. This had been contrary to the respondent's Maximising Attendance Policy and also the Health and Safety Management Standards. There had been a duty on Mr Crawshaw as an operational manager to keep staff advised of significant changes.

302. The claimant questioned Mr Crawshaw being deemed suitable to manage her absence up to the point of her return to work on 11 November 2019 but not thereafter. She noted that Ms Hamilton was brought in to manage her return to work interview and subsequent absence management meeting despite not being in her reporting line. She also referred to Ms Walsh replacing Mr Ralston and disputed that this was for continuity purposes.

303. The claimant was critical of aspects of Dr Meechan's evidence, particularly his failing to consider the possibility of malice or ill-intent on the part of the author of the email of 19 December 2019. She observed that when questioned about this, Dr Meechan had said that Ms Robertson (the recipient of the email along with Mrs Ham) was an experienced litigation officer and he took her word for it.

304. The claimant also referred to Ms Robertson in relation to the witness statement of Mr Prescott. She pointed out that Mr Prescott had been unable to recall addresses of properties he had visited with the claimant when preparing his witness statement in March 2020 and yet, when giving his evidence in December 2020, he had been able to recall three addresses. The claimant alleged that Mr Prescott had been given this information by Ms Robertson who had been present during the claimant's evidence in March 2020.

305. The claimant questioned the conduct of the Tribunal in a number of ways. She criticised the decision to allow the author of the email of 19 December 2019 to remain anonymous. She asserted that the Tribunal had allowed the respondent *"protection and leeway"* in relation to the allegation of witness intimidation towards Mr Prentice. She criticised the fact that Mr Prentice had remained under oath between March and December 2020. She criticised the manner in which the respondent had complied with the Tribunal's Order of 7 December 202 in regard to the email chain of 19-20 December 2019.

306. The claimant argued that there had been conduct of the respondent extending over a period for the purpose of section 123(3)(a) EqA. She pointed out that different types of discriminatory conduct can potentially be part of one continuing act of discrimination. The incidents were linked to one another and there was, she submitted, evidence of an ongoing situation.

307. The claimant referred to the Equality Act Code of Practice which we understood to be a reference to the Equality and Human Rights Commission: Code of Practice on Employment (2011), and specifically to the explanation of *"detriment"* which is found at paragraph 9.8 – "*anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage".* The claimant also referred to the ACAS Code of Practice which we understood to be a reference to the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015).

308. The claimant highlighted that the process of pursuing her workplace complaints had had a detrimental effect on her mental health and wellbeing.

Submissions – respondent

309. Mr Miller also provided written submissions in advance of the final day of the hearing and these too are available within the case file. We approach these in the same way as those of the claimant, ie by reference to a number of points rather than attempting to cover the submissions in full. Mr Miller structured his submissions around the list of issues and we take the same approach here. We give the same assurance about having read through and considered these submissions.

310. Addressing the legal issues, Mr Miller reminded us of what Mummery LJ said in ***Madarassy v Nomura International plc [2007] IRLR 246*** –

"*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

311. Mr Miller argued that there had been three protected acts, namely the claimant's allegations of discrimination in –

- Her email to Mr Waddell of 29 November 2017 (283)
- Her email to Mr Gillespie of 30 January 2018 (745)
- Her email to Mr Sawers of 18 May 2018 (163)

312. Mr Miller acknowledged that the threshold for treatment to amount to detriment is low, referring to Lord Hope at paragraph 35 in ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285*** –

"*This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment"."*

313. Mr Miller argued that the detriment alleged by the claimant in relation to Mr Prescott continuing to be the claimant's leave approver, his being the claimant's acting team leader on 24 December 2018 and the referral to Occupational Health failed to meet even this threshold.

314. Under reference to ***Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 245*** Mr Miller reminded us that the test was whether the treatment was by reason of the protected act(s). It was not enough merely to consider whether the treatment would not have happened *"but for"* the protected act(s). The claimant had to prove a causal nexus between the fact of doing something by reference to the Act and the imposition of any detriment – ***Aziz v Trinity Street Taxis Ltd [1988] IRLR 204***.

315. Mr Miller argued that the direct sex discrimination case pled by the claimant was that Mr Prescott *"had previously allowed male employees to be accompanied on similar visits to properties elsewhere in the Glasgow area".* The visit made by Mr Prescott with Mr Prentice on 19 October 2017 was not *"previous"* to the alleged act of sex discrimination.

316. In relation to the alleged acts of victimisation, Mr Miller set out the respondent's position in tabular form within his written submissions and we do not propose to repeat what is said there, save for two points –

- In respect of Mr Sawers' investigation, Mr Miller reminded us that the claimant had not put to Mr Sawers that he was in fact retaliating against her for having raised her complaints in the first place. This, he argued, left "*a vacuum which cannot be filled".*

- Mr Miller observed that the claimant seemed to run out of questions when she had the opportunity to cross-examine Dr Meechan and "*was unable to muster any challenge to the evidence given by Dr Meechan to the effect that he had passed the anonymous complaint to his colleague John Dawson for further reporting to the Police in good faith".*

317. Mr Miller was critical of the claimant and Mr Prentice, asserting that they "*inhabit a world where nothing is accepted as true unless it has been recorded (or "quantified") and where everything else which is not to their liking can be dismissed as "rhetoric"."*

Closing statements

318. We invited the claimant and Mr Miller to address us by way of response to each other's written submissions and they did so during the CVP hearing on 23 December 2020.

