Case Number: V 2300147/2019

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**
Ms R Downer
Mr N Shanks

BETWEEN:

Ms A Burton **Claimant**

AND

Nuffield Health **Respondent**

ON: **23, 24 and 25 November 2020 and on 8 and 10 December in Chambers**

Appearances:

For the Claimant: **Mr MacMillan, Counsel**
For the Respondent: **Mr Bownes, Solicitor**

JUDGMENT

1. The unanimous judgment of the Tribunal is that:

    a. the Claimant's claims of disability discrimination under sections 13, 15 and 26 Equality Act 2010 ("Equality Act") succeed in part;
    b. The Claimant's claim of victimisation under s27 Equality Act does not succeed and is dismissed.

2. Remedy shall be decided at a separate hearing.

Reasons

1. By a claim form presented on 14 January 2019 the Claimant presented a claim of disability discrimination arising out of her employment by the Respondent, by whom she is still employed. The claims were resisted by the Respondent. The Claimant submitted amended grounds of complaint following a preliminary hearing for case management before EJ Fowell on 10 December 2019. In doing so she clarified that she brought claims under sections 13, 15, 20, 26 and 27 Equality Act 2010 ("Equality Act"). The Respondent submitted amended Grounds of Resistance in response.

2. The full hearing took place by CVP over three days and the Tribunal convened in chambers by CVP for a further two days to make its findings and reach conclusions on the issues. At the hearing we heard evidence from the Claimant herself and from five witnesses for the Respondent: Sean Foord, at the time the senior general manager at the Respondent's Crawley site, Sarah Norman, who took over as the Claimant's fitness manager from John Thornley for a brief period from September 2018, Jon Bugg, a colleague of the Claimant who informally managed and supported her during a period when there was no fitness manager in place, Benny Hawkins, at the time assistant programme manager at the Respondent's Nestle site and James Chapman, a senior general manager of the Respondent, who dealt with the Claimant's grievance.

3. There was an electronic bundle of documents of 329 pages. Two different numbering schemes were used for most of the documents in this bundle and where we refer to page numbers from the bundle in this judgment, we use both numbers where applicable.

The relevant law

4. **Direct discrimination**: S 13 Equality Act prohibits direct discrimination. Under s 13(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. The circumstances of the claimant and the chosen comparator must be the same or not materially different. S 4 Equality Act sets out the protected characteristics. These include disability.

5. **Discrimination arising from disability**: Section15 Equality Act provides as follows:

   (1) A person (A) discriminates against a disabled person (B) if—
   (a) A treats B unfavourably because of something arising in consequence of B's disability, and
   (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
   (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

6. **Duty to make reasonable adjustments**: The duty to make reasonable adjustments arises under section 20 and Schedule 8 Equality Act. Section 20, subsections (3) to (5) imposes on the Respondent a duty with three possible requirements of which the first is applicable on the facts of this case. This is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

7. **Harassment**: S 26 Equality Act prohibits harassment related to a protected characteristic, including disability. A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.…
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

8. **Victimisation:** S 27 Equality Act provides that a person (A) victimises another person (B) if A subjects B to a detriment because—
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.
(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.
(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
(4) This section applies only where the person subjected to a detriment is an individual.
(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

9. **Burden of proof**. It is also relevant to consider the law on the burden of proof which is set out in section 136 of the Equality Act. In summary, if there are facts from which the tribunal could decide in the absence of any other explanation that the Claimant has been discriminated against, then the tribunal must find that discrimination has occurred unless the Respondent shows the contrary. It is generally recognised that it is unusual for there to be clear evidence of discrimination and that the tribunal should expect to

consider matters in accordance with the relevant provisions in respect of the burden of proof and the guidance in respect thereof set out in Igen v Wong and others [2005] IRLR 258 confirmed by the Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246. In the latter case it was also confirmed, albeit applying the pre-Equality Act wording, that a simple difference in status (related to a protected characteristic) and a difference in treatment is not enough in itself to shift the burden of proof to the Respondent; something more is needed.

10. The law on time limits in discrimination cases is set out in s123 Equality Act as follows:

123Time limits

(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

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

The agreed issues

11. There was an agreed list of issues in the case, which is set out in the Appendix to this judgment.

Findings of fact

12. The Tribunal makes the following findings of fact. It has limited its findings to those that were necessary to enable it to decide the matters set out the list of issues agreed between the parties. It has not been necessary to address every matter that was raised during the course of the evidence.

13. The Respondent is the largest not-for-profit healthcare provider in the United Kingdom. The Claimant has been employed by the Respondent since May 2018 as a Personal Fitness Trainer whose work involved assisting clients In the gym and selling her services to them as a personal fitness trainer.

14. The Claimant suffers from Generalised Anxiety Disorder (“GAD”). The Respondent did not dispute that at the time of the matters giving rise to the claim the Claimant was a disabled person for the purposes of s6 Equality Act. Nor did it dispute the way in which the condition affects the Claimant, namely that if her disorder is triggered as a result of cleanliness and hygiene issues she suffers from panic attacks and intrusive thinking, becomes upset and emotional and suffers from loss of energy and disturbed sleep. The Claimant has had this condition for several years. She self manages and does not take medication.

15. Prior to the commencement of her employment the Claimant had undergone a recruitment and interview process [detail]. That process included two interviews, one with Mr Thornley and a second with Sean Foord at which she made reference to her history of mental health difficulties. Mr Foord's evidence to the Tribunal was that he had no recollection of that conversation but nor is there any evidence that the Claimant went into great detail at the interview or that she explained to Mr Foord the specific nature of her disability or the likely triggers.

16. The Claimant also received an occupational health form to complete and on 8th May 2018 had a telephone call with the company's in-house occupational health department, which formed part of the Respondent's induction process. During the call she explained her medical background in full. Occupational health advised the Claimant not to undertake hygiene related tasks as this could be a trigger for her GAD. It recommended that she reduce her shift hours from 32 to 24 hours and that the shifts be consecutive, in order that she could have ample time off between work in order to manage her condition. It was also recommended that she be exempt from undertaking HMOT health appointments with members (an in-depth consultation and assessment involving a blood test) due to the bodily fluids that are handled in these appointments. Further duties and adjustments to those duties were to be discussed with John Thornley, her line manager. She was passed fit to do the role with the agreed modifications.

