EMPLOYMENT TRIBUNALS

Claimant: **Mrs L. Union Mc Gibbon**

Respondent: **National Education Union**

Heard at: **Leeds (via CVP)**

On: 2, 3, 4, 5, February, 4 ,5 March (Hearing and deliberations): write up 8 March 2021.

Before: Employment Judge T R Smith, Mr R Webb and Mr K Lannaman.

Representation

Claimant: In person

Respondent: Mr Boyd (Counsel)

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V-video. It was not practicable to hold a face-to-face hearing because of the Covid19 pandemic.

RESERVED JUDGMENT

The Claimant's complaint of direct discrimination is dismissed on withdrawal.

The Claimant's complaint of a failure to make reasonable adjustments is not well founded and is dismissed.

The Claimant's complaint of victimisation is not well founded and is dismissed.

The Claimant's complaint of harassment is not well founded and is dismissed.

REASONS

The Evidence

1.The Tribunal had before it a bundle consisting of 504 pages. This was supplemented, at the start of the hearing, with four photographs which were labelled 505 to 508.

2.A reference to a number in brackets is a reference to a document in the agreed bundle.

3.The Tribunal heard evidence from the Claimant, Mrs L. Union Mc Gibbon, her husband Mr L. Mc Gibbon and Ms K. Burton.

4.The Tribunal hear evidence from Mrs E.Jeynes (nee Starkey), legal officer and Mr R. Clark, Advice line team leader, for the Respondent

5.The Tribunal considered all the evidence in the round, even if it has not specifically referred to every piece of evidence or document.

The Issues

6.The Tribunal should begin by recording that the Claimant' initially pursued four complaints namely, harassment, victimisation, direct discrimination and a failure

to make reasonable adjustments. The Claimant relied upon the protected characteristic of disability.

7.The complaint of direct discrimination was withdrawn at the end of all the evidence but before submissions.

8.The failure to make reasonable adjustments related to a physical feature of the building at which the Claimant was employed, when on 22 June 2018, the Claimant could not use the lift, and she contended that no further reasonable adjustments were made for her.

9.The Respondent conceded the Claimant had the protected characteristic of disability and it had constructive knowledge of that disability at all material times.

10.The Claimant's disability was found by a Tribunal, sitting on 21 March 2019, to be a physical impairment to both of her legs which impacted on her mobility.

11.The Claimant, in respect of the victimisation complaint, relied upon two protected acts namely her grievances of 22 June 2018 and 04 July 2019. It was conceded by the Respondent that both grievances were protected acts.

12.The first grievance related to the lift incident on 22 June 2018 and was sent on that same day at 14.52.

13.The second grievance, dated 04 July 2019 related to whether the Claimant should or should not have received a carers break between March and May 2018 and how that was handled. Although originally, part of the Claimant's claim before the Tribunal related to the carers break, those allegations were withdrawn prior to the substantive hearing. However, the protected act remained.

14.The Claimant had produced a list of issues. They were adopted by a Tribunal at a previous hearing. In the circumstances this Tribunal has adopted that list using exactly the same emphasis and wording as utilised by the Claimant.

15.Before setting out, verbatim, the Claimant's list of issues there are a number of matters the Tribunal should address, so the list is intelligible to the reader.

16.The reference to SAR is a reference to a subject access request.

17.The reference to *"Emma"* is a reference to Mrs Jeynes.

18.The reference to *"Richard"* is a reference to Mr Clark.

19.The reference to *"Debby"* is a reference to Ms Bunn.

20.The reference to *"Carl"* is a reference to Mr Price.

21.The reference to *"Shelli"* is a reference to Ms Robinson.

22.The reference to *"Nikki"* is a reference to Ms Kirk.

23.The reference to *"John"* is a reference to Mr Sunderland, who worked in the Respondent's HR department.

24.The reference to *"Kate R"* is a reference to Ms Robinson who also worked in the Respondent's HR department.

25.The allegations are not all in chronological order and there is an element of overlap between some of the allegations. The Tribunal has used the same numbering as used by the parties in evidence to save confusion, rather than rearranging the allegations into a more logical order.

"Allegation 1: *Friday, 22 June 2018 – Richard emails all staff about my absence that day and talks about the impact on their workload. Harassment and victimisation*

Allegation 2*: Friday, 22 June 2018-I get to work and there are signs up outside the lift saying it is out of order. I speak to Emma outside/inside in the shared reception space. She questions me as to why I can't use the lift* (The Tribunal interjects here and thinks the Claimant meant stairs) *and I replied because of my legs. I say I'm happy to do anything. She leaves to make arrangements though seems angry. The building manager states that our ban has been lifted and we can now book meeting rooms. She states there are plenty available and I can have my pick of them. Emma returns with some common guidance and tells me to sit in reception (on a hot day with no facilities) until the lift is fixed . I ask if I will be in a meeting room and she states no. I advise they've said it will be a long time before it's fixed and Apex staff also advise it will be a matter of hours. Emma says to them you'll just have to advise me when it's fixed and walks out . I feel upset and humiliated and end up taking refuge in my car. When I have calmed down, I return home and call HR . I tell them what has happened, they say I do*

not have to speak to management. I ask for an email from Emma stating what has happened and why. Failure to make reasonable adjustments

***Allegation 3** 28 June 2018 – HAD TO HAVE A MEETING ABOUT MY ABSENCE WITH THE MANAGER THAT CAUSED IT-four days off including/following the lift incident. Forced to complete a back to work meeting with Emma. I raised the fact I feel it is inappropriate as she is responsible for the incident in question and subsequent anxiety attack, but she doesn't see anything wrong with it. I asked to fill the back to work form in myself at my desk .Following this meeting I end up upset in the toilets. Victimisation*

***Allegation 4**: 28 June 2018. Richard tells me off for not putting phone on make busy (do not disturb) when I am crying in the toilets. Harassment and victimisation.*

***Allegation 5**: 3 July 2018 IGNORED BY MANAGEMENT-Richard blanked me, said "good morning" to everyone on my shift individually except me. Later he emailed me out instructions for the day, this is something he would usually do verbally. Victimisation*

***Allegation 6:** Tuesday, 3 July 2018- MANAGEMENT BEGIN FORMAL ABSENCE PROCEDURES-receive a letter advising I have now been invited to a formal absence of meeting (please note there are no trigger points for this and therefore it is* (sic) *management decision on when to launch these proceedings) The meeting is due to be held with Emma. Harassment and victimisation*

***Allegation 7:** 04 July 2018 –RICHARD INAPPROPRIATELY BRINGS UP GRIEVANCE MAKING ME VERY UNCOMFORTABLE:MAKES MORE FALSE ALLEGATIONS.121 with Richard. I raised the fact we have a whole organisation staff conference/party in London imminently (06/07/2018) and are not allowed to attend. No issues with capability . Richard advised he was aware I had raised grievances and was confident he had done nothing wrong. He told me off for arriving at work on time and (falsely) accused me of sitting in my car on a morning until it was 9 AM. This was followed by an email summary of the meeting on 09/07/2018. Victimisation.*

Allegation 8 *Wednesday, 11 July 2018. RICHARD RUDE AND AGGRESSIVE REGARDING A GDPR CONCERN I HAD-Richard asked to speak to me at his desk regarding an email enquiry I asked him for assistance with. He asks why I sent it to him and I advise I could not clear data protection for the member as only her name was included. Richard searched the database and found someone (out of nearly half a million members) who had the same name. I advise the other sparse details did not match that record I was not sure if it was the same person. Richard became rude and quashed my concerns, telling me to use my common sense. Later in the day multiple other advisers asked if I was okay as they had overheard the way he spoke to me. Victimisation.*

Allegation 9 *Monday, 16 July 2018 SIDELINED FROM CPD-new advisers began today and I am excluded from new adviser induction. This is part of my appraisal targets and something I was meant to be involved in, confirmed by an email from Richard on 29/01/2018. I feel side lined and have been prevented from CPD. Direct discrimination, harassment and victimisation.* (Before the Tribunal the Claimant clarified she was relying upon an actual comparator, Ms Natalie Smith but as the case develop indicated that she thought it was now unlikely that there was an act of direct disability discrimination).

Allegation 10*- Friday, 20 July 2018. OVERBEARING SUPERVISION BY CARL-micromanagement by Carl, acting team leader. In the morning barking at me to turn my computer on (whilst it was in the process of loading) just after 9 AM. Later in the day telling me to sit down when I went to look at the staff annual leave board. Victimisation*

Allegation 11*-Tuesday 24 July 2018 SHELLI VERY RUDE WHEN I MADE A SUGGESTION, Shelli had been acting team leader earlier that day became very rude, patronising and challenging when I raised a workload suggestion. Please note, when this conversation was investigated my concerns of bullying by Shelli were not passed to the investigator. Victimisation*

Allegation 12*- Thursday, 26 July 2018 OVERBEARING SUPERVISION;FEELINGS ABOUT ME BY DEBBY APPARENT TO OTHERS-advised by a colleague that Debbie had been watching me speak to a new adviser with a look of horror on her face. Victimisation*

Allegation 13 *– Thursday, 26 July 2018 ISOLATED FROM MY COLLEAGUES BY DEBBY-we have banks of desks with four or six people sitting on each one. The people around me had left and/or were part-time and/or were off sick. I was sat with one of the newer members of staff. Today he was called in for a meeting with Debby, returned to his desk, collected his things together and moved elsewhere. I was sat on a bank of six by myself . I was humiliated and became very upset. Victimisation*

Allegation 14 *– Monday, 30 July 2018 GASLIGHTING-back to work meeting with Emma, I raise concerns about how I was being treated, she told me I was paranoid and over thinking things. From completing the SAR I know I was correct and this was a further example of gaslighting. Victimisation*

Allegation 15 *–07 August 2018 PUBLIC HUMILIATION-as is common practice in the office, I emailed some useful guidance I have found to the rest of the team, and Emma replied all (over 30 people) chastising me for doing so. This has never happened to anyone else and multiple people commented this was very harsh. I felt humiliated. Victimisation*

Allegation 16- *Wednesday, 8 August 2018 CONCERNS IGNORED RE MALICIOUS ALLEGATIONS- I advised Emma I felt people were making malicious complaints due to the divide in the department, these concerns were never investigated. Please note I have raised concerns recently about malicious allegations made around this time and not even had an acknowledgement. Harassment and victimisation.*

Allegation 17 *– Wednesday, 8 August 2018 TOLD OFF FOR FOLLOWING POLICY-Richard emails me asking to speak to me about a member who has complained as we won't advise her. I email confirming this to be true because she was a new member and that is our policy, which he had emailed out on 12/07/2018. I advise I had actually emailed him about this member at the time 11/07/2018 and asked him to contact her. Victimisation.*

Allegation 18 *–08 August 2018.HARASSMENT BY COLLEAGUE NIKKI-Richard then advised me he needed to speak to me about another member. He needed a referral but there were significant issues with his subscription and I transferred him to membership first. I realised Nikki had complained to him as*

she was the one who had a follow-up call. I felt betrayed and bullied. Victimisation.

***Allegation 19**- 08 August 2018 IGNORED BY RICHARD WHEN REQUESTED HELP-Richard was getting ready to leave but was still chatting to people. I asked if I could have a quick word. He said no he was leaving, it would have to wait until tomorrow. I told him that I was at the point I didn't know if I would make it in "as I just can't cope any more", then dissolved into tears. He walked out and left and I ended up in the toilet extremely distressed. Emma checked up on me, at the time I felt this was supportive but after the SAR realised she was writing notes about me. Victimisation.*

***Allegation 20** – Thursday, 9 August 2018 meeting with Richard goes ahead. Advised Richard I thought Nikki's complaint was malicious, this was never investigated. Harassment and victimisation.*

***Allegation 21** – Thursday, 9 August 2018 RICHARD ANGRY AND INTIMIDATING-Richard approached me in anger to have the meeting (about the above member) with him, he refused to allow anyone else to accompany me, I got upset. Ended up in the kitchen in tears with Emma and Kate (Unite rep). I agree to have the meeting on the basis the blinds aren't all pulled down that I can leave the meeting if he becomes aggressive again. Victimisation*

***Allegation 22**:17 August 2018 GRIEVANCE RESPONSE RECEIVED,INACURATE AND INTIMIDATING return to work but then advised Carl (acting team leader) that I have to go home due to receiving grievance responses from Debby. They are inaccurate and intimidating. I am also gob smacked that she has supposedly investigated the grievances without even speaking to me or holding a hearing. Victimisation.*

***Allegation 23** – 17 August 2018- LIFT GRIEVANCE RESPONSE-in the lift grievance response Debby states I have never said I needed reasonable adjustments; that I have been witnessed using the stairs on one occasion (in six months); she stated I never agreed to OH; she confirms I was not Emma's priority that morning as she had other things on her mind; she confirms a witness states she was curt with me; she confirms I was left in reception because Emma had other things to do; she states meeting rooms were unavailable though later*

confirms this was not true; she states reasonable adjustments under the Equality Act had not been agreed; she acknowledges they knew I had issues with stairs; she states reception is not suitable; she tells me I could have gone and worked in Morrison's café; she states I should have suggested other alternatives; she agrees Emma was curt but blames me says a professional adviser should be able to accept this treatment; she states I was not bullied as there was no shouting or use of abusive language; she advises I should have waited patiently for the lift to be fixed (it took over four hours); she states leaving the premises was not warranted and implies disciplinary action. Victimisation.