319. The claimant disputed Mr Miller's assertion that she had done only three protected acts. She referred to her meeting with Ms Dyer on 7 November 2017 and subsequent email to Ms Dyer, her disciplinary hearing with Mr Hamilton on 30 November 2017, her email to Mr Walker on 10 November 2017 and her meeting with Mr Sawers on 17 May 2018.

320. The claimant alleged that Mr Sawers had failed both in terms of the timescale of his investigation and in the substance of it. She had told him the whole story at the assessment stage, the meeting on 17 May 2018, yet he had failed to tell her the scope of his investigation. His summary report missed out a large portion of her complaint.

321. The claimant criticised the time delay during which Mr Prescott remained her leave approver. She had told Mrs Laurie about this in May 2018 but Mrs Laurie had failed to contact HR. Detriment did not have to be economic.

322. In relation to the office move, the claimant argued that the respondent had not taken responsibility to notify her. They had put the blame on her, yet there had been no response to the weekly emails she sent Mr Crawshaw.

323. Regardless of whether Mr Crawshaw had been aware of her Tribunal claim, the claimant argued that Mr Gillespie and Mrs O'Donnell had been aware of it. It had been their conscious decision to have Mr Crawshaw manage her absence.

324. The claimant agreed with the statement in Mr Miller's written submissions that the "*mutual term of trust and confidence had been irreparably breached".* She said that after she had been put through the disciplinary process *"mutual trust was shattered".*

325. The claimant said that throughout their witness statements, the respondent's witnesses had attempted to portray herself and Mr Prentice as *"abrasive"* and yet no evidence had been produced. She described the reference in Mr Miller's written submission to "*paranoia"* as insulting.

326. Mr Miller invited us to reject the claimant's allegation that Ms Robertson had acted in any way improperly with regard to Mr Prescott's recollection of addresses he had visited with the claimant. He reminded us that Mr Prescott had said that he had been thinking about this "*constantly".*

327. In relation to the restructure where the claimant alleged she had been "*singled out"*, Mr Miller pointed out that the claimant had not put anything to Mrs Laurie to that effect, ie that she had been singled out for detrimental treatment.

328. Mr Miller alleged that the claimant had shown defiance to the Tribunal. She stated in her written submissions that Mr Dawson should have given evidence despite the Tribunal refusing her application for a witness order. She persisted in her allegation of *"clear collusion"* between the respondent and Police Scotland despite being told by the Tribunal that there was *"not a shred of evidence".* She accused the Tribunal of preventing full disclosure of the 19-20 December 2019 email chain. Such defiance was bound to lead to conflict, whether with the Tribunal or the claimant's managers.

329. Mr Miller argued that there had been no detriment to the claimant in Mr Sawers' decision to focus his investigation on Mr Prescott, rather than Mrs Laurie, Ms Dyer and Mr Hamilton. He had started with Mr Prescott and the course of his investigation was determined by the conclusion he reached – that Mr Prescott had done nothing wrong. The claimant could have appealed but did not do so.

330. The claimant responded on this point, arguing that she had appealed to Mr Gillespie and Mrs O'Donnell. She accepted that this was not within the Bullying and Harassment framework but argued that it had been the respondent who decided to use that policy.

331. When asked by the Tribunal what desired outcome she would have stated if she had completed the respondent's bullying and harassment form, the claimant said that it was "*not for me to say what outcome I wanted".*

Discussion and disposal

332. We will deal with matters by following the list of issues but before doing so, we refer to some further provisions of the EqA which are relevant.

333. Section 23(1) EqA (**Comparison by reference to circumstances**) provides as follows –

"*On a comparison of cases for the purposes of section 13….there must be no material difference between the circumstances relating to each case."*

334. Section 120 EqA (**Jurisdiction**) confers jurisdiction on the Employment Tribunal to deal with a contravention of Part 5 (**Work**). Part 5 includes section

39 EqA (**Employees and applicants**) in terms of which an employer must not discriminate against or victimise an employee.

335. Section 123 EqA (**Time limits**)provides as follows –

"*(1) Subject to sections 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of –*

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2)….

(3) For the purposes of this section –

(a) conduct extending over a period is to be treated as done at the end of the period…."

336. Turning to the list of issues, the first of these relates to the claim of direct discrimination brought under section 13 EqA –

1.1 Was the claimant treated less favourably than her colleagues, John Beaton and Kenneth Prentice, were or would have been when asked to visit the property in Bearsden Road, Glasgow on 10 October 2017?