17. The report itself (page 105/109) was very brief but contained the following advice:

    May have a health condition that may fall under the Equality act for disability: recommend following adjustments: does not undertake blood testing as part of MOT until she feels ready to do this activity. The time frames for this are difficult to advise on. Meets with line manager to discuss other expectations of role that are not within the job description and agrees locally, certain tasks that can be excluded from doing relating to hygiene for the foreseeable future.

18. Mr Thornley, who as fitness manager was the Claimant's immediate line manager at the start of her employment, discussed the Claimant's medical condition at a meeting with the Respondent's heads of department but Mr Foord was not present at that meeting and was not formally informed by Mr Thornley until 30 May (see paragraph 15 below).

19. However before he received that information, at the end of a shift on or around 30 May an incident occurred when the Claimant was asked by Mr Foord to pick up towels from the gym floor. These were sweat towels used by gym members. We find as a fact that at that point in time Mr Foord was unaware that the Claimant's condition meant that she was unable to have contact with bodily fluids.

20. The Claimant's account of this incident, in paragraphs 17 and 18 of her witness statement was as follows:

He started to check the free weights area and upon arrival here I mentioned that apart from a couple of towels, all was good. He saw the sweat towels on the Gym floor. He then asked why they were still there. I informed him I could not pick them up. He then questioned why I could not pick them up. I was taken aback by his comment and felt awkward and embarrassed. I replied with: "it's just something I can't do." I was uncomfortable at this point as we were in a public environment because the Gym was not closed. Sean Foord said something like "we all have to do things that are unpleasant". So, I explained: "it's not that I am unwilling, it's an actual issue for me". He then replied: "we don't have issues here". He then said: "Can't you pick them up with gloves on? I can get you some gloves" I felt pressurised that he would not accept my explanation, but I then reiterated that I could not do it because of the potential that the towel would touch my body. He pressed me to explain. I was extremely uncomfortable because I don't have clinical language and it is hard to explain. I felt embarrassed at having to explain and justify my condition. He was challenging everything I said – I was trying to say I cannot physically do it. I said I can't have them physically touching my body. He then proceeded to pick up the two towels, mockingly held them with arms outstretched and said, "you can do it like this – it's good for the deltoids". He then put the towels in the towel bin. At no point did I pick up the towels.

Sean Foord and I then proceeded to head up the mezzanine stairs. I then said, "It's an actual condition, I don't want you to think I am being selective, it's a real thing". He then went on to challenge me about my ability to clean and I was again uncomfortable. He said, "we will have to talk about that then because it could affect you working here". I was on the stairwell and he was at the top of the stairs at this point, with several people around downstairs. I was very panicked by the conversation and just wanted to get out of the building. My heart was pounding, and I was very overwhelmed, I just didn't want to be alone with him or near him and I was conscious that maybe someone had heard the interaction. I went to stand near the reception. After a few minutes, he received confirmation that the building was clear of members and he then dismissed me and the rest of the staff for the evening. I was extremely emotional and did not want to go back at all.

21. Mr Foord's recollection coincided with the Claimant's in certain respects, but he did not for example recall telling her that her inability to handle towels could affect her employment. His evidence to the Tribunal was not wholly consistent with either his evidence to the subsequent grievance investigation or indeed his own witness statement. We find on a balance of probability that the Claimant's recollection was the more accurate. It was clear that the Claimant was very upset by the incident. We find that at some point in the conversation Mr Foord should have realised that the Claimant was trying to convey that she had a medical condition that was affecting her ability to carry out the full range of her duties.

22. Around the same time as the incident took place the Respondent's HR department forward to John Thornley the Occupational Health report on the Claimant, which Mr Thornley then sent on to Mr Foord and Jo Gaskell, his deputy.

23. There was then an email exchange between Mr Foord and John Thornley. Mr Foord wrote:

Hi John...

Could you let all the DMs understand how this affects her role..?

I had a slightly embarrassing conversation with Ali regarding picking up towels on the gym floor, as I wasn't aware of the condition.

If you could give me a bullet point list of what roles Ali cannot carry out within her role...?
Has she suggested that she will be able to carry out HMOTs at some point, or is this a complete non-starter..?

Mr Thornley replied:

I raised this at the fast HOD meeting that we had with Jo, Neal, Anna and the DMs (you weren't in that day) and t haven't seen you much since then unfortunately. I was hoping that it might have been fed back to you from that meeting but I should have followed up with an email directly so my apologies.

24. The Claimant then had a discussion with John Thornley about the incident as a result of which Mr Thornley produced a document setting out in detail what the Claimant could and could not do as a result of her disability. That document was not produced to the Tribunal despite an order that the Respondent undertake a specific search for it, but at page 105D-E there was an email from Mr Thornley to the heads of department, including Mr Foord, setting out the tasks that the Claimant should not be asked to undertake. We note that this was sent after the incident with Mr Foord (and seems to have been informed by it), but it was not sent to three individuals against whom the Claimant would go on to raise complaints, Sarah Norman, John Bugg and Benny Hawkins.

25. The Claimant took a sabbatical from the Respondent during the summer of 2018, in order to take up a performing job. This had been arranged with Mr Foord at the time of her recruitment. During her absence John Thornley was replaced by Sarah Norman as covering fitness manager. From the middle of August Ms Norman began to correspond with the Claimant about her return to work as she was concerned about planning and setting rotas. On 20 August 2018 there was an exchange between the Claimant and Ms Norman about the Claimant's absence and her working hours on her return. The Claimant replied on 17 August explaining that she had to undertake limited hours on advice from occupational health. Ms Norman queried the Claimant's limited hours (108/118) with an email containing the following:

Hi Ali
Maybe its best we discuss the mental health condition you are dealing with so I can better understand. Nothing has been told to me other than you are returning to work.

Rota:
You have 3-4 days of work in a row before day or even 2 days off.
The hours of work are 4 hours to 8 hours only.
Please explain why this seems unfair?

26. The Tribunal was struck by Ms Norman's reference to unfairness, which seemed an inappropriate word to use in response to the raising of a mental health issue.The same day the Claimant wrote the detailed response at page 107/117, explaining her GAD in some detail. In particular she said

Also I am concerned that you have had no information regarding me at all - It is very worrying to have to continually explain my condition when it was and should have been clearly documented from the outset when I was asked to join. Sorry that this has not happened and that you were not aware!