Allegation 24 *– Friday, 17 August 2018 notification of investigation by Debby, accusing me of bullying and requesting a statement. Victimisation*

Allegation 25 *– Tuesday, 11 September 2018: Date on OH referral form . Reason for referral include absence levels in previous jobs; to ascertain disability under the Equality Act; advising I could be under disciplinary/capability/absence procedures. Two questions given for referral both referring to my "emotional state". Also references to my stress levels. Form signed by Debby and John S. Victimisation*

Allegation 26 *– Tuesday, 11 September 2018: approx. date, telephone meeting with John S, kept offering settlement, he told me that once the investigation was complete I would not like the results, I agreed to an appointment for protected conversation. Victimisation and harassment*

Allegation 27 *– Friday, 14 September 2018. FALSE ALLEGATION-email/letter from Judith Hearn saying I had not submitted a fit note for 21/08/2018. Victimisation and harassment*

Allegation 28 *– 21 September 2018. Chased John S, he said he had never had authority to offer the settlement in the first place. Victimisation*

Allegation 29 *–01 February 2019.PROCEDURES STILL NOT BEING FOLLOWED- Kate R emails with grievance update, alleging they never went through an informal process. She states because Debby never followed the formal grievance process correctly it therefore cannot be considered to be a formal grievance. They blame my absence as delaying the their (sic) response*

(despite me being able for any contact and specifically stating that the outstanding grievances were preventing me from returning to work). Victimisation

Submissions

26.The Tribunal does not mean any disrespect to either party by failing to repeat their submissions. It has considered all the submissions even it has is not directly referred to them in its judgement. The Tribunal has retained careful notes of the submissions on the Tribunal file.

27.Mr Boyd produced a written submission and then highlighted matters from that submission by means of oral argument.

28.The written submission makes reference to a number of cases but none of the law was in dispute and therefore the Tribunal had not repeated that case law.

29.The Claimant made an oral submission which concentrated solely on the factual matrix.

The Law

30.The Tribunal have summarised the legal principles it applied to its findings. In reaching its findings the Tribunal had, as it must, regard to the EHRC Employment Statutory Code of Practice.

Harassment

31.Section 26 of the EQA 2010 defines harassment as follows:

(1) *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 an offensive environment for B

(2)A also harasses B if

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose of effect referred to in subsection (1)(b)

(3) A also harasses B if -

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(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.

32.In **Richmond Pharmacology Limited v Dhaliwal 2009 IRLR 366** Underhill P set out three essential elements of a harassment claim namely:

- Did the Respondent engage in unwanted conduct?
- Did the conduct have either (a) the purpose or (b) the effect of either (i) violating the Claimants dignity or (ii) creating an offensive environment?
- Does the conduct relate to a relevant protected characteristic?

33.This test was altered slightly in the case of **Pemberton v Inwood 2008 EWCA Civ 564** where the court added that when considering where the

conduct had the prescribed effect the Tribunal had to take into account the following factors:

" In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub paragraph (1)(b), a Tribunal must consider both…..whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and ….whether it is reasonable for the conduct to be regarded as having that effect (the objective question). It must also…take into account all the other circumstances- subsection (4)(b). The relevance of the subjective question is that if the Claimant does not perceive their dignity to have been violated, or an adverse environment created , then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the Claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

34.The Tribunal reminded itself that *"related to"* is a broader concept than *"because of/on the grounds of"*. There is no requirement for a causative link, just an associational connection with the protected characteristic. .

35.A mere failure to investigate may not be amount to harassment. The question is why the employer did not investigate. Was it the protected characteristic? See **Grant v HM Land Registry 2011 EWCA 769.**

36.When considering whether the conduct has the effect alleged, it is assessed from the Claimant's subjective point of view - see section 26(4). The test however is not solely subjective. The Tribunal must consider whether it was reasonable for the conduct to have that alleged effect.

37.What is an intimidating, hostile, degrading humiliating or offensive environment? In determining whether something violated the Claimant's dignity or creating an intimidating hostile degree humiliating or offensive environment the Tribunal reminded itself that these were fact sensitive judgements and all the circumstances and the context was important ,see for example **Heafield v Times Newspapers Limited**.

38.The word "violating" is a strong word which should not be used lightly. Offending against dignity or hurting it is insufficient said the EAT said in **Betsi Cadwaladr University Health Board v Hughes UKEAT/0179/1**.

39.The intention of the alleged harasser may be relevant to determine whether the conduct could reasonably be expected to violate a Claimant's dignity although the harasser need not know the behaviour was unwanted, context may be everything, see **Lindsay –v- London School of Economics [2013] EWCA Civ 1650** . Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offense was unintended.

40.In **HM Land Registry v Grant 2011 EWCA 769** the Court of Appeal held that the effect of the conduct on the clamant could not amount to a violation of his dignity, nor could it properly be described as creating an intimidating hostile degrading, humiliating or offensive environment. Elias LJ stressed that the Tribunal "*must not cheapen the significance of these words because they were an important control to prevent trivial acts which caused minor upsets being labelled as harassment".* The learned Lord Justice also went on to say in making the relevant assessment of the conduct complained of that *"for example it will generally be relevant to know to whom a remark is made, in what terms and for what purpose" and that it "may be a mistake to focus on remark in isolation…a Tribunal is entitled to take the view…that a remark, however unpleasant and however unacceptable is made in a particular context, it is not simply a remark standing on its own".*

41.Thus, the Tribunal concluded an uncomfortable reaction is not the same as humiliation.

42.In looking at whether it was reasonable for the Claimant to take offence again there is helpful guidance in **Dhaliwal** from Underhill P who stated *"whilst it is very important that employers, and Tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the…legislation…). It is also important not to encourage the culture of hypersensitivity or the imposition of legal liability*

in respect of every unfortunate phrase…if, for example, the Tribunal believes that the Claimant was unreasonably prone to take offence, then, even if she did generally feel her dignity had been violated, there will have been no harassment within the meaning of the section whether it was reasonable for the Claimant to have held her dignity to have been violated is quintessentially a matter for the factual assessment of the Tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question".

43.In looking at the circumstances of the case the Code suggests that factors such as the Claimant's health, cultural norms, previous experience of harassment and the environment in which it takes place may all be relevant factors.

Victimisation

44.Victimisation is set out in section 27 of the Equality Act 2010 as follows: –

"A person (A) victimises another person (B) if A subjects B to a detriment because:-

(a) B does a protected act or….."

45.A protected act is then defined in subparagraph (2) and it includes *"making an allegation (whether or not express) that A or another person has contravened this act".*

46.As a Tribunal have already noted the Respondent conceded the two grievances were protected acts.

47.The Claimant must show she suffered a detriment and that was because of the protected act.

48.It is therefore necessary to determine what consciously or sub consciously motivated the Respondent.

49.A detriment may be defined as something that a reasonable employee would take the view that they have been disadvantaged in the circumstances in which they had to work, see **Shamoon-v-Chief Constable of the Royal Ulster Constabulary (Northern Ireland) [2003] IRLR 285**.

50.The act makes it clear by reference to the word *"because"* that the protected act has to be an effective and substantial cause of the detrimental action, although it does not have to be the principal cause.

51.In **Aziz -v- Trinity Street Taxis Ltd 1988 IRLR 204** (a case on the Race Relations Act 1976) the court stressed it was necessary for a Claimant to show that it was the protected act that had influenced the unfavourable treatment.

Reasonable Adjustments.

52.Section 20 has four requirements, and a Tribunal must go through each of the constituent parts of section 20 as was emphasised by the EAT in **Environment Agency v Rowan [2008] ICR 218** The Tribunal should identify:

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

(b) the identity of non-disabled comparators;

(c) the nature and alleged extent of the substantial disadvantage suffered by the Claimant comprising itself the need to identify:

  (i) the nature of the Claimant's disability;

  (ii) why this disability placed him at a substantial disadvantage;

  (iii) what the substantial disadvantage was;

(d) in light of those matters what a reasonable adjustment would be.

53.The test of what steps an employer should take is an objective reasonableness test although this may require positive discrimination.

54.The thought processes that lead to the adjustment are irrelevant hence why an employer may escape liability even if it was luck rather than judgement that lead to a reasonable adjustment being made.

Burden of proof

55.Section 136 of the Equality Act 2010 provides:-

"(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 the 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…"

Findings of fact

56.In reaching the conclusions set out below the Tribunal has relied upon its findings of fact. Each of those findings, to the extent they are relevant should be treated as incorporated into these conclusions even if they are not specifically mentioned.

The Conspiracy

57.The Claimant contended that there was a core group who were banding against her and that group consisted of Ms Bunn, Mr Clark, Mrs Jeynes, Ms Robinson, Ms Kirk and Mr Price along with some members of HR. The Tribunal

found no evidence whatsoever of any such conspiracy and has no hesitation in rejecting that argument.

Background

58.The Respondent is a teaching trade union.

59.As part of the Respondents service to its members it provides advice and assistance on a variety of workplace issues.

60.In order to deliver that service, the Respondent has created what is known as Advice line. This is the first port of call for most members with a general concern Members queries are dealt with by Advice line either by telephone or e-mail. Those that it cannot deal with, or which require specialist advice, are referred to other departments within the union, including the various regional offices.

61.The Claimant commenced employment with the Respondent as an adviser within Advice line on 29 January 2018. Prior to this date the Claimant had worked for the Respondent via an agency.

62.An advice worker is required to deal with telephone and email enquiries and to offer appropriate advice, and if necessary, appropriate signposting. It is expected that an adviser will be trained as a certified settlement agreement officer.

Structure

63.Initially Ms Bunn was the overall Head of Department. Mrs Jeynes was the manager and also the Claimant's line manager. Mr Clark was the deputy manager.

64.Mr Clark did not report directly to Mrs Jeynes but to Ms Bunn.

65.Mrs Jeynes and Mr Clark had responsibility to manage the advisers, who numbered in the region of 25 to 30.

66.The structure of the Department changed in about August/September 2018 following a merger with another union. The post of manager and deputy manager were deleted from the structure. Under the new structure Ms Bunn remained Head of Department but Mrs Jeynes was retitled as legal officer and three team leader posts were created. They were occupied by Mr Clark, Mr Price, and Ms Shama Fazal.

67.For reasons that will become apparent, it is proper to mention Mrs Jeynes is significantly sight impaired and is likely to satisfy the provisions of section 6 of the Equality Act

The Building

68.At the time when the events giving rise to the Claimant's complaints arose she was based at the Respondents premises at the Apex business centre in Doncaster.

69.The building is not owned by the Respondent. Apex rents out of the building to multiple business users. There are a number of meeting rooms on the ground floor that can be rented, by the hour, to tenants, subject to booking.

70.The office in which the Claimant worked was on the 2nd floor. Access to the second floor was by means of either a single lift or a flight of stairs.

71.The floor on which the Claimant worked was predominantly open plan.

72.Ms Bunn had her own office. Mrs Jeynes and Mr Clark had their own desk in the open plan office. The advisers sat at a number of banks of desks situated in the office.

73.The reception area is set out in a number of photographs (505 to 508).The area is light and airy. There are two low coffee type tables and chairs. There is a

receptionist's desk which is manned by staff employed by Apex. There is access to a toilet and kitchen on the ground floor for staff, using their swipe card.

74.The Tribunal accepted that the reason the Claimant used the lift to the second floor was because of her disability which impacted on her ability to climb or descend stairs .

75.Although the Claimant is disabled, her disability is not immediately obvious to the observer. For example, her gait is perfectly normal.