337. The answer to this is found in paragraphs 70-71 above and in section 23 EqA. On a comparison of cases for the purposes of section 13 EqA there must be no material difference between the circumstances relating to each case. We found that there were significant differences, as recorded in those paragraphs. It follows that the claimant was not treated less favourably than her chosen comparators under section 13 EqA because the circumstances of their treatment were materially different from the circumstances of her own treatment. Accordingly, we answer this question in the negative and the direct discrimination claim fails.

338. It follows that section 136 EqA (**Burden of proof**) is not engaged. Even if, in terms of section 136(2), we had found facts from which we could decide, in the

absence of any other explanation, that the respondent had contravened section 13 EqA, section 136(3) provides that subsection (2) does not apply if the employer shows that it did not contravene the provision. That was the position here.

339. The next issue is expressed as follows –

1.2 If so, was the claimant's sex the reason or part of the reason for that treatment?

Our decision on the first issue renders this question academic.

340. The next issue is –

2 Did the claimant do a protected act/s prior to raising these Employment Tribunal proceedings and, if so, what and when?

We answer this question in the affirmative. The claimant's protected acts are set out in paragraph 241 above.

341. The next issue is –

3 Was the claimant given an "additional workload" in October 2017 and, if so, did that amount to a detriment?

342. The answer to this is found in paragraph 39 above. The claimant was given an additional workload when responsibility for ward 23 was transferred from Mr Banks to her (and Mr Prentice). That was arguably a detriment. We say "arguably" because the only evidence we had of the claimant's actual workload was contained in the statistics provided by Mr Prescott to Mr Sawers in July 2018 (224). These showed that the claimant's workload was more or less identical to that of Mr Banks in 2017 and in the first 6 months of 2018. We did not have statistics for the claimant's workload before and after the reallocation of ward 23.

343. In terms of section 27 EqA, victimisation occurs when A subjects B to a detriment because B does a protected act. In paragraph 38 above we have noted that the reallocation of ward 23 occurred no later than 3 October 2017. In paragraph 241 above we have recorded that the claimant's first protected act

took place on 7 November 2017. It follows that the detriment, if any, could not be "*because"* of a protected act since the detriment occurred before the earliest protected act. We therefore answer this question in the negative.

344. In the course of the hearing the claimant sought to change her position to argue that it had been Mr Prescott's decision to make the temporary reallocation of ward 23 permanent which had been a detriment. However, this was not the issue which formed part of the agreed list. If it had been, or if the claimant had applied to amend to this effect and we had allowed such an application, we would have decided that Mr Prescott's said decision did not amount to a detriment. Mr Prescott's explanation (see paragraph 39 above) was plausible and credible.

345. The next issue is –

4 Did Stephen Sawers fail properly to investigate the claimant's complaint and/or did he unreasonably decide to reject it, and if so did that amount to a detriment?

346. Our findings in fact in respect of Mr Sawers' investigation and its outcome are set out at paragraphs 124-159 above. We have made brief comments about the adequacy of the investigation at paragraph 159 above. We will expand on those comments here.

347. Mr Sawers' investigation was conducted under the respondent's Bullying and Harassment Policy (361-368). This contains a formal procedure (366-367) which contemplates that the employee will complete a Harassment Complaint Form. The form is clearly not mandatory as Mr Sawers was able to deal with the claimant's complaint without it.

348. The first stage in the investigation process involves an assessment of the complaint by the investigator –

"*Initially a service based investigator will independently and impartially review the information provided. They will determine if the behaviours fall under the definitions of bullying and harassment and decide if an investigation is required.*

If they decide that the complaint doesn't fall under the definitions they will refer it back to service HR or management."

349. The references to "*a service based investigator"* and referral of the complaint back "*to service HR or management"* raised a doubt in our minds as to whether the investigator should have come from within LES. However, no point was taken about this and none of the witnesses expressed any concern about Mr Sawers coming from outwith LES. Mr Sawers himself said that *"it is very much recommended that the investigators are not within the same service as the complainant".* We see the sense in that but perhaps the policy should be updated to reflect it.

350. We have commented at paragraph 131 above about the *"disconnect"* between Mr Sawers' purpose and the claimant's perception of the meeting on 17 May 2018. We understood that the initial meeting between the investigator and the complainant was intended to be an independent and impartial review of the complaint. It is perhaps inevitable that this may involve a degree of challenge to any element of the complaint which does not appear to the investigator to fit the definitions of bullying and/or harassment; hence the claimant's view that she was being challenged to justify her complaint.

351. Mr Sawers' evidence was that, having met with the claimant on 17 May 2018 and with the benefit of HR advice, he decided to focus on the claimant's allegations against Mr Prescott. Clearly that is what he did. What he did not do was to tell the claimant that the other parts of her complaint had been judged to fall outwith the scope of his investigation. Indeed, he gave exactly the opposite impression.