27. This caused Ms Norman to raise a query with Mr Thornley (page 112/122) on 20 August:

Can you shed some light deeper on Ali.
She says she's back 10th Sept.
I sent a rota of 4hr and 6 hour and 8 hours shifts for her wanting 32 hours a week.

Yet It's not deemed acceptable by her mental illness and 2nd Job?! (her words)

Can you please shed light?
I'm hearing all sorts and I just need to get some clarity as sounds very messy.

28. The Tribunal notes that there was nothing in either of the Claimant's emails referring to her second job and we were unclear as to why Ms Norman would have mentioned it. In cross examination Ms Norman accepted that this handover process could have been handled better. She gave evidence that she perceived the Claimant's concern about having to explain all over again the adjustments that had been put in place for her as conveying frustration on the Claimant's part. The Tribunal did not think that the Claimant's emails conveyed frustration – they were courteous, forthcoming and even apologetic. The Tribunal however considered that the tone of Ms Norman's emails did convey frustration at having to handle a less than straightforward return to work at a time when she was very busy managing two gyms at once.

29. Mr Thornley replied the following day, 21 August, (112/122), saying:

I have attached Ali's letter from OH outlining the basic restrictions to her work -- because of the nature we have had to make reasonable adjustments (i.e. towels and blood subject to further training) I have attached Ali's letter from OH outlining the basic restrictions to her work -- because of the nature we have had to make reasonable adjustments (i.e. towels and blood subject to further training). I had arranged that she would work every weekend as this fitted well with the team and her acting work, also every Monday night and one other 8 hour shift -- she was hoping to quickly drop to 24 hours p/week, Sean was very keen to bring her In and work around the acting job (hence the approved unpaid leave while on tour) the other work adjustments came to light after OH had done their pre-work assessment.

30. On the same day Ms Norman wrote again to the Claimant, copying Sean Foord (page107/117). It was clear from the email that she was very much focused on putting the rota arrangements in place, a point she confirmed in her evidence to the Tribunal.

31. The Claimants' first shift after her absence was on or around 11 September 2018. She had a meeting with Ms Norman. Ms Norman's evidence was that the purpose of the meeting was for her to better understand the Claimant's condition so as to manage her more appropriately. The meeting however took place in an area adjacent to the café and people were coming and going

in the vicinity. It was not therefore a private area that would have been more suitable for such a discussion.

32. We find as a fact that during that meeting Ms Norman said a number of things that the Claimant would reasonably have found distressing including:

    a. Asking the Claimant to explain her condition and how it limited her to the extent that the Claimant felt that she was having to justify the adjustments that had been put in place on the recommendation of occupational health. An example of this was the close questioning about towels and whether or not she could touch them while wearing gloves. Ms Norman was on notice from Mr Thornley's email that the measures put in place for the Claimant were in the nature of reasonable adjustments.
    b. A comment to the effect that Ms Norman did not understand why the Claimant wanted to work in a gym if she was afraid of sweat (see page 216/237 of the grievance investigation);
    c. A question about how the Claimant would feel if a sweating person came close to her. We were satisfied that a remark of this nature was made even if the exact words spoken were not as the Claimant recalled them;
    d. The suggestion that the adjustments made for the Claimant, including her inability to do blood work, resulted in unfairness to other members of staff and would have impeded Ms Norman's ability to meet her targets for health MOTs, which included the blood work the Claimant was unable to do. We also note that the conversation took place in the context of an email sent by Ms Norman to all personal trainers, expressing her concern about the poor performance of Crawley Worth in terms of overall targets.
    e. It was the Claimant's evidence that Ms Norman made a remark to the effect that at another venue she had been managing a member of staff who used a wheelchair, but who did not require any "special treatment". This remark was not put to Ms Norman during cross examination and the Tribunal was therefore unable to determine whether the remark had in fact been made. Had it been said however it could plainly have had the propensity to cause distress to the Claimant.

33. The accumulated effect of this conversation was to make the Claimant feel that she was being put under pressure to undertake tasks such as picking up towels that it had already been agreed that she was exempt from doing. It would also have contributed to her frustration at having to explain her condition and the adjustments she required several times within a relatively short time of joining the Respondent, when she reasonably expected that the Respondent would ensure that the information about her condition was communicated to those who needed to be aware of it.

34. It appeared to the Tribunal that Ms Norman was out of her depth in taking over line management of the Claimant and appeared not to have had training in how to handle a discussion of this nature appropriately. She was either unaware of the meaning of the term "reasonable adjustment" or took

insufficient account of its meaning in speaking with the Claimant. Her email exchanges with Mr Thornley prior to her conversation with the Claimant convey a degree of hostility and irritation at having to manage an employee with a condition that required adjustments. If she had received support from HR prior to the conversation (there was no direct evidence of the nature of any such support) it appeared to the Tribunal to have been potentially inadequate and led to her dealing with the conversation with the Claimant in a way that caused the Claimant distress.

35. The fact that the Claimant sent the email at page 116 thanking Ms Norman for her positivity and interest is hardly surprising in the circumstances. The Claimant was trying to be positive and to make a good impression on her new manager after a period of absence from work. The Tribunal did not infer from that email that the Claimant was unaffected by the meeting.

36. The period during which Ms Norman was line managing the Claimant was brief, as Ms Norman returned to be solely the fitness manager at Crawley Central soon after that meeting. It was the Claimant's case that shortly before Ms Norman's departure, at her last one to one meeting with the Claimant Ms Norman compared the Claimant's decision to work in a gym with her metal health condition to someone worth a milk allergy deciding to work in Costa. Ms Norman denied having made this remark, but in the Tribunal's judgment it was too specific a comment to have been fabricated. The Tribunal was not persuaded by Ms Norman's suggestion that she would not have said it "because I am not a coffee person and even if I do have it I have it black". On a balance of probabilities she did make the comment and the Claimant would justifiably have found it offensive.