The Grievances

76.The first grievance was sent by the Claimant to HR on 22 June 2018 (241 to 246). The grievance named Ms Bunn, Mrs Jeynes and Mr Clark in the heading. The central figure in the first grievance was Mrs Jeynes.

77.It is not clear from the grievance what it is said Mr Clark did, or did not do, or in what way he was subject to complaint by the Claimant.

78.The substance of the grievance was the Claimant was told to work in reception on 22 June 2018whilst the lift was being repaired. In her grievance the Claimant said she did not know whether that instruction came from Ms Bunn, but even if it did not, she criticised Ms Bunn for not intervening because she had a *"duty of care"*. How she was meant to act if she did not know of the incident was not explained. That was the extent of the allegation against Ms Bunn.

79.The second grievance was sent to HR on 04 June 2018 (287 to 296) and was directed against Ms Bunn, Mrs Jeynes and Mr Clark. The Tribunal viewed the content and determined that it was almost exclusively directed to Mr Clark.

80.It is difficult to discern any concrete allegations against Mrs Jeynes.

81.The only allegation against Ms Bunn was a brief reference to her refusing to speak to the Claimant for a few minutes (when she was about to go out) about her concern in respect of non-payment of carer's leave. That appeared to be the

extent of the grievance against Ms Bunn. She was very peripheral to the grievance.

Knowledge of the grievances.

82.It is important that the Tribunal identifies who knew what about the grievances and therefore has set out its findings, below.

83.At no stage did Mrs Jeynes ever see either of the Claimants two grievances.

84.However, she was asked by HR to write her account of what occurred on 22 June 2018, that same day, and thus the Tribunal concluded that she would have surmised that this was the substance of the first grievance. She accepted the grievance was about the Claimant's mobility and thus her disability.She was specifically aware that she was named in a grievance by no later than 28 June 2018 as the Claimant tried to raise it with her in her return-to-work interview and Mrs Jeynes refused to discuss it.

85.Mrs Jeynes had no direct knowledge of grievance two. She assumed that if she was a significant player in grievance two, she would have been asked for a statement from HR, as happened in grievance one. She was not asked for any such statement. She never saw grievance two. At its highest she knew as a manager that the Claimant had raised a grievance about carers leave but no detail, and did not consider she was implicated in it. She did not think it had anything to do with the Claimant's disability

86.Mr Clark never saw either grievance.

87.He was however aware, as a manager, there were two grievances. He assumed he was not involved in the first grievance but knew it had to do with the lift. He believed he was likely to be involved in the second grievance as it was his decision not to classify the Claimants sick leave as carers leave.

88.Ms Bunn did not give evidence but, at the latest, she knew of the first grievance by 28 June 2018 as she mentioned it in an internal email that the grievance had been allocated to her (247) to investigate. That e-mail made it

clear she had read it as she made clear Mrs Jeynes had not discussed with her the detail of the Claimant working in reception on 22 June 2018.

89.The best evidence the Tribunal had as regards Ms Bunn's knowledge of the second grievance is found in an email from HR to the Claimant dated 13 July 2018 headed "grievances". In it the author Ms Munn from HR stated *"I have therefore referred your concerns to Debbie Bunn for further investigation and a hearing/response as appropriate".* It follows the Tribunal deduced that, at the latest, from 13 July 2018 Ms Bunn was aware of the second grievance.

The Principal Personalities

90.The Tribunal considered it helpful to set out its assessment of the three principal witnesses, the Claimant, Mrs Jeynes and Mr Clark

91.The Claimant was clearly good at her job and her work generally well praised. However the Tribunal found the Claimant was a *"needy"* employee. This was documented by the Respondent with the Claimant, 23 Jan 2018, well prior to the events which give rise to the claim (127 by Mrs Jeynes).

92.Others made similar comments (357 and 470) and the Claimant acknowledged that she was high maintenance (141) and a difficult member of staff to manage (178).

93.In fairness to the Claimant the Tribunal could understand why a new employee would ask questions. Mrs Jeynes did not criticise this but it was the timing and relevance of questions. She gave as an example, calls stacking up and e-mail queries outstanding and the Claimant wanting an immediate response to how she completed her flexi time sheet.

94.The Tribunal considered the Claimant at times was somewhat dogmatic in her opinions and prone to making rather generalised statements without considering more likely explanations. By way of illustration, she said she considered some of the evidence of the Respondent had been changed . She relied upon one example. The Claimant rightly made the point that two of the three versions of

an email dated 05 April 2018 (which appeared in the bundle of pages 150, 151 and 184) were slightly truncated. When it was put to her that given the full version was also included in the bundle did that not lead her to believe there could be an innocent explanation such as being cut off in photocoping to which she answered in the negative. In the Tribunal's judgement the Claimant at times struggle with applying self-reflection to both her evidence and circumstances at work. That said there were times when the Claimant fairly conceded obvious points.

95.The Tribunal considered the Claimant honesty believed what she was telling the Tribunal though at times the factual basis for her feelings and beliefs was not well founded.

96.The Tribunal found Mrs Jeynes to be a direct witness. She felt quite comfortable answering questions with a simple yes or no. She was not a witness prone to speculation.

97.She expressed her opinions in a clear and forthright manner. Her answers were very precise, perhaps influenced by her training. The Tribunal considered that some people might consider her behaviour somewhat curt but she was not uncaring, for example there was an occasion when she became aware the Claimant was upset and went to comfort her in the lavatory.

98.The Tribunal found Mrs Jeynes to be a witness who related the evidence from her perception. She had made numerous contemporaneous notes to which she referred. She was a credible witness. Whilst there were occasional deviations between her oral and contemporaneous notes there was a large measure of consistency.

99.Mr Clark was in the Tribunal's judgement a witness who did his best to assist but perhaps, not surprisingly, given the passage of time, on occasions struggled to be able to identify exact dates for certain incidents. Mr Clark struggled, for example to explain when he knew the bar on the Respondent booking offices by Apex had been lifted, although the contemporaneous evidence pointed to the fact that he had sent an email on the morning of 22 June referring to that very fact.

100.The Tribunal formed the views that at time he considered events with the Claimant were blown out of proportion and he had at times difficulty managing the Claimant.

101.Mr Clark was a balanced witness in that he accepted the Claimant could produce very good work but considered as a manager the difficulty he had with her was she was very defensive to any form of criticism or guidance. He was a generally credible witness.

Findings of fact and discussion in respect of the allegations.

102.The Tribunal should begin by making the observation that a number of the allegations had a degree of overlap. Where the Tribunal has made findings of fact in respect of an incident, and then aspects of that incident appear in a further allegation, the Tribunal has not repeated its findings of fact. The findings of fact should be read together as an entire assessment by the Tribunal.

Allegation 1. *Friday, 22 June 2018 – Richard emails all staff about my absence that day and talks about the impact on their workload. Harassment and victimisation*

103.As will be seen in allegation 2, on Friday, 22 June 2018 the Claimant had a problem accessing the second floor at the Apex centre as the lift was out of commission.

104.The Claimant criticised an email sent at 10.40 that day by Mr Clark. Significantly at the time this alleged act took place the Claimant had not lodged her first grievance, her first protected act.

105.Mr Clark's email (240) simply said *"Due to some unforeseen staff absences please could I ask all advisers to be available for calls for the rest of the day".* The Claimant contended, although it was part of the adviser's role, that advisers didn't like telephone work. She considered that other staff would turn against her because they had to undertake telephone work when she had not appeared at

her workstation. She considered that Mr Clark had sent a coded message to staff.

106.The Tribunal rejected that contention. Firstly, the Claimant was not specifically identified in the email. Secondly the email refers to *"staff absences"* which is in the plural. Linked to the second point there were a total of seven advisers who had not attended work that day for a variety of reasons. This was approximately 25% of the adviser staffing complement. Whilst two were on pre-planned annual leave and others on sickness absence, three, the Claimant, Ms Fletcher and Mr Lane were all unexpected. Thirdly all Mr Clark was stating was that he wanted all advisers to be available for telephone calls. He was not stating that advisers had to only do telephone calls. If the calls were being answered and other work existed, they were free to do that.

107.Allegation one cannot amount to victimisation, as at the time the act occurred there was no protected act. The email from Mr Clark neither had the purpose or effect of either violating the Claimants dignity or creating an offensive environment. Whilst the Claimant may perceive that it violated her dignity or created an offensive environment it was not reasonable for her to hold that view looking at the email in the round. In addition the conduct complained of had nothing to do with the Claimant's protected characteristic. In the circumstances the claim must be dismissed.

Allegation 2*: Friday, 22 June 2018-I get to work and there are signs up outside the lift saying it is out of order. I speak to Emma outside/inside in the shared reception space. She questions me as to why I can't use the lift* (The Tribunal interjects here and thinks the Claimant meant stairs) *and I replied because of my legs. I say I'm happy to do anything. She leaves to make arrangements though seems angry. The building manager states that our ban has been lifted and we can now book meeting rooms. She states there are plenty available and I can have my pick of them. Emma returns with some common guidance and tells me to sit in reception (on a hot day with no facilities) until the lift is fixed . I ask if I will be in a meeting room and she states no. I advise they've said it will be a long time before it's fixed and Apex staff also advise it will be a matter of hours. Emma says to them you'll just have to advise me when it's fixed and walks out . I feel*

upset and humiliated and end up taking refuge in my car. When I have calmed down, I return home and call HR . I tell them what has happened, they say I do not have to speak to management. I ask for an email from Emma stating what has happened and why. Failure to make reasonable adjustment.

108.The Tribunal noted in an internal email dated 18 January 2018 (116) it was recorded that the Claimant had told the Respondent that if the lift was broken in the Apex building, she would be unable to climb the stairs to the second floor.

109.Subsequently, given the Claimant's vulnerability, a personal evacuation plan was undertaken for the Claimant, the results of which were recorded in an email of 02 May 2018 The assessment was carried out by Mrs Jeynes and she recorded (172) *"You found that you would be able to use the stairs to get out of the building in an evacuation situation it's just that it would be painful. You said that it would have to be really bad for you not to be able to use the stairs and have to wait in the refuge area… we agreed that in the event of an evacuation situation that you would use the stairs along with your colleagues but if you were having a particular bad day with your legs that we would use the refuge area instead"* The Claimant was copied in to the email and at no stage indicated it was in anyway incorrect. Mrs Jeynes's knowledge of the impact of the Claimant's disability was therefore based on that note.

110.The Claimant in evidence accepted she had used the stairs between 3 to 5 occasions but almost inevitably used the lift. Mrs Jeynes was aware of the very rare occasions when the Claimant had used the stairs prior to 22nd of June 2018.

111.On the evening of 21 June 2018 there was a power outage which affected the Apex building. It was such that Mrs Jeynes was called out that evening.

112.When the Claimant arrived at the office on 22nd of June she found the lift was out of order. A mechanic was there. Almost immediately thereafter Mrs Jeynes entered the buildings. Mrs Jeynes had only come in for a meeting with Ms Bunn, as she had to go to Liverpool later that day. The Tribunal found she was pressed for time and concerned as to what effect the power outage may have had on the computer and phone systems of Advice line.

113.The Tribunal found that Mrs Jeynes did ask whether the Claimant could use the stairs to which she replied *"my legs"* and Mrs Jeynes accepted that meant that she could not and did not pursue it. The request as to whether the Claimant could use the stairs was reasonable given the information she obtained from the personal evacuation plan and the fact on a few, rare, occasions the Claimant had use the stairs.

114.Mrs Jeynes enquired as to how long the lift was to be out of order with reception, in the presence of the Claimant and at that stage understood it to be about one hour. Mrs Jeynes then went upstairs and obtained a copy of the Burgundy book, (the terms and conditions for teachers) and suggested the Claimant sat in reception until the lift was fixed studying the document as it was relevant to her employment. Teachers' terms and conditions are available on line. No confidentiality issues therefore arose in the Claimant studying the documents in a public reception

115.Mrs Jeynes asked the receptionist to contact her in an hour. The Tribunal was satisfied that the intention of Mrs Jeynes was then to review the situation if the lift had not been fixed.

116.The reception contained appropriate facilities for a person to sit down and read (505 to 508). There are also refreshment and toilet facilities available. Whilst it may well be the Claimant had forgotten her swipe card to access those facilities the Tribunal concluded that it was likely that had she asked the receptionist she would have been given a temporary pass or swiped through.