352. In his email to the claimant sent at 09.32 on 30 May 2018 (618-619) Mr Sawers said –

"*Given the level of dissatisfaction on your part and the evidence presented to me I feel it merits a full investigation…"*

353. In his email to the claimant sent at 13.49 on 30 May 2018 (616-617) Mr Sawers said –

"*….there will be additional questions that I would like to ask so that I can fully understand and make preparations to meet with the respondents in this case."*

"I now conclude that to be fair to all parties it is now apparent that a full investigation under the bullying and harassment framework is required. This will mean that I will also meet with the respondents to your complaint…."

"The purpose of the meeting and subsequent meetings with the respondents is…."

354. In his email to the claimant of 31 May 2018 (615-616) Mr Sawers said –

"*The people accused and witnesses are also met."*

355. Mr Sawers' references to "*a full investigation", "respondents"* (plural) and *"all parties"* (not "*both parties"*) would have led any observer to believe that all of the allegations made by the claimant against Mr Prescott, Mrs Laurie, Ms Dyer and Mr Hamilton were to be investigated. The claimant was misled as to the scope of Mr Sawers' investigation.

356. Having said that, Mr Sawers was entitled in making his initial assessment of the claimant's complaint to decide that all or part of that complaint should not be investigated under the Bullying and Harassment Policy. He dealt with this in his Summary Investigation Report (at 204) in these terms (after referring to the meeting on 17 May 2018) –

"*Following this meeting and based on the written submissions provided by Maureen I believed that there was a need to progress to an investigation under the B&H Policy. This was in relation to Maureen's claims of sexual discrimination/lack of support by James Prescott when it was alleged that he treated her differently to her colleagues by refusing to attend a visit with her when attending with other colleagues and that he allocated an uneven distribution of work to her.*

I concluded that an employer has the right to investigate any misconduct claims and in Maureen's case she advises that no disciplinary outcome was taken. It was therefore difficult to see any matters that fall within the B&H Policy or that had not already been taken into account as part of the disciplinary process. I

viewed that there was no case to investigate against the other officers in this respect. Nor was there a case to investigate to lack of support from William Hamilton."

357. However, we do not understand why Mr Sawers did not simply tell the claimant that he had decided to take no further action in respect of her complaints against Mrs Laurie, Ms Dyer and Mr Hamilton. We do not understand why he did not refer those parts of the complaint, which he decided not to investigate, back to "*service HR or management"* as the Bullying and Harassment Policy required. We regarded the claimant's tone in her email exchanges with Mr Sawers' after the meeting on 17 May 2018 as "*very combative"* (see paragraph 141 above) but that was not an excuse for failing to make clear the scope of the investigation.

358. We had the benefit of being able to assess the reasonableness of Mr Sawers' decision to investigate the claimant's complaint only against Mr Prescott with the wisdom of hindsight, having heard a considerable amount of evidence about the events in question. As we said in paragraph 159 above, we could understand why Mr Sawers might have come to the view that the roles played by Mrs Laurie and Ms Dyer did not constitute bullying and harassment but we would have preferred if his rationale had been explained to us, and not just ascribed to advice from HR.

359. We reviewed the email correspondence between the claimant and Mrs Laurie between 11 and 17 October 2017. Our view is that Mrs Laurie was simply doing her job as line manager of the claimant and Mr Prescott. She agreed with Mr Prescott rather than the claimant. Her verbal and written instructions to the claimant reflected that. We saw nothing which could reasonably be considered to constitute bullying and/or harassment.

360. In Ms Dyer's case, she was tasked by Mr Hamilton with carrying out an investigation and did so. She spoke with Mr Prescott, Mrs Laurie and the claimant who were the relevant parties in relation to the matter under investigation. She was perhaps guilty of using the words "*failed"* and "*refused"* as if they were interchangeable but that ultimately operated in the claimant's favour. Had the allegation at the disciplinary hearing on 30 November 2017

been that the claimant "*failed*" to carry out a reasonable instruction, the outcome might have been less favourable to her.

361. Although the claimant and Mr Prentice accused Ms Dyer of being "*hostile*" at their meeting on 7 November 2017, we believed that Ms Dyer's description of the meeting as "*fraught"* reflected how the claimant and Mr Prentice had behaved. The evidence disclosed a pattern of behaviour at meetings attended by the claimant and Mr Prentice with officers of the respondent. For example, Mr Hamilton spoke of the disciplinary hearing on 30 November 2017 in these terms –

"*The meeting was tense and Kenny and Maureen were both unpleasant and aggressive. The meeting was unpleasant and there was real anger towards Jane from Maureen and Kenny."*

362. Mr Crawshaw described the absence management meetings as *"difficult"* and described the claimant and Mr Prentice as *"condescending, disrespectful and quite rude"*. The claimant appeared to take the line that because this had not been recorded in the records of the meetings nor followed up in writing, it had not happened. Suffice it to say that this was not a view we shared.

363. As with Mrs Laurie, we saw nothing in the conduct of Ms Dyer which could reasonably be considered to constitute bullying and/or harassment.

364. Turning to the claimant's allegations against Mr Hamilton, we noted that he decided that there should be a disciplinary investigation before the claimant's first protected act on 7 November 2017. The claimant alleged that Mr Hamilton failed to speak to her about her "*allegations of lack of support/sexual discrimination"* but she made no such allegations when she emailed Mr Hamilton on 18 October 2017.