37. We turn next to the Claimant's complaints about John Bugg. We find that in the absence of a fitness manager in late September 2018 Mr Bugg had appointed himself to take charge of certain aspects of the management of new and probationary employees, including the Claimant. However he was not the Claimant's formal manager and had no formal line management responsibility for her. The support consisted of pre-arranged one to one meetings where he offered to help the Claimant increase her level of business. These were done informally and the two employees agreed that from time to time they would meet in their personal time if that was mutually convenient.

38. Difficulty then arose about arranging a date on or around 8 November. The Claimant had been out of the country between 2 and 7 November and there was an exchange of messages between her and Mr Bugg, trying to establish a convenient time to meet. Mr Bugg asked about the Claimant's availability on Thursday or Friday 8th and 9th and the Claimant's reply was delayed, but she replied on Thursday morning saying

I have a busy evening tonight I'm coming in to train for an hour then have to dash for an appointment and tomorrow I'll get back late from London probably be really tired, I know you're not in at the weekend.

She suggested Monday as an alternative, and Mr Bugg said that morning would be difficult and the conversation appears to have ended there.

39. The Claimant then went into the gym to train (in her own time), something she was in the habit of doing as one of a range of activities she undertook to support her own mental health. At the end of her session Mr Bugg approached her in what she described as an abrupt and confrontational manner, asking her to come and find him when she was finished. The Claimant said that she saw Mr Bugg in one of the HMOT rooms. He was sitting down behind the desk on a chair and the Duty Manager was also in the room, seated on the bed, which surprised the Claimant and made her think that this was to be a formal meeting, although Mr Bugg did not explain his presence. Thereafter the accounts given by the Claimant and Mr Bugg differed markedly. However there were serious discrepancies between Mr Bugg's own witness statement and his evidence in cross examination. For example on the issue of the reason for the meeting and why he felt the need to have a manger there, Mr Bugg said in his witness statement that he was effectively holding the meeting in order to reprimand he Claimant. In cross examination however, he maintained that his purpose had simply been to rearrange a time for a one to one meeting with her. However in a contemporaneous email to Mr Foord (page 140/151) he said it was a result of the Claimant having declined a one to one. Given these discrepancies, the Tribunal was inclined to rely on the contemporaneous account of the incident in the email to Mr Foord that Mr Bugg sent followed the meeting and to prefer the Claimant's account of the incident where that differs from the account given by Mr Bugg (whether contemporaneously or in his evidence to the Tribunal).

40. In light of the email at page 140/151 and the Claimant's evidence, the Tribunal had the following concerns about Mr Bugg's conduct:

    a. He should have realised that the Claimant was coming into the gym to train for personal purposes in support of her mental health and would not be available for a meeting afterwards because she had told him so in her message. His expression of disappointment at seeing her at the gym was therefore without justification and he gave a misleading impression in his email to Mr Foord by suggesting that the Claimant was being insubordinate;
    b. It was inappropriate to insist on the Claimant attending the unscheduled meeting in the way that he did and intimidating to the Claimant to involve a second manager in the meeting, particularly as the Claimant herself was unaccompanied. We remind ourselves at this point that Mr Bugg was not the Claimant's line manager and had no real authority to be acting in the way that he did;
    c. On the Claimant's account, which we accept, he was angry and accusatory from the outset. Even if there had been justification for annoyance, he should not have expressed his anger openly. The Claimant was justifiably shocked and intimidated. If she raised her own voice it would have been understandable in the circumstances as she

was trying to make the valid point that there had been no prearranged meeting and she had done nothing wrong;

d. He told the Claimant that he would have to record her failure to attend a meeting with him as a non-attendance in her probationary review. There was no basis for this threat, which the Claimant justifiably perceived as having been issued without authority;
e. He then suggested that she could make amends by complying with what he described as four "relatively straightforward tasks" that had been set at a previous meeting. For the purposes of this judgment only one of these tasks was relevant, namely that she should "Email the latest diagnosis she last received precluding her from certain tasks in the workplace (failed to bring paper copy to previous 121)". The Claimant was distressed by confidential matters pertaining to her health being raised and discussed in front of a third party.

41. The Claimant was extremely upset by this meeting and left the building in a state of distress. She in fact never returned to that building to work and the following day she raised a grievance about her treatment by the Respondent.

42. There is no doubt that there was then a considerable delay in the Respondent acting on the grievance. There appear to have been three contributory factors: the first that the Respondent did not use the correct email address in corresponding with the Claimant, the second being an anomaly with the Claimant's phone, which meant that it was necessary to ring it twice in order to get a response and the third being a change of HR managers on 20 December, when the Claimant was asked to forward copies of her grievance to HR, suggesting that it had been lost in the intervening period. However none of these factors singly or together fully explain why the grievance was not referred to Mr Chapman until sometime later in January 2019. The chronology does not however support the Claimant's assertion that the Respondent only acted in response to her grievance once she had raised the matter with ACAS, which she did on 21 November 2018.

43. The Tribunal also finds as a fact that when the Claimant asked Sarah Norman if she could train her clients at a different gym (Crawley Central) in the wake of the incident with John Bugg, Sarah Norman refused. She maintained that this was contrary to the rules of club membership. Sean Foord reiterated the point when he gave evidence to the grievance investigation, explaining that in any event the Claimant's clients did not want to move and train at a different club.

44. The grievance meeting between James Chapman and the Claimant took place on 1 February 2019. The Claimant complains that, at the grievance meeting, she mentioned to James Chapman that she was worried that Benny Hawkins would make an issue about her having attended the grievance meeting at a time when she should have been on shift. Her case was that although this was minuted and Mr Chapman assured her that he would speak to Ms Hawkins ahead of her returning to work, in fact upon returning to work she was reprimanded by Ms Hawkins for attending the grievance meeting. The Claimant maintained that she then withdrew an arrangement about

working hours and attributes that decision to her having attended the grievance meeting.