117.The Claimant did not ask about the possibility of using a ground floor meeting room. Mrs Jeynes did not explore the option of a meeting room because she believed the Respondent was on block by the landlord because it had not paid its bills for a considerable period of time. As it transpired, she was right that the Respondent had been on block for a considerable period of time but the outstanding bills had recently been paid and therefore meeting rooms were available. The Tribunal found that Mrs Jeynes belief, at that time, that the Respondent was still on block, was reasonable .

118.The Claimant accepted that Mrs Jeynes might reasonably believe there was a block on meeting rooms and she herself only learnt that the block had been

lifted when speaking to the receptionist, after Mrs Jeynes had left. The Tribunal is satisfied that had the matter been raised with Mrs Jeynes and there was no block by Apex she would have arranged for a room for the Claimant to sit in whilst the lift was repaired had she so wanted.

119.It is proper to record the Claimant's evidence was that she did raise with Mrs Jeynes the possibility of using a ground floor meeting room and she is entitled to find some support for that in the grievance outcome drafted by Ms Bunn (372). However, the Tribunal is satisfied there was no such conversation. Ms Bunn sent Mrs Jeynes's a note of their discussion (when she was investigating the first grievance). Whilst Ms Bunn's notes make reference to a discussion in respect of the meeting room Mrs Jeynes's had crossed that out as can be seen on page 321. The most probable explanation is that Ms Bunn had used her original notes of her meeting with Mrs Jeynes rather Mrs Jeynes amended notes when writing up her report. The Tribunal accepted there was no discussion between the Claimant and Mrs Jeynes as to the use of a meeting room.

120.The Claimant contended she would be embarrassed to read terms and conditions in reception as she would "*stick out like a sore thumb."* The Tribunal regarded that as an unreasonable overreaction.

121.The Claimant contended that other than booking a room Mrs Jeyes should have considered allowing her to work from home, going home, working a later shift or working in regional office a number of miles away or purchasing a laptop. None of these suggestions were raised with Mrs Jeynes at the time. The Tribunal was satisfied Mrs Jeynes had found a reasonable solution to the problem the Claimant faced based on what she knew.

122.The Tribunal does not consider it unreasonable for Mrs Jeynes to take the action she did based on the information she had at the time. She was not to know the room block had been lifted. She was not to know at the time it would take more than one hour for the lift to be repaired .Given the expected delay, as she understood it was one hour, the arrangement she made was a reasonable adjustment .

123.Because the Claimant considered she would feel uncomfortable sitting in the reception for about an hour, she went home, sometime between 9.30 and 9.40.

124.The evidence of Mr McGibbon was that he spoke to his wife who was in the car and the complaint she made as regards Mrs Jeynes was that she had been *"rude/mean to her"* and had *"embarrassed"* her in reception. The Tribunal considered, given the other priorities that faced her, outlined above, that Mrs Jeynes was matter of fact, but not rude or mean. The Claimant expected more attention than Mrs Jeynes considered necessary. This echoes back to Mrs Jeynes assessment, to which the Claimant agreed with, that at times she could be "*high maintenance".*

125.The Claimant when at home tried to speak to management at the office but they were in a meeting. She then spoke to HR. HR told the Claimant that they would get a message to Mrs Jeynes and ask her to write out what she said had occurred that morning. The Claimant did not ask to be contacted when the lifts were fixed so she could go back to work.. Following this incident, the Claimant then had two working days sickness absence.

126.Allegation two related to a failure to make an adjustment in respect a physical feature namely the ability to access the office on the second floor

127.Access was by means of either a lift or the stairs. This was the PCP. No complaint is made that access via a lift addressed the Claimant's mobility disability in ordinary circumstances.

128.The Claimant was placed at a disadvantage compared with non-disabled people because she could only use the stairs with difficulty. If she could not use the stairs she could not access her workstation..

129.On 22nd of June the lift broke down. In the Tribunal's judgement it was at that point that the duty to make a reasonable adjustment arose. A temporary solution was required as it was foreseen the lift would be quickly repaired. Mrs Jeyne's understood it to be about an hour. It was longer but the Claimant had left before Mrs Jeynes was due to review the Claimant's position at 10 am. Between the arrival of the Claimant at work and her leaving, a reasonable adjustment had been made.

130.The reception was suitably furnished and there was access to the facilities. The criticism from the Claimant was the Respondent did not supply a meeting

room, not that she had to work on the ground floor for a short period of time or that the work was unreasonable. As the Tribunal have already explained Mrs Jeynes believed on reasonable grounds that it was pointless asking for a meeting room because the Respondent was on block due to the non-payment of bills. The Claimant accepted that was a reasonable belief. Mrs Jeynes's was not to know the block had been lifted and neither the Claimant nor the receptionist at Apex drew that to her attention. Reasonable adjustments were made in the circumstances as they presented themselves. In the circumstances the claim must be dismissed.

Allegation 3 *28 June 2018 – HAD TO HAVE A MEETING ABOUT MY ABSENCE WITH THE MANAGER THAT CAUSED IT-four days off including/following the lift incident. Forced to complete a back to work meeting with Emma. I raised the fact I feel it is inappropriate as she is responsible for the incident in question and subsequent anxiety attack, but she doesn't see anything wrong with it. I asked to fill the back to work form in myself at my desk .Following this meeting I end up upset in the toilets. Victimisation.*

131.The Claimant had been absent from work from 22 June 2018. She reported sick. When an employee had been absent due to illness the Respondents procedures involve a return-to-work process. That process was carried out by the employee's line manager. It follows that Mrs Jeynes was the appropriate person to carry out the return to work. Part of the process involves the completion of what is known as a pink slip.

132.This is normal management practice and one the Claimant would have been familiar with as she had previous absences due to ill-health.

133.The Tribunal concluded that the reason for the meeting being convened by Mrs Jeynes was that she was required to hold one in accordance with the Respondents normal practice, following a period of sickness by an employee.

134.At no stage was the Claimant forced to have the meeting and raised no concerns about attending the meeting beforehand. This is consistent with the notes of Mrs Jeynes made up that same day at 10.05 (253 and 256).

135.The Claimant did try to discuss the incident of 22 June. Mrs Jeynes stopped that conversation as she considered a return-to-work meeting to be the wrong forum. The Tribunal does not criticise that decision. The Claimant asked if she could complete the pink slip on her own to which Mrs Jeynes acquiesced. When the pink slip was returned to Mrs Jeynes, she passed it to Ms Bunn without counter signing it because she did not agree with comments made on the form by the Claimant.

136.The Tribunal did not find the Claimant was subjected to any detriment either by the convening of the meeting or its conduct.

137.As the Tribunal has already indicated it was appropriate and proper for a return-to-work meeting to be held. The meeting was held by Mrs Jeynes because she correctly believed that was following the Respondent's normal procedure. The meeting therefore took place because she was following that procedure and not as some form of punishment, as alleged by the Claimant, because she had made at that stage a protected act. In the circumstances the claim must be dismissed.

Allegation 4*: 28 June 2018. Richard tells me off for not putting phone on make busy (do not disturb) when I am crying in the toilets. Harassment and victimisation.*

138.When staff were not available to take calls the office protocol was that the *"make busy"* arrangement had to be engaged on the telephone system. This can be done using the adviser's keyboard or mouse. This led to calls being re-routed rather than kept waiting.

139.The Claimant fairly accepted that she had not done so on this occasion. She had gone to the washroom as she was upset about her return-to-work discussion with Mrs Jeynes. In the circumstances the Tribunal considered that the Claimant genuinely forgot the office protocol because she was upset.

140.When the Claimant was back at her desk Mr Clark spoke to her. The Claimant accepted the tone and content of the conversation with Mr Clark was reasonable. He reminded her of the office protocol.

141.Mr Clark took no further action whatsoever. The matter was not discussed again. The Tribunal concluded that Mr Clark was simply and politely reminding the Claimant of the office procedure to use, particularly given the Respondents received a significant volume of queries by telephone.

142.The Claimant had failed to follow the correct procedure in respect of the telephone system. In the circumstances Mr Clark was entitled to raise that matter with the Claimant. The Tribunal is satisfied Mr Clark would have had a similar conversation with any other employee. There was nothing improper in the conversation . It did not have the purpose or effect of violating the Claimant's dignity or creating an offensive environment. Neither was it related to the Claimant's protected characteristic. The Tribunal did not regard reminding an employee of the correct procedure to follow when leaving their desk was a detriment in these particular circumstances. The conversation had nothing whatsoever to do with the fact the Claimant had made a protected act. In the circumstances the claim must be dismissed.

Allegation 5*: 3 July 2018 IGNORED BY MANAGEMENT-Richard blanked me, said "good morning" to everyone on my shift individually except me. Later he emailed me out instructions for the day, this is something he would usually do verbally. Victimisation*

143.There are two factual aspects to this allegation, firstly the alleged failure of Mr Clark to greet the Claimant and secondly giving an instruction by email.

144.On the first, perhaps unsurprisingly Mr Clark could not recall the incident. His evidence, which the Tribunal accepted was that he would normally say good morning to a person if he saw them.

145.It may well have been that Mr Clark did not say good morning to the Claimant on 03 July 2018 but the Tribunal is not satisfied that there was any deliberate snubbing or ostracism by Mr Clark of the Claimant. The Claimant did not suggest it occurred again. There was no course of conduct.There were equally plausible explanations such as Mr Clark did not see the Claimant.

146.A further matter that the Tribunal took into account was the Claimant was not a shrinking violet and if she perceived anything had occurred to her detriment

she would have been quick to raise those points. She did not challenge Mr Clark as to his apparent failure to wish her a good morning.

147.The Tribunal is satisfied that instructions were given to staff both orally and sometimes by email.

148.As has already been noted the Claimant contended advisers did not like working on the telephone.

149.The email instruction (260) from Mr Clark to the Claimant was that he wanted the Claimant to work on emails rather than on the telephones. The Tribunal carefully examined the email and there was nothing in the tone to cause concern. It simply read *"Hi Lindsay, Could you do emails until 5 pm. Thanks, Richard*

150.Given email work was regarded as preferable to telephone work by advisers the Tribunal concluded there was no intention, as the Claimant contended in her evidence, to punish her. She was being given work that she preferred. Giving a person work they preferred, in preference to work that they did not, was inconsistent with an assertion that Mr Clark was part of an overarching campaign against the Claimant. There was no detriment.

151.Nor did the Tribunal attach any significance to the fact the instruction was sent by email rather than being verbally relayed to the Claimant. The message was short and precise and there may have been a myriad of explanations as to why an email was more suitable, for example the Claimant being on the phone at the time.

152.The Tribunal found no evidence that any alleged behaviour was connected to the Claimants protected acts. In the circumstances the claim must be dismissed.

Allegation 6: *Tuesday, 3 July 2018- MANAGEMENT BEGIN FORMAL ABSENCE PROCEDURES-receive a letter advising I have now been invited to a formal absence of meeting (please note there are no trigger points for this and therefore it is* (sic) *management decision on when to launch these proceedings) The meeting is due to be held with Emma. Harassment and victimisation*

153.The Claimant put her case squarely on the basis that she was invited to an absence management hearing because, by that stage, she had raised her first grievance, which it was conceded was a protected act.

154.Prior to the appointment of the Claimant by the Respondent the Respondent was aware that the Claimant had a very poor sickness record and discussed this concern with the Claimant prior to the commencement her employment. The information the Respondent had received was the Claimant had 132.5 days sickness between April 2015 and April 2016. It is proper to record the Claimant considered that the reference period was not wholly accurate but nothing hinges on it. Suffice to say and the Claimant fairly accepted she had substantial periods of sickness in her previous employment.

155.Well before the lift incident on 22 June 2018, Ms Bunn appeared to have concerns as to the Claimant's attendance as is evidenced in an email of 05 April 2018 (150). The Claimant had substantial periods of absence in early 2018.

156.Again, on 25 April 2018, because of the Claimant's sickness record (which did not appear to have any connection with her disability), Mr Clark raised with the Claimant the possibility of an occupational health referral. By 10 May 2018 (185/186) it appeared that Mr Clark had decided a referral was appropriate but as the Claimant disagreed, he was persuaded not to make the referral.

157.An internal email from Ms Bunn to HR on 09 May 2018 expressed concern that the Claimant had been absent due to illness for five weeks in the first three months of her permanent contract (178). Similar concerns were expressed in a later email of 21 May 2018 (219).

158.The above background is relevant as it demonstrates that the pattern of high sickness absences in the Claimant's previous employment appeared to be repeated well before any grievance was lodged. In the circumstances any employer would want to discover whether there was an underlying cause, and what could be done to improve attendance. The Respondent had those concerns.