365. We believed that Mr Hamilton had declined to discuss the claimant's allegations against Mr Prescott at the disciplinary hearing on 30 November 2017 using the word "*prerogative"* which was an unfortunate choice of language. However it was not unreasonable as Ms Dyer's investigation report (at 81-82) disclosed that both Mr Prescott and Mrs Laurie has asked the claimant to visit the Bearsden Road property, and the focus of the hearing was on that issue. Mr

Hamilton dealt with the disciplinary allegation in a way that was favourable to the claimant, by distinguishing between *"failed"* and "*refused".*

366. The claimant's allegations that there had been a lack of support from Mr Hamilton were either unfounded (so far as based on the email of 18 October 2017), irrelevant (so far as relating to Mr Prentice), petty (so far as relating to the choice of Ms Dyer to investigate) or difficult to understand (the evidence supporting the allegation of lack of support in personal development and training was actually an email from Mr Hamilton congratulating the claimant on her award from REHIS). Our view was that it had not been unreasonable of Mr Sawers to decide that the claimant's complaints about Mr Hamilton should not be investigated.

367. Returning to the relevant issue, our conclusion was that Mr Sawers did not fail properly to investigate the claimant's complaint. His investigation of the complaint so far as relating to Mr Prescott was adequate. He might have spoken with other members of Mr Prescott's team in PHT (ie before he moved to EIT) but we considered that he (Mr Sawers) had a measure of discretion in how he approached the investigation. His investigation was not rendered improper or inadequate simply because he had not spoken with everyone to whom the claimant might have wished him to speak.

368. We also concluded that Mr Sawers had not unreasonably rejected those parts of the claimant's complaint which he chose not to investigate. Viewed objectively, there were valid reasons for treating the allegations against Mrs Laurie, Ms Dyer and Mr Hamilton as falling outwith the definitions of bullying and harassment. That led us to find that there had not been a detriment to the claimant in respect of the issue we had to decide.

369. However, and before moving to the next issue, we hope we have made it clear that we were less than impressed with some aspects of how the bullying and harassment investigation was conducted. If only part of a bullying and harassment complaint is to be investigated, the complainant should be advised of that and told why. Communication with the complainant should not be misleading as to the extent of the investigation. We were however satisfied that these shortcomings in the investigation process were not because of any

protected act by the claimant. They appeared to be the result of Mr Sawers following advice from HR.

370. The next issue is –

5 Did the respondent knowingly permit James Prescott to remain the claimant's leave approver between May and December 2018 and, if so, did that amount to a detriment?

371. Our findings in fact are at paragraphs 176-183 above. We agreed with the response which Mr Walker gave to the claimant in his email of 12 November 2018 (273-274). There had been an administrative delay in changing the claimant's leave approver following Mr Prescott's change of team in May 2018. This was unfortunate, and there had been some confusion as to where responsibility lay for actioning the change of leave approver, but this had not been done to bully or intimidate the claimant. The respondent had not "*knowingly permitted"* Mr Prescott to remain the claimant's leave approver. There was no suggestion that any leave request made by the claimant had not been dealt with, or had been dealt with unreasonably. There was no detriment to the claimant.

372. We pause to observe that it is a pity the claimant did not take up Mr Walker's offer to meet informally "*to discuss how we can move forward and improve working relations for the benefit of yourself and the Service".* We return to this below.

373. The next issue is –

6 Did the respondent knowingly permit James Prescott to act as the claimant's team leader on 24 December 2018 and, if so, did that amount to a detriment?

374. Our findings in fact are at paragraphs 184-189 above. We believed that the arrangement whereby Mr Prescott would de facto be the claimant's team leader on 24 December 2018 was a routine administrative matter. Given that Mr Prescott had previously been a team leader in the PHT and was available to work on 244 December 2018, it was a reasonable arrangement. When the

claimant raised a concern, Mrs Laurie acted on it. Again, there was no detriment.

375. The next issue is –

7 Did James Prescott confront the claimant on the stairwell on 10 January 2019 and, if so, did that amount to a detriment?

376. Our findings in fact are at paragraphs 190-199 above. Mr Prescott denied confronting the claimant. Mr Clarke's investigation concluded, in effect, that he had not done so. We found that was a conclusion Mr Clarke was entitled to reach. The claimant did not challenge Mr Prescott about this in cross examination. We accepted Mr Prescott's evidence that he did not *"take a confrontational stance"* with the claimant. Again, there was no detriment.

377. The next issue is –

8 Did the relocation of the claimant's geographical area amount to a detriment?

378. Our findings in fact are at paragraphs 200-204. The change to the claimant's geographical area was part of a restructure. A number of technical officers were moved. The evidence of Mrs Laurie, Mr Hamilton, Ms Arnott and Mr Beaton confirmed this. The claimant was not, as she alleged "*singled out".* It was not credible that the other moves were the result of the claimant complaining to Mr Gillespie on 14 January 2019. There was no detriment.