45. The Tribunal does not accept that Claimant's interpretation of the sequence of events. Ms Hawkins' evidence on this was clear and coherent and we find that the Claimant made assumptions about the reasons for Ms Hawkins actions that were not justified on the facts. The chronology of events was, we find, as set out in an email from Ms Hawkins to Mr Chapman (page 188-191/204-207), composed during the grievance investigation and consistent with the evidence Ms Hawkins gave to the Tribunal. The Claimant had, we find, been granted some leniency over her start time by Ms Hawkins, but this was a concession that had only been granted on a small number of occasions and was neither a contractual right nor an established practice. On the day before her grievance meeting (31 January 2019) the Claimant had come in late having attended a doctor's appointment which she had only told Ms Hawkins about the evening before (30 January 2019). She had arranged the appointment on the assumption that on the basis of the grace and favour arrangement she would be starting her shift later than scheduled (at 1.00pm rather than the official start time of 11.30am). In fact it was not convenient on that occasion for her to start late and Ms Hawkins reminded her by email on the evening of 30 January of her usual working hours. She did not however have the opportunity to discuss the situation with the Claimant until 1 February, when the Claimant had returned from attending the grievance meeting, which had taken place at another location. In the discussion that ensued, the Claimant assumed that she was being criticised for attending the grievance meeting. We find that that was not that case and that Ms Hawkins had accepted that the grievance meeting had needed to be accommodated. However she needed to discuss with the Claimant the difficulties that had arisen from her arriving late the previous day. The timing of the discussion was unfortunate and caused the Claimant to gain the wrong impression, but we find that there was no causal link between Ms Hawkins decision to restore the Claimant's normal working hours and her having attended the grievance meeting. The timing was coincidental. There was also no criticism of the Claimant by Ms Hawkins for having attended the meeting.

46. We find that during the grievance process Mr Chapman did not, as the Claimant claims, formally offer the Claimant a role at the Nestle Club as it was not within his gift to do so. He was not challenged on his evidence in chief that it was not his job. That evidence was at paragraph 3 of his witness statement where he stated "I did not promise her any Nestle role, it would not have been my job to do that. Nestle was a one person unit and therefore from our perspective as she could not do first aid it would not have been appropriate, but in any event the role had been offered to someone else". The Tribunal did not accept the Claimant's assertion that an offer was made and withdrawn. The document on which she relies – the grievance minutes at page 183/199 contain an exploratory discussion of the potential for her to work at Nestle, but no formal offer by Mr Chapman.

47. As well as asserting that the Respondent did not deal with her grievance in a timely manner the Claimant's Amended Grounds of Complaint also assert that

the Respondent did not comply with its own grievance procedure. She also asserted that the Respondent and in particular Mr Chapman did not take her grievance seriously or deal with it in a satisfactory way. Mr Chapman was closely cross examined by Mr MacMillan with a view to demonstrating that he had in fact demonstrated bias in his handling of the grievance. Mr Bownes submitted that the Claimant had not pleaded that the Respondent had been biased in its handling of her grievance. The Tribunal however was satisfied that the Amended Grounds of Complaint indicated that Mr Chapman had not been open minded when listening to the Claimant's concerns and showed an inclination to believe her colleagues over her. We therefore consider that the matters put to Mr Chapman were properly put on the basis of the pleaded case. However the contribution of this part of the evidence to our conclusions was limited for reasons set out below.

48. We find that after Mr Chapman interviewed the Claimant on 1 February the Claimant felt that the meeting had gone well and her concerns would be addressed. However the incident with Ms Hawkins referred to above led to the Claimant writing the email at page 340. Mr Chapmans' initial response (same page) was placatory, but he then received the email at pages 210-212/194-196 which sets out a detailed chronology of the incident written by Ms Hawkins. Mr Chapman's response to that was an email to HR as follows (page 193/209).

> **Please see email from Manager at Nestle.**
>
> **Very interesting!**
>
> **Also if you recall it was Ali, who cancelled my initial meeting date, and then proposed this date herself and at the location.**
> **I could have amended my times and locations as I had previously stated to her other locations fine.**
> **She also did not inform them until the Thursday when it had been confirmed with me the week before.**
>
> **There are certainly 2 sides to this story.**
>
> **It would appear the team are doing all their can to support her and she Is the more hostile one!**
> **I've asked Sean if It's ok to meet with him and Jon on Friday morning and also set up a telephone call with sarh so the 3 can all be interviewed for their responses to Ali's statements and then hopefully we can discus next week and decide a way forward If there is one!**

49. The Tribunal notes that this email was written before Mr Chapman interviewed Mr Bugg, Mr Foord or Ms Norman and that he therefore engaged in that stage of the grievance investigation having formed a view that the Claimant was “the hostile one”. On a balance of probabilities that will have affected the extent to which he was able to approach the investigation with an open mind and his disposition when interviewing those against whom the Claimant had brought complaints.

50. The grievance outcome letter, dated 18 February, was at page 257-260/279-282. The grievance was largely not upheld save in respect of an inappropriate use of humour by Mr Foord and an acknowledgment that communication within the Club and between occupational health and the general manager should have been better. There was a commitment to address this in the future (page 258/280). The letter ended with a request for the Claimant's GP notes and medical history to be forwarded to himself and to HR. In the Tribunal's judgment this was an inappropriate request and if and to extent that Mr Chapman was relying on advice from HR in making the request, that advice was also inappropriate.

51. It was clear from Mr Chapman's evidence in cross examination that he was not experienced or trained in the proper handling of mental ill health or disability and the appropriate use of medical evidence. He accepted that he had seen the Claimant's occupational health report but he appeared to have been sceptical about it based on the use of the word "may". He said he thought that the Respondent needed "an actual official document". He also said in his evidence to the Tribunal that given the role itself, which involved 20 per cent health MOTs and 20 per cent cleaning, the Respondent did need something to support the Claimant's request for adjustments otherwise what would be to stop every employee asking for similar adjustments. He said he did not realise it was such a big issue for her to provide this information. He also seemed to suggest during his evidence that health information ceases to be private if it concerns a job role. His position seemed to be that the Claimant's colleagues would not be able to support her without detailed information about her health, thus showing a lack of understanding about how confidential health information should be managed in such a case.

52. The Claimant was unhappy with the grievance outcome and wrote to Mr Chapman on 19 February (page 264/286). Mr Chapman then wrote directly to occupational health pages 268-269/290-291). The Tribunal was unable to understand why Mr Chapman was taking this step at all as he did not have management responsibility for the Claimant but had been brought in as an independent person to hear her grievance. Approaching occupational health directly was clearly stepping beyond the bounds of that role. We were also concerned about the tone and content of the communication and in particular the following passages:

    Given her General Anxiety Disorder and related conditions, you stated she was fit to work if initially unable to undertake HMOTs and local agreement on cleaning, hygiene Issues could be arranged. This was all agreed by the Fitness manager at the club and Ali initially didn't have to undertake HMOTs cleaning or have contact with dirty linen however these should be reviewed going forwards. These were not reviewed for numerous reasons and her 3 month probationary period passed without any action or sign off.