159.On 22 June the Claimant returned home. She was then absent from work with what she described as anxiety for two days.

160.The Claimant was invited by letter dated 27 June 2018 to a sickness absence review arranged for 05 July 2018 (251). The Tribunal concluded the principal thrust of the letter was for the Respondent to understand the absences and to examine what steps could be taken to sustain attendance. There were a range of possible outcomes from the meeting including medical investigation. At its highest, one possible outcome was the employee would be monitored over a period of three months and if persistent short-term absences continued that could put the employee's employment at risk.

161.Mrs Jeynes had no involvement in deciding whether the letter would be dispatched. The letter was composed and signed by a member of HR.

162.The Tribunal noted there were no trigger points in the Respondent's sickness absence policy. It therefore carefully considered whether the Claimant was being targeted because of her grievance. The Tribunal rejected that because it was clear the Claimant's attendance had given cause for concern prior to 22nd of June and she then had further time off work

163.The Tribunal was satisfied that the Respondent has explained why the Claimant was invited to absence management meeting. Given her very short service she had a very poor attendance record. None of the absences related to her disability. Whilst the Tribunal accepted that there were two longer serving employees who had poorer records much of their non-attendances were discounted due to disability. In the circumstances the Tribunal is satisfied that the Respondent acted in the manner which was in no way was connected with the Claimant's physical disability. Being called to an absence meeting was not a detriment when the purpose was to assist the Claimant in achieving satisfactory attendance. The Claimant was not invited to an absence management meeting because she had undertaken protected acts. The behaviour of the Respondent did not have a purpose or effect of violating the Claimant's dignity or creating an offensive environment. It was simply done to manage her sickness absence. In the circumstances the claim must be dismissed.

Allegation 7: *04 July 2018 –RICHARD INAPPROPRIATELY BRINGS UP GRIEVANCE MAKING ME VERY UNCOMFORTABLE:MAKES MORE FALSE ALLEGATIONS.121 with Richard. I raised the fact we have a whole organisation*

staff conference/party in London imminently (06/07/2018) and are not allowed to attend. No issues with capability . Richard advised he was aware I had raised grievances and was confident he had done nothing wrong. He told me off for arriving at work on time and (falsely) accused me of sitting in my car on a morning until it was 9 AM. This was followed by an email summary of the meeting on 09/07/2018. Victimisation.

164.The Tribunal found that by 04 July 2018 Mr Clark believed he was mentioned in the Claimant's second grievance.. He did mention the grievance but in the context that it was not a matter to be raised at a one-to-one and he considered he could fairly undertake the one-to-one because his perception was that he did not consider that he had treated the Claimant unfairly or less favourably. The Claimant did not raise any concern at the time with Mr Clark continuing with the discussion.

165.Mr Clark did raise with the Claimant why she was only now coming into work at 9 am as it was his perception, she used to come in 5 to 10 minutes earlier and talked to colleagues before starting work at 9 am. In the Tribunal's judgement context was everything. The Tribunal found Mr Clark was stating that he had no difficulty in managing the Claimant despite the grievance. He was telling the Claimant that she should work as normal rather than isolate herself. There was a need to maintain professional relationships. The grievance would be processed via the appropriate channels in due course but in the interim it was desirable that normal office interactions continued.

166.Mr Clark had valid reasons as regards the London conference and who was to attend.

167.The Tribunal did not accept the Claimant's assertion that she was subject to intimidation by Mr Clark at this meeting. It reached this conclusion because Mr Clark sent the Claimant an email summary of the meeting (297) and stated *"please let me know if anything you would like to add or amend".* The email was balanced, praising the Claimant for some of her work and recording that he considered both of them had to focus on maintaining positive relationships . The note recorded *"I said that you only just arrived on time today and said that I didn't want you to try to avoid management by deliberately arriving later than you used*

to do" . There was one small aspect of criticism as regards taking breaks but the Claimant accepted that was a fair point. Having received the email the Claimant did not respond suggesting it was incorrect or that there was any inappropriate behaviour by Mr Clark towards her. Whilst the Tribunal noted the fair point made by the Claimant, that there was an inequality of power, the Claimant was not a shrinking violet and had already raised grievances The Tribunal was satisfied that the Claimant was not subjected to any form of detriment at the meeting.

168.The Tribunal found no evidence that any alleged behaviour was connected to the Claimants protected acts. In the circumstances the claim must be dismissed.

Allegation 8 *Wednesday, 11 July 2018. RICHARD RUDE AND AGGRESSIVE REGARDING A GDPR CONCERN I HAD-Richard asked to speak to me at his desk regarding an email enquiry I asked him for assistance with. He asks why I sent it to him and I advise I could not clear data protection for the member as only her name was included. Richard searched the database and found someone (out of nearly half a million members) who had the same name. I advise the other sparse details did not match that record I was not sure if it was the same person. Richard became rude and quashed my concerns, telling me to use my common sense. Later in the day multiple other advisers asked if I was okay as they had overheard the way he spoke to me. Victimisation.*

169.It is relevant to mention that at the time of the incident GDPR was a relatively new concept, replacing the Data Protection Act.

170.The background to the Claimant's concern was that a member of the union, AG, had contacted the Claimant six days earlier to discuss a query as regards the personal injury claim. AG then again spoke to the Claimant who considered she could not provide advice as there were GDPR issues clarifying the members identity from the Respondents database. She therefore did not deal with the members enquiry but referred the matter to Mr Clark.

171.In the Tribunal's judgement Mr Clark was vexed that the matter had been referred to him and did tell the Claimant to use her common sense. He found there was only one AG on the database and, given the query related to personal injury, he considered the identity was obvious. He probably did say that the

Claimant wasted 10 minutes of his time as this is referred to in a contemporaneous email authored by the Claimant.(310) That however was said in the context that the Claimant had previously spoken to the same member without raising any GDPR issue and had spoken to Mr John Roberts about the member making a personal injury claim. If she had concerns as to the members identity, she could have spoken further to the member to clarify the issue or sought confirmation by email from the member.

172.At its highest Tribunal considered Mr Clark gave management feedback.

173.The Tribunal found that the discussion between the Claimant and Mr Clark was fraught in the sense that the Claimant raised her voice and it was Mr Clark who then ended the conversation. Mr Clark subsequently took advice from the Respondent's expert Ms Shama Fasal to satisfy himself his approach was correct and was so assured. He also wrote to the Claimant on 11 July 2018 at 11.59 stressing the GDPR did not prevent advisers searching the Respondents membership database.

174.That is not to say Tribunal did not accept the Claimant genuinely believed there was an issue. At its highest there was a difference of opinion in respect of work-related matter.

175.The Claimant was not subjected to a detriment. She was given management feedback on how to address the issue. .

176.The Tribunal found no evidence that any alleged behaviour was connected to the Claimants protected acts. In the circumstances the claim must be dismissed.

Allegation 9 *Monday, 16 July 2018 SIDELINED FROM CPD-new advisers began today and I am excluded from new adviser induction. This is part of my appraisal targets and something I was meant to be involved in, confirmed by an email from Richard on 29/01/2018. I feel side lined and have been prevented from CPD. Direct discrimination, harassment and victimisation.* (Before the Tribunal the Claimant clarified she was relying upon an actual comparator, Ms Natalie Smith but as the case developed indicated that she thought it was now unlikely that there was an act of direct disability discrimination).

177.On 25 January 2018 (131) Mr Clark sent an email to all advisers asking for volunteers to assist in the induction of new advisers. He indicated that inductions were carried out by an experienced adviser. The email went on to say that once management had a list of volunteers, a pool would be created from which they could then select experienced inductors, when the new advisers started work.

178.It should be recalled that the Claimant was only an agency worker at the time and did not start permanently until 29 January 2018 and had not been trained up as a certified settlement agreement officer, which was part of the role of an adviser (and still wasn't at the date the new recruits started). She could not therefore be described as an experienced adviser.

179.The Claimant volunteered, and on 29 January 2018 Mr Clark responded indicating that the Claimant's name had been added to the pool. (130).

180.The formal induction process included a number of specific aspects. The Claimant's specialism, directed time and workload, was not one of those topics.

181.Three new advisers started employment with the Respondent on 16 July 2018 namely Richard Woodward, Jodi Lilley and Innes MacLeod.

182.Mr Woodward was allocated two experienced advisers Ms Liz Clothier and Ms Robinson. The Claimant's husband was assigned to Ms Lilley and Ms MacLeod to Ms Kirtina Chad.

183.It was not put in evidence that any of those chosen mentors were less experienced or qualified than the Claimant.

184.The Tribunal is satisfied that the Respondent was reasonably entitled to determine that Ms Clothier, Ms Robinson, the Claimant's husband and Ms Chady were all experienced advisers and has satisfactorily explained why they preferred to appoint those advisers in preference to the Claimant.

185.The failure to appoint the Claimant did not have the purpose or effect of violating the Claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment. The behaviour of the Respondent had nothing to do with the Claimant's protected characteristic.

186.Whilst it might be said that the failure to appoint a person as a mentor was a detriment as it enhanced the employees skill set the Tribunal found no evidence that any alleged behaviour was connected to the Claimants protected acts. In the circumstances the claim must be dismissed.

Allegation 10*- Friday, 20 July 2018. OVERBEARING SUPERVISION BY CARL- micromanagement by Carl, acting team leader. In the morning barking at me to turn my computer on (whilst it was in the process of loading) just after 9 am. Later in the day telling me to sit down when I went to look at the staff annual leave board. Victimisation*

187.The Claimant's case was that on 20 July 2018 Mr Price micro managed her and that was at the direction of Ms Bunn. On that day Mr Price was the acting team leader.

188.The Respondent was embarking on a restructuring exercise because of the merger of the two unions. In the structure new posts of team leader were to be created. The Respondent therefore invited existing experienced advisers, if they were interested in the posts, to trial the role by acting up. Mr Price was one of those who expressed an interest.

189.The Tribunal found there was not a scintilla of evidence to support the Claimant's assertion that Ms Bunn had any involvement whatsoever in Mr Price's behaviour on 20 July 2018. The Claimant engaged in mere conjecture.

190.The Tribunal found that both prior to 20 July 2018 and after 20 July 2018, as Claimant accepted, she had a normal professional working relationship with Mr Price. Indeed, the Claimant admitted that Mr Price had been supportive when she returned from one of the periods of sick leave.

191.The Claimant accepted Mr Price was a very measured individual. There was no direct evidence or evidence from which the Tribunal could safely infer, that that he was aware of either of the Claimants to grievances.

192.On the basis of the evidence the Tribunal considered Mr Price may well have spoken abruptly to the Claimant in the morning about turning her computer on and getting down to work, and later that afternoon when she wandered out of her seat.

193.The Tribunal considered that as Mr Price's behaviour was out of character and not repeated, there were a myriad of explanations, including that Mr Price simply was having a bad day or was perhaps keen to set very clear boundaries to staff whilst acting up. The fact there was no repetition points away from the Claimant's assertion that Mr Price was part of a conspiracy headed by Ms Bunn to seek retribution against her because she had raised two grievances.

194.Even if speaking abruptly to a person amounts to a detriment (and the Tribunal is prepared to accept that it might in certain circumstances) there was no evidence from which the Tribunal could conclude that Mr Price behaved as he did because the Claimant had done protected acts. In the circumstances the claim must be dismissed.

Allegation 11*-Tuesday 24 July 2018 SHELLI VERY RUDE WHEN I MADE A SUGGESTION, Shelli had been acting team leader earlier that day became very rude, patronising and challenging when I raised a workload suggestion. Please note, when this conversation was investigated my concerns of bullying by Shelli were not passed to the investigator. Victimisation*

195.There was no direct evidence or evidence from which the Tribunal could safely infer that Ms Robinson was aware of either of the Claimants two grievances

196.On 24 July 2018 Ms Robinson was acting up as a team leader in a similar manner to Mr Price as seen in allegation 10.

197.The Claimant attributed Ms Robinson's alleged behaviour to a directive from either Ms Bunn, Ms Jeynes or Mr Clark. The Tribunal could find no cogent evidence either direct or indirect from which it could infer that Ms Bunn, Ms Jeynes or Mr Clark gave such a direction.

198.The Claimant contended that on that same day Ms Robinson displayed similar behaviour to what she complained of, to her husband. The Claimants husband had not carried out a protected act. That is a fact that points away from any victimisation specifically being aimed towards the Claimant.