379. The next issue is –

9 Did the referral of the claimant to Occupational Health on 19 March 2019 amount to a detriment?

380. Our findings in fact are at paragraphs 205-215 above. While the claimant (a) had been entitled to decline the invitation to an early intervention meeting to be held on 19 February 2019, (b) had a valid reason for not attending the absence management meeting scheduled for 7 March 2019 and (c) was complying with the letter of the Maximising Attendance Policy by contacting Mr Crawshaw each

Sunday, the respondent's perception as articulated by Ms Walsh – "*we had an employee who wasn't engaging with us"* – was understandable.

381. By 13 March 2019 the claimant had been absent for more than four weeks with work related stress and the respondent had made no progress in terms of managing her absence. We noted the response to the claimant's Freedom of Information request confirming that, in the previous five years, no other employee of Environmental Health had been referred to Occupational Health within the first five weeks of sickness absence. We were not persuaded that this meant the referral of the claimant was a detriment.

382. We had no information about whether other Environmental Health employees who had been on long term sickness absence in the previous five years had engaged with the respondent to a greater extent than the claimant had done within the first five weeks of absence. However, we found that the reason for the referral of the claimant to Occupational Health was the respondent's perception that she was not engaging with their absence management processes. The referral was not connected with any protected act and did not amount to a detriment.

383. The next issue relates to Mr Clarke's investigation. As stated above (see paragraph 24), this was withdrawn by the claimant and so we say no more about it.

384. The next issue is –

11 Did the respondent subject the claimant to all or any of the following detriments because she did a protected act?

11.1 ….the commencement and pursuit of disciplinary action against her in October 2017.

385. Our findings in fact are at paragraphs 59-61 and 72-98 above. The decision to initiate a disciplinary investigation into the claimant's alleged refusal to carry out a reasonable instruction was taken by Mr Hamilton (see paragraph 61). When Mr Hamilton took that decision he had spoken to Mrs Laurie who had expressed

her view that the claimant had refused to follow a reasonable instruction from Mr Prescott to attend at Bearsden Road.

386. Mr Hamilton had also received the claimant's email of 18 October 2017 (127) forwarding her email exchange with Mr Prescott and Mrs Laurie (127-132). We have quoted extensively from that email exchange above (see paragraphs 49-57). We found that what the claimant was complaining about at the time Mr Hamilton took the decision to initiate disciplinary action was not any alleged discriminatory conduct by Mr Prescott but –

- The way in which Mr Prescott had decided the Bearsden Road complaint should be investigated – the claimant did not consider this was the correct way to investigate a dirty house complaint and felt that the complaint was being "*trivialised".*

- The fact that she as *"a junior member of staff"* was being asked to *"become embroiled in an existing, controversial complaint"* and being asked to visit "*unsupported without a Senior Officer".*

387. Indeed, when the claimant emailed Mrs Laurie on 17 October 2017 (127-128) she alleged that Mr Prescott was "*avoiding visiting the property at all costs"* and that he did not "*have the same reluctance with attending joint visits to investigate routine public health inspections with other Officers".* When this was forwarded to Mr Hamilton by the claimant on 18 October 2017, there was nothing to indicate to Mr Hamilton that there was an allegation of discrimination against Mr Prescott.

388. The evidence did not disclose exactly when Mr Hamilton decided to start a disciplinary investigation but it was not before 18 October 2017 when the claimant forwarded emails to him (127-132) and obviously not after Ms Dyer's investigation meeting with Mr Prescott on 1 November 2019 (89-90). Mr Hamilton's decision therefore occurred before the claimant's earliest protected act on 7 November 2017, during her investigation meeting with Ms Dyer. Accordingly, the commencement of disciplinary action against the claimant could not amount to a detriment.

389. When Mr Hamilton convened the disciplinary hearing on 30 November 2017, the only allegation of discriminatory conduct by Mr Prescott in Ms Dyer's investigation report (79-104) was in the note of her interview with the claimant on 7 November 2017 (see paragraph 78 above). It was clear from Mr Hamilton's handwritten notes taken at the disciplinary hearing (105-106) that the claimant had alleged discrimination by Mr Prescott during the hearing, which we have found to be a protected act.

390. Mr Hamilton found that the claimant had failed, but not refused, to carry out the instruction to visit Bearsden Road. In our view that was a reasonable conclusion and was factually correct. Mr Hamilton imposed no disciplinary sanction on the claimant. There was therefore no detriment to the claimant in the disciplinary outcome.

391. In finding that the first protected act occurred on 7 November 2017 we are disagreeing with Mr Miller's submission that the earliest act was on 29 November 2017 when the claimant emailed Mr Waddell alleging sex discrimination and bullying and harassment. There was some force in Mr Miller's argument that a mere expression of opinion – "*I'm beginning to think that Jim Prescott has issues with women"* – could not amount to a protected act. However, we considered that the context needed to be considered. In the course of her meeting with Ms Dyer the claimant had already alleged that the purpose of her meeting with Mrs Laurie on 18 October 2017 was to advise about the disciplinary procedure "*and I thought this was bullying and harassment".* Even if we are wrong in regarding the first quoted passage as a protected act, we believe the second quoted passage (when read with the first) comes within section 27(2)(d) EqA as an allegation of contravention of EqA.