    …….

    From my hearing I have also requested, as stated above, that we undertake a second OH appointment with Ali. This is primarily not to assess her conditions as we are working with these but going forwards we should assess these again as there has been no progress on the HMOTs and cleaning aspects of the role and therefore she is

not actually able to fulfil the iconic contract but to assess her attitude and inability to hold conversations with her line managers without turning them into massive negative issues that result In her continually having time off work.

I can provide for you all the investigation notes and grievance papers if allowed and if required. Just let me know. I also visit Novartis quite regularly as It's one of my corporate sites so it may be easier if we meet up. Again just let me know.

I am therefore requesting:
A second referral for Ali with you. This time both her physical limitations to undertaking the role long term going forwards but also her attitude to her condition which makes managing her impossible for the team.

53. The Tribunal finds that in making these requests Mr Chapman was exhibiting a sceptical attitude towards the adjustments that had been put in place for the Claimant and a lack of understanding of her condition, despite her having explained this to him during the course of the grievance investigation. This was consistent with the position he had taken in the email set out at paragraph 41, where he described the Claimant as the hostile one". He was also, as we have already noted, stepping outside the role of grievance manager by approaching occupational health after having given the Claimant the grievance outcome.

54. The Claimant then attended an occupational health appointment and HR submitted some additional questions for the OH report to address (page 273/295). The report itself was at page 274-279/296-301. It confirmed that the previously recommended adjustments should remain in place and refuted the suggestion that the Claimant's medical records were required in order to make the appropriate recommendations. The report confirmed that the Claimant was fit to perform her role with adjustments, that those adjustments would be likely to be needed on a permanent basis and that it was essentially an operational decision whether her employment with those adjustments was viable on a long term basis. Evidently the Respondent concluded that it was as the Claimant has continued in its employment. The report also noted:

In terms of approach to her condition and attitude, I did not experience any unreasonable requests or behaviour during our interview.

We assume that in making this comment the author of the report was addressing Mr Chapman's implication that the Claimant's own attitude had contributed to the difficulties she had encountered at work.

55. The Claimant's list of issues contained a reference to the grievance appeal, and in her amended grounds of complaint she complained that in the appeal outcome the Sean Foord incident was not mentioned. Reading the grievance appeal outcome letter that is indeed the case. This is the only matter of which the Claimant explicitly complains in relation the grievance appeal.

Reasonable adjustments

56. The PCPs relied on by the Claimant were as follows:

    a. that the Respondent required Personal Fitness Trainers to carry out cleaning tasks, including clearing used sweat towels from the gym, and blood work;
    b. that cages containing used towels were placed in the corridor leading to the staff room.

57. As regards the matter of the towel cages, avoiding proximity to cages of dirty towels was noted by John Thornley as an adjustment that would assist the Claimant in discharging her duties (pages 105D and E). The Claimant's case is that this was not done consistently however. We heard evidence from Ms Norman but this indicated only that the towel cages were moved to a different location after she had left her role as fitness manager and it therefore did nothing to persuade us that the Respondent had in fact implemented this adjustment on a consistent basis. We find that the Claimant had repeatedly to ask a series of different people for the towel cages to be moved to a different location and that that would have been humiliating and embarrassing for her. As the request would have to be made to a duty manager on each occasion and someone would have to be found to move the cage, this was onerous for the Claimant. The Respondent made no argument that the adjustment was unreasonable save for noting that it had not been specifically recommended by occupational health. That in itself does not make the adjustment unreasonable and it was as we have noted, specifically agreed with John Thornley at the start of the Claimant's employment.

58. The Tribunal finds that the Claimant was not at any point actually required to pick up used towels, conduct blood work or carry out cleaning tasks that had been identified as unsuitable for her. In that respect therefore the Respondent did not fail to make those particular adjustments. It did however at certain times make the Claimant feel that she was under pressure to undertake those tasks, for example during the conversation with Ms Norman, when the Claimant felt that she had to justify the adjustments that had been made to what the Respondent described as the 'iconic contract'. The Claimant would therefore at times have felt that she was under pressure to give up certain adjustments, by, for example starting to undertake blood work, before she was ready and able to do so.

Conclusions on the issues

59. From its findings of fact as set out above the Tribunal concludes as follows on the issues agreed between the parties.

Jurisdiction

60. The Respondent conceded that the Claimant was a disabled person and that it had knowledge of the Claimant's disability by reason of the occupational health report. It did not pursue or make any submission on the issue of

whether it had knowledge of the substantial disadvantage suffered by the Claimant from the application of any PCP. In any event it was clear to the Tribunal that the Respondent had actual or constructive knowledge of the effect of the Claimant's condition on her as a result of the initial occupational health report and the Claimant's own explanations to Mr Thornley.

61. As regards jurisdiction, the only matter that fell outside the statutory time limit was the incident with Mr Foord. The Tribunal considered whether this incident formed part of a continuing act or state of affairs, or whether, alternatively, it would be just and equitable to extend the time limit in relation to the incident. We concluded that the incident was closely bound up with the Respondent's overarching failure to properly disseminate to its managers information about the Claimant's health conditions. The occupational health report prepared prior to the start of the Claimant's employment was dated 8 May 2018. It was not however sent to Mr Thornley by HR until 29 May – it was not clear why there was a delay. However there clearly was a delay in ensuring that all relevant personnel were aware of the Claimant's health condition and the incident on 30 May involving Mr Foord occurred at a time when, as we have found, he was not aware of the situation. The incident was therefore a direct consequence of the Respondent's lack of adequate arrangements for communicating important information about the Claimant's condition to those who needed to know. We did not think the two matters could be separated and that consequently the incident formed part of an ongoing discriminatory state of affairs for which the Respondent was responsible. In the alternative it would be just and equitable to extend time because the significance of the incident would not have been apparent to the Claimant at time it happened – it later became clear that to her that it was part and parcel of the Respondent's limited understanding of her condition and its failure to have trained its managers to deal with it effectively – an omission that the Tribunal found surprising in an organisation whose purpose is to promote health and wellbeing. The Tribunal found it particularly surprising that there was not a better recognition amongst the Respondent's employees of the link between physical exercise and mental wellbeing.