199.On the evidence available to it the Tribunal considered that there was a frank exchange of views between Ms Robinson and the Claimant during which voices

were probably raised. The Claimant suggested that certain staff should be taken off the telephone service but Ms Robinson considered that the demands of the shift was such that they were appropriately allocated and that it was her responsibility to manage the resources. Given that Ms Robinson was the acting team leader it was her responsibility to allocate resources. The Tribunal considered that it was likely Ms Robinson saw the Claimant's suggestion as telling her how to do her job and took offence.

200.The Claimant apologised to Ms Robinson the following day for her behaviour and the parties agreed to disagree upon their respective view of the work-related issue.

201.The Tribunal concluded that it was the Claimant who was the aggressor rather than Ms Robinson. It reached this conclusion on the basis of an email sent by Ms Bunn to Mr Sunderland in HR on 25 July 2018 (329). The email *read "a new member of staff has raised concerns about witnessing inappropriate behaviours and conversation by* [the Claimant] *yesterday evening towards Shelli Robinson who was acting team leader for the day."* The email went on to say the new member of staff, Mr Woodward, had experienced similar treatment from the Claimant and asked Mr Sutherland for advice. Subsequently Mr Woodward spoke to Mrs Jeynes and indicated if such behaviour was not addressed he would not be able to continue in his role .This indicated to the Tribunal that the incident, from Mr Woodward's perception, was serious and the fact that a new adviser would be considering leaving would also be a matter of concern to the Respondent. .

202.The Tribunal also considered the above contemporaneous e-mail was relevant as it pointed away from the fact that there was some form of conspiracy, at the heart of which was Ms Bunn, directing a campaign against the Claimant .

203.Even if the Claimant could establish a detriment, which the Tribunal found she could not as she was the aggressor, there was no evidence from which the Tribunal could conclude that Ms Robinson behaved as she did because the Claimant had done protected acts. In the circumstances the claim must be dismissed.

Allegation 12*- Thursday, 26 July 2018 OVERBEARING SUPERVISION;FEELINGS ABOUT ME BY DEBBY APPARENT TO OTHERS- advised by a colleague that Debbie had been watching me speak to a new adviser with a look of horror on her face. Victimisation*

204.The Claimant did not witness the alleged look of horror on Ms Bunn's face when the Claimant was speaking to one of the newly recruited advisers. She is reliant upon what she has been told, by her husband.

205.On the Claimant's own evidence there was no repetition of the behaviour. This was confirmed by the Claimant's husband.

206.There was no cogent evidence before the Tribunal that even if Ms Bunn had such a look on her face it had anything to do with the Claimant. The fact that it had neither happened before or since pointed away from the Claimant's assertion that it was directed at her and was part of some form of campaign by Ms Bunn and other members of management to intimidate her.

207.On the basis of the findings of fact the Tribunal is not satisfied the Claimant was subject to a detriment that even if she was it found it had nothing whatsoever to do with the Claimant having made any protected acts. In the circumstances the claim must be dismissed.

Allegation 13 *– Thursday, 26 July 2018 ISOLATED FROM MY COLLEAGUES BY DEBBY-we have banks of desks with four or six people sitting on each one. The people around me had left and/or were part-time and/or were off sick. I was sat with one of the newer members of staff. Today he was called in for a meeting with Debby, returned to his desk, collected his things together and moved elsewhere. I was sat on a bank of six by myself . I was humiliated and became very upset. Victimisation*

208.One of the new advisers, Mr Woodward sat on the same bank of desks as the Claimant. His mentors were Ms Clothier and Ms Robinson. Mr Woodward, following a meeting in a manager's office returned to his seat and then moved. In his new seat he was sitting next to Ms Robinson, one of his mentor's.

209.The Claimant was not left on an empty bank of six desks. Two members of staff sat on the same bank, Mr David Pearson and Ms Gill Dyson although it is possible, they may not have been in work that day.

210.The Claimant contended the Respondent should have discussed the move of Mr Woodward with her. With respect, the Tribunal considered this was a pure management decision. It had nothing to do with the Claimant. In addition there may well have a confidentiality issue. As the Tribunal have already observed Mr Woodward had complained as to the Claimants conduct.

211.In any event the Respondent was entitled to consider that the Claimant would approve of the arrangement as she had said she preferred to work with less people around her, see her e-mail 13 March 2018 (142).The relevant extract of the email read as follows "*I really struggle to get things done when surrounded by people and am a gazillion times (accurate maths!) more productive when I'm tucked away somewhere"*

212.The Claimant accepted that when she raised directly with Mr Woodward why he been moved, he said the principal reason was to be next to his main mentor as Ms Clothier was part time and she was also experiencing some sickness absence.

213.On the basis of the evidence, the Tribunal accepted that Mr Woodward was moved for genuine business reasons.

214.In the circumstances the Claimant was not subjected to a detriment. Even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 14 *– Monday, 30 July 2018 GASLIGHTING-back to work meeting with Emma, I raise concerns about how I was being treated, she told me I was paranoid and over thinking things. From completing the SAR I know I was correct and this was a further example of gaslighting. Victimisation*

215.The Claimant described *"gaslighting"* as when something happened and a person then told them it did not happen.

216.The Tribunal placed reliance upon the contemporaneous note made by Mrs Jeynes on the same day (331) as this incident. It regarded it as likely to be the more reliable evidence than the memories of the witnesses. It was also written well before the Tribunal proceedings had commenced.

217.The Claimant conceded in cross examination that she could not be confident that Mrs Jeynes said she was paranoid but agreed, and the Tribunal found, that Mrs Jeynes did raise with the Claimant her concern that she was overthinking matters.

218.The Claimant raised her concerns that Mr Woodward was moved without any discussion with her. Mrs Jeynes explained the rationale was to ensure that he was next to one of his mentors. This the Tribunal noted, tallied exactly with the explanation Mr Woodward had given the Claimant, when she had raised the issue with him. Given Mrs Jeynes did not know the Claimant had spoken to Mr Woodward this was a further factor that added to the weight to be given to her evidence in respect of this incident.

219.The Claimant also accused Mrs Jeynes of watching her. The Tribunal found that was highly unlikely given Mrs Jeynes was severely visually impaired. The Tribunal found Mrs Jeynes was upset and distressed by the comments. She was so upset she raised matters with Mrs Bunn that same day. Indeed, when the matter was raised again, in the cross examination of Mrs Jeynes, she became so upset that it was necessary for the Tribunal to rise for 10 minutes so she could compose herself. Mrs Jeynes is clearly acutely conscious and sensitive to comments as to her disability.

220.The documentation placed in the bundle as a result of the SAR did not support the Claimant's contention that she was subject to *"gaslighting".* Mrs Jeynes advised the Claimant that she was overthinking things. It was the Claimant herself who took this to mean that she was being said she was paranoid. The Tribunal concluded that Mrs Jeynes was counselling the Claimant that she appeared to be making assumptions on perceptions that were not true or on events that had innocent explanations. The Tribunal found that what Mrs Jeynes was saying was the Claimant ought to consider applying some self-reflection at times.

221.In the circumstances the Claimant was not subjected to a detriment. Even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 15 *–07 August 2018 PUBLIC HUMILIATION-as is common practice in the office, I emailed some useful guidance I have found to the rest of the team, and Emma replied all (over 30 people) chastising me for doing so. This has never happened to anyone else and multiple people commented this was very harsh. I felt humiliated. Victimisation*

222.Individual advisers had their own specialisms .

223.Campaigning was not a specialism of the Claimant; it was the specialism of Ms Diane Fletcher.

224.On 07 August 2018 the Claimant sent an email (340) to the entire department headed *"trade union campaigning – NEU update July 2018".* The Claimant referred to a booklet she found on the intranet which explained the Respondent's priorities as an organisation and she considered that it might be helpful for people to have a wider understanding of what was going on within the organisation.

225.Mrs Jeynes responded that same day, copying in the recipients of the Claimant's email and stated *"Thank you for circulating this although as you will see from the advisers specialisms email attached Diane Fletcher is our campaign specialist so I am sure this is something she will want to progress following her return to her substantive post in the advice line. Best wishes. Emma"*

226.The Tribunal accepted Ms Jeynes's explanation that she was showing support to another adviser who had recently returned from secondment to regional office to reassure her that campaigns remained her specialism. The wording of email was in measured tones and also reminded everybody of who undertook what specialisms within the office.

227.The Claimant then responded (339) stating that she considered that as the response was sent via *"reply all"* she considered it humiliating.

228.The Claimant perceived that the fact that Ms Jeynes utilised *"reply all"* was so that she was publicly humiliated. She accepted that if the response had been simply been to her, she would have had no issue with it. Using *"reply all"* was not in the Tribunal's judgement a deliberate act by Mrs Jeynes to, as the Claimant alleged, to chastise her and nor was it as she alleged, passive aggressive.

229.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 16- *Wednesday, 8 August 2018 CONCERNS IGNORED RE MALICIOUS ALLEGATIONS- I advised Emma I felt people were making malicious complaints due to the divide in the department, these concerns were never investigated. Please note I have raised concerns recently about malicious allegations made around this time and not even had an acknowledgement. Harassment and victimisation.*

230.It may be helpful if the Tribunal provided the background to this allegation. The Claimant alleged that malicious allegations were made against her by Mr Clark and Ms Kirk and that Ms Jeynes was not prepared to record them, as she wished to cover up any wrong doing. This related to an incident on 08 August 2010. The Tribunal found that the Claimant did not make a specific reference to malicious allegations being made against her at the meeting.

231.The Tribunal found Mrs Jeynes did speak to the Claimant on 08 August 2010 at the end of the day. She wrote up a note of that discussion on 09 August 2018 (349) and send it to Mr Clark and Ms Bunn. The Tribunal was satisfied that as this was close to the incident it was a document that it could place some reliance upon and did so.

232.Put simply Mrs Jeynes overheard an interaction between Mr Clark and the Claimant at the end of the day (Mr Clark sometimes worked from 8.30 until 4:30 pm) when the Claimant wanted to know what a meeting was about with Mr Clark the following day and he had said he was leaving and would discuss it the following day to which the Claimant replied *"if I'm in".* Further details of the interaction are set out in the Tribunal's findings in respect of allegation 19.

233.At the end of the interaction between Mr Clark and the Claimant she started to cry and went to the ladies lavatory. Mrs Jeynes followed her in to see how she was. The Claimant alleged she was being micromanaged by Mr Clark and she shouldn't have to explain to him the advice she'd given to members. Ms Jeynes confessed she did not know what Mr Clark wished to discuss with her but if it was issues at work, or a complaint, then Mr Clark would not be doing his job unless he discussed them with her. As it transpired one of the issues that Mr Clark wanted to discuss with the Claimant was an email chain sent to him by Ms Kirk in respect of the handling of a matter by the Claimant. Mrs Jeynes suggested to the Claimant that trying to stop Mr Clark as he was leaving for home, to discuss issues to be raised at a meeting at 10 o'clock the following morning, was not the best time to approach him to which the Claimant agreed.

234.Mrs Jeynes suggested the Claimant was feeling stressed she ought to consider obtaining advice from her GP.

235.Ms Jeynes did not need to investigate the matter because she had witnessed the interaction between Mr Clark and the Claimant. She was entitled to come to a view that it required no further investigation.

236.As Mrs Jeynes had no knowledge of the content of the email exchange from Ms Kirk to Mr Clark and as Mr Clark had yet to speak to the Claimant to obtain her version of events, there was no reason for Mrs Jeynes to assume that Ms Kirk had made a malicious complaint about the Claimant and thus that she had to investigate it.

237.In the circumstances the Claimant was not subjected to a detriment that even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts.

238.Nor is the Tribunal satisfied that the behaviour of Mrs Jeynes had anything whatsoever to do with the Claimants protected characteristic. It did not have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading humiliating or offensive environment when looked at in the round. If the Claimant felt that way it was not a reasonable belief. In the circumstances the claim must be dismissed.

Allegation 17 *– Wednesday, 8 August 2018 TOLD OFF FOR FOLLOWING POLICY-Richard emails me asking to speak to me about a member who has complained as we won't advise her. I email confirming this to be true because she was a new member and that is our policy, which he had emailed out on 12/07/2018. I advise I had actually emailed him about this member at the time 11/07/2018 and asked him to contact her. Victimisation*

239.The background to the incident on 08 August 2018 can be summarised briefly.

240.Mr Clark had sent the Claimant an email about three concerns which he wanted to discuss with her on 09 August 2018 at 10 o'clock. He had provided the email chain to assist the Claimant to understand those concerns.