392. If we are wrong about the date of the first protected act, we still do not agree with Mr Miller that it occurred on 29 November 2017. As recorded in paragraph 100 above, the claimant alleged "*bullying and harassment"* in her email to Mr Walker of 10 November 2017. She also alleged "*bullying and harassment"* in her email to Ms Dyer of 22 November 2017. These were protected acts.

393. We did not believe that any part of the disciplinary process could fairly be described as a detriment to the claimant. She was instructed to visit the

Bearsden Road property by both Mr Prescott and Mrs Laurie. Both were entitled to give her that instruction. It was a reasonable instruction. Notwithstanding her misgivings, the claimant should have complied. To fail to comply with a reasonable instruction is to invite disciplinary consequences.

394. The disciplinary process related only to the alleged refusal by the claimant to comply with the instruction to attend at Bearsden Road. That was the focus of Ms Dyer's investigation and of Mr Hamilton's disciplinary hearing. It was evident that the claimant wanted to broaden the scope to include her own allegations of bullying and harassment but (a) that was outside Ms Dyer's remit and (b) Mr Hamilton declined to engage with this. His expression that this was his "*prerogative"* was perhaps an unfortunate choice of language but, in our view, it was correct. The respondent had a Bullying and Harassment Policy, separate from its Discipline and Appeals Procedure, which was available to the claimant.

395. In any event, the outcome of the disciplinary process, far from being a detriment to the claimant, was generous to her. Mr Hamilton could have concluded that, having been asked to do so by both Mr Prescott on 10 October 2017 and by Mrs Laurie on 13 October 2017 (see paragraphs 48 and 54 above), the claimant's failure to visit the Bearsden Road property amounted to a refusal. If the disciplinary allegation had been expressed in terms of *"failure"* rather than "*refusal"*, the outcome might have been less favourable to the claimant. Her repeated assertion during the hearing that she had been "*exonerated"* was not a view we shared. She was fortunate to escape disciplinary sanction. She suffered no detriment.

11.2 The rejection of her application for the post of Environmental Health Officer.

396. Our findings in fact are at paragraphs 166-175 above. The evidence from Ms Dyer and Miss McCoull was consistent and credible. The claimant came 9th out of 15 candidates. The standard was high. Lack of recent food hygiene experience counted against her. On another day, against different opposition, she might have fared better. The decision making process was reviewed by Ms Hamilton and found to be correct.

397. We found nothing untoward in Ms Dyer participating in the interview and selection process. She was a manager within the relevant department. There was no evidence that she had in any way been influenced by having previously conducted a disciplinary investigation into the claimant's conduct. There was no link to any protected act and no detriment to the claimant.

11.3 "additional workload"

398. Our decision on this point is recorded at paragraph 339 above. We found no detriment.

11.4 Mr Sawers' investigation

399. We have dealt with this matter in some detail at paragraphs 342-365 above. We were critical of the aspects of the investigation process but found no detriment.

11.5 Mr Prescott as leave approver

400. Our decision on this point is recorded at paragraph 367 above. We found no detriment.

11.6 Mr Prescott as acting team leader

401. Our decision on this point is recorded at paragraph 370 above. We found no detriment.

11.7 Stairwell incident

402. Our decision on this point is recorded at paragraph 372 above. We found no detriment.

11.8 Relocation of claimant's geographical area

403. Our decision on this point is recorded at paragraph 374 above. We found no detriment.

11.9 Referral to Occupational Health

404. Our decision on this point is recorded at paragraphs 376-378 above. We found no detriment.

11.10 Mr Clarke's investigation

405. This issue was withdrawn by the claimant.

406. The next issue is –

12 Was the omission to inform the claimant of the change in office location a deliberate omission by James Crawshaw because the claimant had done a protected act?

407. Our findings in fact on this point are at paragraphs 233-236 above. We found that the failure to tell the claimant was not a deliberate act. There was no connection with any protected act.

408. The next issue is -

13.1 Did George Gillespie and Annemarie O'Donnell insist that James Crawshaw was a suitable person to conduct the claimant's absence management meetings?

13.2 If so, did they so insist because the claimant had done a protected act?

409. Our findings in fact are at paragraph 223-228 above. These effectively deal with this point. There was no "*insistence"* and no sensible challenge to Mr Crawshaw's suitability. We therefore answer these questions in the negative.

410. We have accordingly found that the claimant's case fails on all of the agreed issues. While that is sufficient to dispose of the matter, we will for the sake of completeness deal with the time bar point.