Direct Disability Discrimination (s13)

62. The Tribunal finds that the only matter that constituted direct disability discrimination against the Claimant under s 13 Equality Act was Ms Norman's comments to the Claimant as set out at paragraphs 25 and 29 of this judgment.

63. We were concerned about the attitude Mr Chapman exhibited towards the Claimant when he determined during the course of the grievance investigation that she was the "hostile one". We considered that he had in effect stereotyped her as "difficult" midway through the grievance process, rather than waiting until he had interviewed all involved and keeping an open mind until that point. Stereotyping in that fashion is potentially directly discriminatory. However it was neither pleaded nor submitted by the Claimant that Mr Chapman's actions constituted direct disability discrimination. Hence, whilst we had a number of concerns about Mr Chapman's attitude and

approach as described earlier in this judgment, we fall short of concluding that he directly discriminated against the Claimant – that was not how the Claimant put her case.

64. The complaint of direct discrimination under s13 Equality Act succeeds in part.

Discrimination because of something arising in consequence of disability (s15)

65. It was agreed between the parties that the "something arising" in this case was the Claimant's inability to carry out certain tasks, including cleaning duties, because of her anxiety about cleanliness and hygiene. The Tribunal concludes that of the matters complained of by the Claimant, only the following matters constituted discrimination contrary to s15 Equality Act because of the Claimant's inability to carry out those tasks:

    a. The manner in which Mr Foorde spoke to her on or around 30 May 2018 and the comments that he made, including making light of her concerns with the "deltoids" comment and giving the Claimant cause to be concerned about the viability of her ongoing employment as set out in the Claimant's account of the incident at paragraph 13 of this judgment;
    b. The failure of the Respondent to have in place a robust system for recording and disseminating information about the Claimant's mental health condition to those with management responsibility for her, or to ensure that those managing her were adequately trained to manage employees with mental health conditions such as GAD, meaning that the Claimant had to explain her condition and the adjustments she required repeatedly to managers who exhibited a sceptical attitude or made inappropriate comments or requests;
    c. The remarks made by Ms Norman described in paragraphs 25 and 29 of this judgment;
    d. The unexplained omission from the grievance appeal outcome letter of any reference to the incident with Mr Foord, which itself arose in consequence of the Claimant's disability. We did not however consider that the delay in dealing with the grievance could be properly characterised as a breach of s15 Equality Act. The reasons for the delay connoted inefficiency on the part of the organisation, rather than unfavourable treatment because of the Claimant's inability to perform certain tasks.

    The Respondent has not submitted that any of the matters which we conclude fell within the scope of s15 Equality Act constituted a proportionate means of achieving a legitimate aim and we consider that a defence of objective justification would have been very unlikely to have succeeded, even if advanced.

66. The complaint under s15 Equality Act therefore succeeds in part.

Harassment (s26)

67. The matters referred to in paragraph 55 (a) and (c) also constitute discriminatory harassment contrary to s26 Equality Act. We also consider that the incident involving Mr Bugg as described in paragraph 33 of this judgment constituted harassment under s26. The incident involved unwanted conduct that was related to the Claimant having attended the Club to train for the purposes of supporting her own mental health and was thus related to her disability. It was reasonable of her to have perceived the incident and Mr Bugg's conduct towards her as having created an intimidating and hostile environment for her that was related to her disability and again in our judgment arose from Mr Bugg's limited understanding of the Claimant's condition or the obligations of the Respondent towards her.

Victimisation (s27)

68. The Tribunal accepts that the Claimant carried out the protected acts consisting of:
    a. The verbal statements she made to managers of the Respondent informing them of her disability and the tasks she was unable to undertake because of it;
    b. The grievance she submitted on 8 November 2018.

69. The Tribunal does not accept that the Claimant was subjected to detriments because of the protected acts as she claims and in particular:

    a. The chronology of events does not support the Claimant's contention that the delay in dealing with her grievance was caused by her having commenced ACAS early conciliation and/or presenting a claim to the employment tribunal. There was no evidence that the nature of the grievance itself (that is, that it was a complaint about disability discrimination) was the cause of the Respondent's delay in dealing with it;
    b. The reason Sara Norman stopped the Claimant working out/training a client, at the Respondent's fitness centre at Crawley Central was not the fact that the Claimant had complained of discrimination but, as Ms Norman stated and Mr Foord reiterated, because this was contrary to the rules of club membership and because the Claimant's clients did not want to move and train at a different club;
    c. Ms Hawkins did not withdraw an arrangement under which the Claimant was allowed to attend the hearing of her grievance; nor did she withdraw a "grace and favour" arrangement for a later start time because the Claimant had attended a grievance meeting;
    d. The offer of an opportunity for the Claimant to work at an alternative site, Nestle, was not withdrawn because it was never formally offered to the Claimant as she asserts;
    e. The Claimant has not shown how the Respondent's failure to mention the incident with Mr Foord in the grievance appeal outcome letter, (which is the only specific complaint the Claimant makes about the grievance appeal), was causally related specifically to her having

complained about discrimination.

70. The Claimant's complaint of unlawful victimisation under s27 Equality Act therefore fails.

Failure to Make Reasonable Adjustments (ss20 and 21)

71. The Respondent did apply provisions, criteria or practices (PCPs) as follows:

a) it required Personal Fitness Trainers to carry out cleaning tasks, including clearing used sweat towels from the gym, and blood work.
b) cages containing used towels were placed in the corridor leading to the staff room.

72. The Tribunal was satisfied that the application of the PCPs put the Claimant, as a disabled person, at a substantial disadvantage compared to a non-disabled person in that if the Claimant had to carry out these tasks or pass the cages containing used towels she would suffer symptoms including distress and anxiety, panic attacks and intrusive thinking.

73. We accept the Claimant's evidence that the Respondent did not consistently take such steps as it was reasonable for it to have to take to avoid the disadvantage caused by the location of the towel cages.