241.The first concern related to a member who telephoned for advice and the Claimant queried whether advice could be tendered as the enquirer had only just joined the union. She believed the enquirer was not entitled to advice. She referred the member to the membership department because the member wanted her subscription back. It would appear that membership then indicated that advice should be given.

242.In turn the member made a complaint about the Claimant's handling of the matter. The member had accused the Claimant of stating that she was *"clogging up the system".* The inference being that the member was time wasting .

243.Concerns two and three were as a result of matters raised by Ms Kirk and another adviser, Ms Lilly

244.The Claimant took particular exception to the opening wording of the email from Mr Clark inviting her to a meeting on 09 August 2018. which read *"I am investigating a complaint made by another member regarding a phone conversation that took place on 11 July 2017.*

245.The Claimant considered that by using the word *"investigating"* that she faced disciplinary proceedings at which she could be dismissed and the Respondent was not following their own disciplinary process.

246.Given the Claimant advised teachers on employment issues, and given she had a copy of the Respondents disciplinary procedure, in the Tribunal's judgement it must have been clear to the Claimant that this was not a disciplinary hearing. The Tribunal considered that what Mr Clark was asking for, and as it turned out to be the truth of the situation, he wanted to look at the concerns to see whether any action needed to be taken.

247.Mr Clark was entitled, as a manager, to obtain the Claimant's views on the concerns.

248.As it transpired Mr Clark found the first concern, the members reference to " *clogging up the system"* was not made out and the Claimant had correctly advised the member. This the Tribunal concluded demonstrated that Mr Clark was not a person who had some form of vendetta against the Claimant. He was not part of a management conspiracy to drive the Claimant out of the Respondents employment. He looked at each matter on its merits and came to a balanced decision.

249.In respect of the two other issues the first relating to the of updating membership details and whether a GDP issue arose, Mr Clark gave general advice as to the procedure to be followed. The Claimant accepted that advice. Thus it cannot be said that Ms Kirk's concern was malicious.

250.Management advice was also given as regards the concern of Ms Lily.

251.In the Tribunal's judgement Mr Clark as a manager was simply undertaking his job. The Tribunal did not find that Mr Clark was part of some form of conspiracy to dredge up concerns against the Claimant as she alleged because she had raised grievances. If that was the case he would not have found in the Claimant's favour as regards the first concern.

252.The Claimant made no criticism of the conduct of the meeting and agreed there were matters a manager could properly discuss at a meeting but regarded the meeting as too formal and that it should have been delayed to a one-to-one. The meeting was not formal. It was simply the Claimant and Mr Clark. There was no note taker or member from HR. There was no threat of any form of proceedings. Mr Clark had a complaint from a member to deal with in, addition

to 2 other internal issues. He was entitled to take the view that it was best to obtain an understanding of the situation whilst it was reasonably fresh in everybody's mind. There already had been a short delay caused by the fact that Mr Clark had been on annual leave.

253.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 18 *–08 August 2018.HARASSMENT BY COLLEAGUE NIKKI-Richard then advised me he needed to speak to me about another member. He needed a referral but there were significant issues with his subscription and I transferred him to membership first. I realised Nikki had complained to him as she was the one who had a follow-up call. I felt betrayed and bullied. Victimisation.*

254.This is linked to allegation 17 and the Tribunal repeats its findings. There was nothing malicious as regards the concern raised by Ms Kirk. The Claimant accepted Mr Clark's finding on the issue.

255.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 19*- 08 August 2018 IGNORED BY RICHARD WHEN REQUESTED HELP-Richard was getting ready to leave but was still chatting to people. I asked if I could have a quick word. He said no he was leaving; it would have to wait until tomorrow. I told him that I was at the point I didn't know if I would make it in "as I just can't cope any more", then dissolved into tears. He walked out and left and I ended up in the toilet extremely distressed. Emma checked up on me, at the time I felt this was supportive but after the SAR realised she was writing notes about me. Victimisation.*

256.This is linked to allegation 16 and the Tribunal repeats its findings of fact.

257.On 08 August 2018 Mr Clark was leaving at approximately 4.30pm for the evening. He had informed the Claimant by an email exchange that day that they would be meeting the following day at 10am, 09 August 2018 to discuss a number of concerns. These are the concerns set out in allegation 18. The Claimant knew what the meeting was about because she had already received from Mr Clark the email chain.

258.It would have been obvious Mr Clark was leaving given he was walking to the door with his coat of and carrying his back.

259.The Tribunal found Mr Clark got up to leave, briefly spoke for about 30 seconds to Ms Kirk. The Claimant then approached Mr Clark and wanted to have a discussion about the meeting they were have to have the following day at 10 am.

260.Mr Clark told the Claimant he was leaving and they would discuss matters as the meeting the following day

261.On the balance of probabilities, the Claimant became annoyed and said *"if I am in".* Mrs Jeynes confirmed she heard the Claimant say *"if an in"* as she regarded it as so significant as she recorded it in an internal email on 09 August 2018 (349). The Claimant was upset and Mrs Jeynes followed her into the lavatory to try and reassure her and suggested she had not chosen the best time to speak to Mr Clark, as he was leaving, which the Claimant accepted. Mrs Jeynes also had concerns as to the manner the Claimant has spoken to Mr Clark but did not raise it with her, given she was upset.

262.It is proper to mention that the Claimant took the Tribunal to a note from Mr Sutherland who said he didn't hear any exchange but that did not alter the Tribunal's judgement that the Claimant said *"if I am in"* she herself agreed she said this phrase but went on to say it was qualified by the words*. "as I just can't cope any more".*

263.The Claimant contended that she was entitled to reassurance from Mr Clark there and then. As the Tribunal have already discussed there were three issues that were to be mentioned at the meeting the following day and an open office was not an appropriate forum to discuss those matters.

264.Given the matters were to be discussed the following day the Tribunal did not find the behaviour of Mr Clark unreasonable . It was in the Tribunal's judgement an example of how the Claimant could project herself and as, in her words demonstrated she was *"high maintenance"*. The Tribunal were not satisfied that Mr Clark's behaviour was anyway linked to the Claimant's grievances. He would have behaved in a similar manner to another employee.

265.In the circumstances the Claimant was not subjected to a detriment that even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 20 *– Thursday, 9 August 2018 meeting with Richard goes ahead. Advised Richard I thought Nikki's complaint was malicious, this was never investigated. Harassment and victimisation.*

266.This meeting, already referred to in the previous allegations,17 and 18, was the meeting when Mr Clark discussed with the Claimant three particular workplace concerns.

267.The Tribunal found in the Claimant accepted the meeting was amicable and professional.

268.The Claimant accepted management advice in respect of the concern of Ms Kirk.

269.Given the Claimant accepted management feedback the complaint of Ms Kirk was not malicious as it had foundation.

270.The Tribunal carefully studied Mr Clark's note of the meeting and feedback to the Claimant in an email dated 10 August 2018 (355).

271.The Claimant did not dispute the outcome of the meeting. The reason therefore the Claimant's reference to a malicious allegation was not investigated was the concerns had no foundation looked at objectively.

272.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts.

273.Nor is the Tribunal satisfied that the behaviour of Mr Clark's had anything whatsoever to do with the Claimants protected characteristic. It did not have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading humiliating or offensive environment. If the Claimant did feel that way it was not a reasonable belief to hold. In the circumstances the claim must be dismissed.

Allegation 21 *– Thursday, 9 August 2018 RICHARD ANGRY AND INTIMIDATING-Richard approached me in anger to have the meeting (about the above member) with him, he refused to allow anyone else to accompany me, I got upset. Ended up in the kitchen in tears with Emma and Kate (Unite rep). I agree to have the meeting on the basis the blinds aren't all pulled down that I can leave the meeting if he becomes aggressive again. Victimisation*

274.Again there is an overlap with allegations 17,18, 20 and 21 and the Tribunal does not repeat its previous findings.

275.The Claimant's case was that the demeanour of Mr Clark when he asked her to come in to the prearranged meeting at 10 o'clock that day was intimidating and that he was clearly annoyed. The Claimant did not attend the meeting promptly at 10 o'clock and therefore Mr Clark went to the Claimant's workstation.

276.She accepted that there was nothing in his tone of voice that showed anger or annoyance.

277.The Tribunal noted the Claimant had no complaint as to the way the meeting was then conducted which was in a professional manner. She remained throughout the entire course of the meeting.

278.The Tribunal considered it was the Claimant's perception that the fact Mr Clark had looked for her was intimidating. The Tribunal regarded it as not unreasonable for a manager who had arranged a meeting to expect the employee to attend promptly. The Claimant then said she wanted a trade union representative. Mr Clark indicated it was not a formal meeting and she had no right to trade union representation. Mr Clark was fully within his rights to indicate that there was no entitlement to trade union representation at such a meeting as that accorded with the Respondent's policy.

279.There was then a passage of time before the Claimant eventually attended the meeting having spoken to her trade union representative.

280.The Tribunal is satisfied that the Claimant had formed a wholly unreasonable impression that she was to be dismissed at the meeting or at least face serious disciplinary action. In reality, as was clear from the correspondence, it was simply a meeting to discuss three minor concerns.

281.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

***Allegation 22**:17 August 2018 GRIEVANCE RESPONSE RECEIVED,INACURATE AND INTIMIDATING return to work but then advised Carl (acting team leader) that I have to go home due to receiving grievance responses from Debby. They are inaccurate and intimidating. I am also gob smacked that she has supposedly investigated the grievances without even speaking to me or holding a hearing. Victimisation.*

***Allegation 23** – 17 August 2018- LIFT GRIEVANCE RESPONSE-in the lift grievance response Debby states I have never said I needed reasonable adjustments; that I have been witnessed using the stairs on one occasion (in six months); she stated I never agreed to OH; she confirms I was not Emma's priority that morning as she had other things on her mind; she confirms a witness states she was curt with me; she confirms I was left in reception because Emma had other things to do; she states meeting rooms were unavailable though later confirms this was not true; she states reasonable adjustments under the Equality Act had not been agreed; she acknowledges they knew I had issues with stairs; she states reception is not suitable; she tells me I could have gone and worked in Morrison's café; she states I should have suggested other alternatives; she agrees Emma was curt but blames me says a professional adviser should be able to accept this treatment; she states I was not bullied as there was no shouting or use of abusive language; she advises I should have waited patiently for the lift to be fixed (it took over four hours); she states leaving the premises was not warranted and implies disciplinary action. Victimisation.*

282..Allegations 22, and 23 have a common thread in that the Claimant regarded the responses she received from Ms Bunn to her two grievances as being inaccurate and intimidating and was also highly critical of the procedure used by Ms Bunn.

283.Pausing at this juncture even if the Claimant was right it does not necessarily follow that the reason Ms Bunn acted as she did was because of the protected acts.

284.The response to the first grievance (which related to the lift incident of 22 June 2018) was contained in a letter dated 10 August 2018 (370/374). Ms Bunn had read all relevant documentation, spoken to the relevant members of staff as well as Apex management staff. She looked at the three specific matters raised by the Claimant firstly how Mrs Jeynes responded to the situation of the breakdown of the lift, secondly the alleged humiliated in public of the Claimant and thirdly whether Mrs Jeynes's by her behaviour had brought the Respondent into disrepute.

285.Whilst Ms Bunn found Mrs Jeynes made a genuine mistake as regards the nonavailability of the meeting room, given a stop had been put on bookings she concluded that was not unreasonable. It also was not unreasonable to expect the Claimant to work in reception for a short period of time .Whilst Mrs Jeynes may have been curt Ms Bunn did not find evidence of abusive behaviour by Mrs Jeynes. Matters could easily have been resolved if the Claimant had waited for the lift to be fixed. There was no evidence that Mrs Jeynes's behaviour brought the Respondent into disrepute.

286.The Tribunal refers to its own findings in respect of allegation number 2. On the available evidence Ms Bunn was entitled to reach the conclusion she did.

287.The response to the second grievance (carers time off) was hardly touched upon by any of the witnesses. The Tribunal had insufficient evidence to make any detailed specific findings other than to note on the basis of what was recorded the conclusion was one that a manager could reach.

288.The Tribunal noted that Ms Bunn did not speak directly to the Claimant but she had very detailed written grievances from her. She was entitled to conclude

she had all the information she needed. Another employer may have considered there was merit in interviewing the Claimant but the Tribunal was not satisfied the failure to interview the Claimant had anything to do with the Claimant having done two protected acts. The Tribunal addressed further procedural issues in respect of the grievances, later in its decision, and as necessary those finding should be read in conjunction with the Tribunals specific finding in respect of this allegation.