Time bar

411. The alleged act of sex discrimination by Mr Prescott occurred on 10 October 2017. The claimant's ET1 in case no 4123712/2018 was presented on 18 December 2018. The claimant was legally represented at that time. The alleged detriments involving (a) the disciplinary process, (b) the "*additional workload"* and (c) Mr Sawers' investigation and outcome occurred before 18 September 2018 and would be time barred unless (i) they formed part of

conduct extending over a period in terms of section 123(3)(a) EqA or (ii) we found it was just and equitable to extend time in terms of section 123(1)(b).

412. We reminded ourselves of what the Court of Appeal said in ***Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 –***

"*52….the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."*

413. We came to the view that there was in this case an "*ongoing situation or a continuing state of affairs"* only in the perception of the claimant. She saw the events which started on 10 October 2017 as a chain with each alleged detriment linked in terms of underlying cause. We did not share that perception. Viewed objectively, there was no ongoing situation. The claimant believed that she had grounds for complaint. She made her complaint. It was investigated and rejected. She could have appealed that decision but did not. We did not consider that the claimant appealed when she wrote to Mr Gillespie and Mrs O'Donnell – her right of appeal was under the respondent's Bullying and Harassment Policy. It was not open to the claimant to decide for herself how that right of appeal should be exercised.

414. We looked at each of the events which followed on from the alleged act of discrimination in October 2017 to see if we could detect some element which supported the claimant's perception of an ongoing situation –

(a) The disciplinary process occurred because the claimant did not attend at Bearsden Road when asked to do so. It was initiated before the earliest of the claimant's protected acts.

(b) The claimant's application for an EHO position was unsuccessful because other candidates were preferred, for a valid reason. There was nothing untoward in Ms Dyer's involvement.

(c) The "*additional workload"* was given to the claimant because another technical officer was struggling with his workload.

(d) Mr Sawers' in his investigation reached conclusions he was entitled to reach and which were not perverse.

(e) Mr Prescott remaining as the claimant's leave approver was a case of administrative delay rather than *"knowingly permit".*

(f) Mr Prescott acting as team leader on 24 December 2018 was a routine administrative matter.

(g) The stairwell incident was found not to involve misconduct on the part of Mr Prescott.

(h) The relocation of the claimant's geographical area was part of a wider restructure involving other officers.

(i) The referral of the claimant to Occupational Health was the result of a reasonable perception that the claimant was not engaging in the absence management process.

(j) The failure to tell the claimant about the office move was not deliberate, as evidenced by the emails which she was able to access on her return to work.

(k) There was no *"insistence"* on Mr Crawshaw being a suitable person to conduct the absence management meetings and no sensible challenge to his suitability.

415. We found nothing to link these events, and nothing to indicate an "*ongoing situation or continuing state of affairs".* These were *"a succession of unconnected or isolated specific acts"* to use the language in ***Hendricks***. That meant that the alleged detriments referred to in paragraph 365 were time barred unless we found that it was just and equitable to extend time.

416. We looked at the prejudice to the claimant if she were denied the opportunity to pursue the complaints which would otherwise be time barred and balanced this against the prejudice to the respondent if she were allowed to do so. The claimant would lose the benefit of her sex discrimination claim and three of her victimisation claims. She would still have the remaining victimisation claims.

The respondent would face the oldest of the complaints brought against it which would otherwise be timebarred.

417. We decided that the balance of prejudice favoured the respondent. Time limits should normally be observed and extending time is the exception, not the rule – ***Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434***. The claimant had the benefit of legal representation when her original claim was presented. No argument was advanced by the claimant either in evidence or in submissions as to why it would be just and equitable to extend time. The sex discrimination claim and the victimisation claims relating to the alleged detriments referred to in paragraph 407 were time barred.

Final comments

418. We have found it difficult to comprehend how something which started as a fairly minor workplace disagreement about an instruction to attend at the address of an alleged dirty house could develop into a dispute involving multiple allegations of victimisation. There was no sex discrimination. That was what Mr Sawers found. It is what we have found. We of course accept that an allegation is sufficient to constitute a protected act for the purpose of a victimisation claim, but the claimant's allegations appear to us to be a construction work with no foundation.

419. We refer back to three matters –

(a) At their meeting on 22 February 2018 Mr Waddell offered the claimant the option of mediation, which was not taken up.

(b) In his email of 12 November 2018 Mr Walker offered the claimant an informal meeting to discuss how to move forward and improve working relations, which the claimant declined.

(c) Towards the end of the hearing the Tribunal asked the claimant what outcome she would have stated if she had completed the respondent's bullying and harassment form and the claimant replied that it was not for her to say what outcome she wanted.

420. It is (a) a pity that the claimant spurned the attempts by Mr Walker and Mr Waddell to find resolution and (b) telling that she was not able to articulate what outcome she wanted. If the claimant persists in treating any negative aspect of engagement with management as part of an ongoing conspiracy, it is hard to see how normal and harmonious relations can be restored. That would be unfortunate given the level of determination and industry the claimant has shown in pursuing her complaints before the Tribunal, and also the positive terms in which her abilities as an officer have been described by those who work with her.

Employment Judge W A Meiklejohn

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Employment Judge

11 January 2021

Date of Judgment

Date sent to parties **23 January 2021**