74. The Tribunal did not accept that the Claimant had been required to carry out cleaning tasks and blood work but as set out earlier in this judgment it was apparent that the Claimant came under pressure from her managers to carry out such tasks and her inability to perform them was treated with scepticism. Those actions do not themselves amount to failures to make reasonable adjustments. We have found however that the claimant was subject to unlawful harassment in part by reason of her coming under pressure to perform certain tasks from managers who were sceptical about the need for adjustments.

75. The complaint of failure to make reasonable adjustments under ss 20 and 21 Equality Act succeeds in part.

76. The Claimant having satisfied the Tribunal that she was subjected to unlawful disability discrimination the matter of remedy now needs to be dealt with. If the parties are unable to resolve questions of remedy between them, either party may apply for the matter to be listed for a separate remedy hearing.

_____
Employment Judge Morton
Date: 20 January 2021

Appendix

List of issues adopted by EJ Fowell

Knowledge and jurisdiction

1. Was the Claimant at all times during the period relevant to the claim a disabled person under s.6 EqA 2010? Did the Claimant suffer from a mental or physical impairment which had a long term and substantial adverse effect on her ability to carry out day to day activities? The condition relied on by the Claimant is Generalised Anxiety Disorder.

2. If yes did the Respondent have knowledge of disability during the period relevant to the claim and, in relation to the complaint of failure to make reasonable adjustments, did it have knowledge of the substantial disadvantage suffered by the Claimant from the application of any PCP?

3. Are any of the complaints out of time? If yes, and in the event that they do not form part of conduct extending over a period, the final act or omission of which conduct Is within time, is ii just and equitable for the Employment Tribunal to extend the time limit so as to permit the complaint to be heard?

Direct Disability Discrimination

4. Did the Respondent treat the Claimant less favourably because of the protected characteristic of disability? The Claimant relies on the following alleged conduct of the Respondent:

   a) On 01 June 2018 Sean Foorde asked the Claimant to clear away used towels from the gym floor. When the Claimant explained that she was unable to do the task he responded in a mocking and humiliating manner (para 6, Amended Grounds of Complaint];

   b) The Claimant informed John Thornley, the Fitness Manager, of the tasks she was unable to do and/or could only do with difficulty because of her disability. However, this information was not provided to duty managers of the Respondent [paras 9 -- 11, Amended Grounds of Complaint];

   c) Sara Norman, the interim Fitness Manager, mocked the Claimant's disability and made humiliating and demeaning comments and pressurised the Claimant to undertake tasks which the Claimant was unable to do and/or could only do with difficulty because of her disability [paras 12 -- 13, Amended Grounds of Complaint];

   d) In a meeting Sara Norman asked the Claimant to explain why she had chosen a career in the fitness industry and likened it to her, "having a milk phobia and working in Costa" [para 15, Amended Grounds of Complaint];

   e) John Bugg spoke to the Claimant in an aggressive, confrontational,

dismissive and mocking manner in a discussion on 08 November 2018, leading to the Claimant becoming extremely distressed [paras 17 --22, Amended Grounds of Complaint];

f) The Respondent failed to address the Claimant's grievance, submitted on 08 November 2018, in a timely manner, and in breach of the Respondent's own grievance procedure. The grievance was only responded to after the Claimant had presented her Employment Tribunal claim [paras 26-27, Amended Grounds of Complaint];

g) Sara Norman stopped the Claimant working out/training a client, at the Respondent's fitness centre at Crawley Central until after the grievance was resolved [para 29, Amended Grounds of Complaint];

h) Benny Hawkins withdrew an arrangement under which the Claimant was allowed to attend the hearing of her grievance [para 30, Amended Grounds of Complaint];

i) The offer of an opportunity for the Claimant to work at an alternative site, Nestle, was withdrawn and the post offered to somebody else [para 31, Amended Grounds of Complaint];

j) The Respondent failed to deal properly or at all with the Claimant's appeal against the decision to dismiss her grievance [paras 32 -- 33, Amended Grounds of Complaint].

5. The Claimant relies on a hypothetical comparator.

Discrimination because of something arising in consequence of disability

6. Did the Respondent treat the Claimant unfavourably because of something arising in consequence of disability in the ways alleged at para5 (a)-(j) above? The "something arising" was the Claimant's inability to carry out certain tasks, including cleaning duties, because of her anxiety about cleanness and hygiene.

7. If yes can the Respondent show that the unfavourable treatment was a proportionate means of achieving a legitimate aim?

Harassment

8. Did the Respondent subject the Claimant to disability related harassment in the ways alleged at para 5(a), (c), (d) and (e)? If all or any of the allegations are proven did this amount to conduct which:

   a) Was unwanted;
   b) Had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant;
   c) Was related to the protected characteristic of disability?

Victimisation

9. Did the Claimant carry out protected acts? The protected acts relied on are:

   a) The verbal statements made by the Claimant to managers of the Respondent informing them of her disability and the tasks she was unable to undertake because of it;
   b) The grievance submitted by the Claimant on 08 November 2018.

10. If yes was the Claimant subjected to detriments because of the protected acts she had carried out or because the Respondent believed that she had or might carry out protected acts? The detriments alleged are those set out at paragraph 5(f) - (j) above.

Failure to Make Reasonable Adjustments

11. Did the Respondent apply provisions, criterions or practices (PCPs)? The PCPs relied on are:

    a) that the Respondent required Personal Fitness Trainers to carry out cleaning tasks, including clearing used sweat towels from the gym, and blood work.
    b) That cages containing used towels are placed in the corridor leading to the staff room.

12. Did the application of the PCPs put the Claimant, as a disabled person, at a substantial disadvantage compared to a non-disabled person? The substantial disadvantage relied on is that if the Claimant had to carry out these tasks or pass the cages containing used towels she would suffer symptoms including distress and anxiety, panic attacks and intrusive thinking.

13. If yes did the Respondent take such steps as it was reasonable for it to have to take to avoid the disadvantage? The Claimant says that reasonable adjustments would have been to inform duty managers and other relevant employees of her disability and the limitations it placed on the Claimant and to not require the Claimant to carry out cleaning tasks and blood work and to not place cages containing used towels in the corridor leading to the staff room.