289.As it transpired the Claimant was permitted to appeal against the findings of Ms Bunn.

290.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal is wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 24 *– Friday, 17 August 2018 notification of investigation by Debby, accusing me of bullying and requesting a statement. Victimisation*

291.Allegation 24 relates to a letter from Ms Bunn to the Claimant dated 17 August 2018 (382/383). The letter began by quoting from the Respondents bullying and harassment at work policy. It referred to an incident involving Ms Kirk on 24 July 2018 (see allegation 11).Ms Bunn stated she had information that the Claimant had raised her voice towards Ms Kirk in the presence of other members of staff. Ms Bunn asked the Claimant to set out her recollection of the incident in order to try and resolve the matter. The letter said "*at this stage I'm confident that the matter can be resolved informally"* Ms Bunn indicated that should be happy to hold a meeting with the Claimant and her trade union representative if the Claimant considered matters could be resolved productively in that manner.

292.The incident between the Claimant on 24 July 2018 had not been resolved as at best the Claimant and Ms Kirk had agreed to differ. More significantly as the Tribunal has noted Mr Woodward had raised concerns about the Claimant's behaviour in that incident.

293.The Tribunal concluded the Respondent was entitled to ask the Claimant for an explanation of her behaviour.

294.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 25 – *Tuesday, 11 September 2018: Date on OH referral form . Reason for referral include absence levels in previous jobs; to ascertain disability under the Equality Act; advising I could be under disciplinary/capability/absence procedures. Two questions given for referral both referring to my "emotional state". Also references to my stress levels. Form signed by Debby and John S. Victimisation*

295.The Claimant had a poor attendance record. She was again absent due to ill-health from 17 August 2018 until just before Christmas of the same year.

296.In the circumstances the Tribunal found it was perfectly reasonable for the Respondent to obtain an occupational health report.

297.The Tribunal reminded itself that the purpose of an occupational health report was to assist the employer, amongst other things, in seeing what steps could be undertaken to improve attendance.

298.The Claimant made two specific criticisms of the referral. Firstly, she said that the referral was inaccurate in that it said that "*our role contains a lot of conflict"* and it didn't. The Tribunal carefully noted the referral (402/404). One section required completion as to the nature of adviser's role. A comprehensive narrative was given, running to almost half a page. The only reference to conflict can be found on page 403 where the author had recorded *"due to the unpredictable nature of the work, the tensions that arise as a result of workload pressure and the emotional investment in the work, conflict and disagreement is a constant feature of the work environment. This requires a calm temperament and the ability to manage conflict productively."* Having heard the Claimant's own evidence that advisers cannot control the flow of work, and that often they were speaking to members who were extremely distressed and in dispute with their

employer, the Tribunal did not consider, looked at in the round, the description given of an adviser's role to be anything other than measured.

299.The second matter the Claimant took exception too was the wording on page 403 which read *"to confirm the employee's ability to participate in formal disciplinary or capability proceedings or sickness absence review interviews as well as normal management processes".*

300.This has to be looked at in context. Occupational health were asked to give advice on five specific matters. Four of those matters were, in summary, whether the Claimant was a disabled person under the Equality Act and if so what adjustments should be made, (it is important to emphasise the Claimant was not absent from work due to her physical disability), whether her current stress and anxiety was a barrier to sustained attendance or performance, to better understand the Claimant's emotional state and capability, to be aware of anything in the Claimant's health that might impact upon her insight of her behaviour on others which could impact upon listening to and acting on feedback. The fifth was the matter upon which the Claimant referred.

301.The Tribunal rejected the Claimant's assertion that the request for information as to the Claimant's ability to participate in formal proceedings was, as she put it, the Respondents putting their cards on the table because they wanted to get rid of her .The Tribunal reached this conclusion having applied its own industrial knowledge, considered the clause upon which the Claimant took exception to was a standard clause frequently found in occupational health referrals. It did not mean that the Claimant faced formal disciplinary action as the Claimant assumed. The word "or" was significant. It was also clear that the Claimant regarded the reference to capability as a reference to her intellectual capability rather than whether her health prevented her giving the Respondent satisfactory service. It did not.

302.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 26 *– Tuesday, 11 September 2018: approx. date, telephone meeting with John S, kept offering settlement, he told me that once the investigation was complete I would not like the results, I agreed to an appointment for protected conversation. Victimisation and harassment*

303.Mr Sunderland was employed by the Respondents in its HR department. The Tribunal found it more likely than not, that what he said was that on completion of the investigation the Claimant might not like the result. The Tribunal reached this conclusion as it considered it inherently unlikely that a skilled HR adviser would suggest that an ongoing investigation was pre-judged, particularly since the Respondent knew from August 2018 that a Tribunal claim was a realistic possibility as the Claimant had entered into ACAS early conciliation. In addition, Mr Sutherland would have no details of the investigation as it was only on that day the Claimant was notified (399) that she was to be investigated in respect of her conduct towards colleagues and failure to follow proper practices. The letter made it clear that it was simply an investigation. There was no reference to gross misconduct although the Claimant described it as a gross misconduct investigation. She was not suspended. A decision as to whether there was or wasn't the case to be dealt with under the Respondent disciplinary procedure would only be decided when the investigation had been completed. The investigation was to be conducted by an external consultant so it was therefore unlikely that any work was done prior to the Claimant being notified of the concern.

304.Mr Hutchinson did not offer a settlement, a matter the Claimant was subsequently to complain about, see below.

305.The Tribunal was not shown a copy of the investigation report.

306.Whilst being subject to an investigation might constitute a detriment if there were no grounds for one, here there was, In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts.

307.Nor is the Tribunal satisfied that the behaviour of Mr Hutchinson had anything whatsoever to do with the Claimants protected characteristic. It did not

have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading humiliating or offensive environment. In the circumstances the claim must be dismissed.

Allegation 27 *– Friday, 14 September 2018. FALSE ALLEGATION-email/letter from Judith Hearn saying I had not submitted a fit note for 21/08/2018. Victimisation and harassment*

308.The Claimant's case was that Ms Hearn, an HR manager said the Claimant had not submitted a fit note. That is not an accurate record of what Ms Hearn said. Ms Hearn wrote to the Claimant on 14 September 2018 (408) and stated *"according to our records we do not have a statement of fitness to work for the period 21/08/18 to 03/09/18".* The contention that Ms Hearn had written this letter on the instructions of Ms Bunn to harass the Claimant because she had lodged a grievance was fanciful and without any evidential support.

309.The Tribunal found on the balance of probabilities it was far more likely that either local management had failed to forward the fit note to HR, it had been misfiled or lost in the system, given the size of the Respondent and the fact it has numerous offices.

310.In the circumstances the Claimant was not subjected to a detriment but even if the Tribunal was wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts.

311.Nor is the Tribunal satisfied that the behaviour of Ms Hearn had anything whatsoever to do with the Claimants protected characteristic. It did not have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading humiliating or offensive environment. Even if that is how the Claimant felt it was not a reasonable position to hold. In the circumstances the claim must be dismissed.

Allegation 28 *– 21 September 2018 . chased John S, he said he had never had authority to offer the settlement in the first place. Victimisation*

312.The Tribunal found that the Claimant had initially been told by Mr Sutherland that he would be provisionally prepared to enter into a protected conversation

with a view to reaching settlement but subsequently informed the Claimant that he did not have authority to make an offer.

313.That may have been disappointing to the Claimant but it was not a detriment as there is no obligation on an employer to negotiate.

314.In the circumstances the Claimant was not subjected to a detriment that even if the Tribunal is wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts.

315.In the circumstances the Claimant was not subjected to a detriment that even if the Tribunal is wrong on that point the treatment that took place had nothing whatsoever to do with the fact the Claimant had made protected acts. In the circumstances the claim must be dismissed.

Allegation 29 *–01 February 2019.PROCEDURES STILL NOT BEING FOLLOWED- Kate R emails with grievance update, alleging they never went through an informal process. She states because Debby never followed the formal grievance process correctly it therefore cannot be considered to be a formal grievance. They blame my absence as delaying the their (sic) response (despite me being able for any contact and specifically stating that the outstanding grievances were preventing me from returning to work). Victimisation*

316.The thrust of the Claimant's complaint was firstly Ms Bunn undertook the investigation into her two grievances and she was not interviewed, secondly, she did not follow the Respondents grievance procedure in terms of timescales and thirdly she was denied a right of appeal.

317.The Respondents grievance procedure sets out two pathways, an informal and a formal procedure.

318.It is only the formal procedure that has directive time limits.

319.It is only the formal procedure that has a right of appeal.

320.The first grievance was submitted on 22 June 2018 (241) and the second grievance submitted on 04 July 2018 (287)

321.Having looked at the grievances, although Ms Bonn is named in both of them it is on a very tangential level. The first grievance, which centred on the incident

of 22 June 2018 when the lift was unavailable, was principally a matter involving the Claimant and Mrs Jeynes. In a very lengthy grievance Ms Bunn is mentioned in the context that the Claimant did not know whether she may have (the Tribunal's emphasis) instructed Mrs Jeynes to make the Claimant work in reception and secondly even if that wasn't the case, in some way Ms Bunn should have intervened because she owed a duty of care.

322.The second grievance related to carers leave and again Ms Bunn's involvement was tangential. The grievance was principally against Mr Clark. Ms Bunn is mentioned on page 291 in the context that she agreed with the Claimant's husband that a particular aspect of the Claimant's concern had not been well handled. That hardly indicates that in some way she would be biased against the Claimant.

323.The Tribunal considered that having regard to the policy if the head of department couldn't deal with matters it had to go to the unions general secretary and given Ms Bunn's very tangential involvement; she was entitled to take a view that she believed she could deal with the matter fairly

324.Mrs Bunn considered the grievances were informal and therefore dealt with them.

325.The first grievance is clearly labelled "notification of formal grievance" (241) as was the second (289). Just because the Respondent's policy would mean the general secretary had to deal with matters did not mean the Respondent's should noy have followed their own policy. If the policy was inconvenient the Respondent should have changed it. The Respondent would have had little truck with an employer who did not follow policy in respect of its own members. However from the evidence before it ,Tribunal concluded that Ms Bunn started from the premise that a grievance was informal and if she could not resolve it then the employee had the option to proceed with the formal process. She did this for every employee. The wording of the policy is heavily weighted to encouraging informal resolution. However even having regard to the Respondents policy the Tribunal was persuaded that Ms Bunn made an error in not processing matters via the formal process, given the Claimant made express reference to a formal grievance. The Tribunal could not find anything in the Respondents policy that

directed that a grievance had to be dealt with informally before it could be dealt with formally.

326.The Tribunal was not satisfied Ms Bunn treated the Claimant any differently than any other person raising a grievance in terms of not holding an interview. The Tribunal reached this conclusion having regard to an independent investigation carried out by Mrs June Thorpe into the department in which the Claimant worked in the winter of 2018. She noted in her report (441) that "*the practice of investigating and reporting grievances without holding a hearing or talking to the individual about their concerns is also not helpful if concerns are to be addressed informally".*

327.Ms Bunn provided a reasoned response to both grievances although she did not see fit to interview the Claimant, presumably due to the comprehensive nature of the grievances but again this would appear according to Ms Thorpe to be her standard practice.

328.When the Claimant expressed dissatisfaction two possible solutions were put forward, as there was no appeal under the informal scheme. Firstly, a new investigation undertaken formally with a right of appeal or if the Claimant wished a right of appeal against the findings of Ms Bunn. She did not accept either option because it transpired, she preferred to allow the Tribunal to adjudicate upon her concerns. Other than the passage of time the Claimant was not disadvantaged by the matter been dealt with informally as she still had the option to proceed formally.

329.The Tribunal considered that it potentially was a detriment not to deal with the claimants grievances informally but the respondent had established that the protected ats had nothing what so ever to do with the way Ms Bunn behaved. In the circumstances the claim must be dismissed.

Conclusion

330.The Claimant was not subjected to harassment. To the extent there was any regrettable behaviour the Claimant was unreasonably prone to take offence at the littlest thing.

331.Nor was the claimant subject to any acts of victimisation. The tribunal found little evidence of any detriments but even to the extent there may have been detrimental conduct it had nothing to do with the claimants protected acts.

332.Finally the Respondent did not fail its duty to make reasonable adjustments. The adjustment made when the lift failed was reasonable in the circumstances when balancing the Claimant's needs against the Respondents.

333.In 'the circumstances the claims of the Claimant must be dismissed

Employment Judge T.R.Smith

Date 08 March 2021