EMPLOYMENT TRIBUNALS

Claimant: Ms P O Muchilwa

Respondent: Stockport Metropolitan Borough Council

HELD AT: Manchester **ON:** 5– 23 October 2020
20-23 January and
25-26 February 2021
(in chambers on
22-23 January and 25-
26 February 2021)

BEFORE: Employment Judge Phil Allen
Mrs A Booth
Mr S Anslow

REPRESENTATION:

Claimant: Mr G Powell, Counsel
Respondent: Ms R Wedderspoon, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. The respondent did treat the claimant less favourably because of race, contrary to section 13 of the Equality Act 2010, in: the terms of a letter stated to be from Ms Stewart of 24 July 2015; an email from Mr Reynolds of 29 July 2015; and in an email from Mr Reynolds on 30 July 2015.

2. Whilst the claim for race discrimination for the matters found was entered at the Tribunal outside the period required, it was just and equitable to extend time for those complaints and therefore the Tribunal does have jurisdiction to determine those complaints.

3. The respondent did subject the claimant to detriments because of one or more protected acts, contrary to section 27 of the Equality Act 2010 (victimisation) by: a letter stated to be from Ms Stewart of 24 July 2015; and in correspondence with the claimant of 7 September 2015.

4. Whilst the claim for victimisation for the matters found was entered at the Tribunal outside the period required, it was just and equitable to extend time for those complaints and therefore the Tribunal does have jurisdiction to determine those complaints of victimisation.

5. The claimant did have a disability at the relevant time as defined by section 6 of the Equality Act 2010 in respect of PTSD.

6. The respondent did treat the claimant unfavourably because of something arising in consequence of her disability (PTSD) in correspondence with the claimant on 24 July 2015.

7. Whilst the claim for discrimination arising from disability for the matter found was entered at the Tribunal outside the period required, it was just and equitable to extend time for that complaint and therefore the Tribunal does have jurisdiction to determine that complaint of discrimination arising from disability.

8. The claimant did make protected disclosures to the respondent: in email correspondence of 13 June 2013; in a letter copied to the deputy chief executive of the respondent of 5 January 2015; and in a letter to the chief executive of the respondent of 11 January 2016. The other alleged disclosures relied upon, were not protected disclosures.

9. The claimant was not subjected to a detriment by the respondent on the ground that she had made any of the protected disclosures found. The complaint under section 47B of the Employment Rights Act 1996 is dismissed.

10. The principal reason for the claimant's dismissal was not that she made one or more of the protected disclosures found. The complaint under section 103A of the Employment Rights Act 1996 is dismissed.

11. The claimant was not subjected to harassment related to sex contrary to section 26 of the Equality Act 2010. The complaint under section 26 of the Equality Act 2010 (related to sex) is dismissed.

12. The claimant was not treated less favourably because of religion or belief contrary to section 13 of the Equality Act 2010. The complaint under section 13 of the Equality Act 2010 based upon religion or belief is dismissed.

13. Save for the ways found at 1 above and 21 below, the claimant was not otherwise treated less favourably because of race contrary to section 13 of the Equality Act 2010.

14. Save for the ways found at 3 above, the claimant was not otherwise subjected to a detriment because of a protected act contrary to section 27 of the Equality Act 2010 (victimisation).

15. The claimant was not treated less favourably because of disability contrary to section 13 of the Equality Act 2010. The complaint under section 13 of the Equality Act 2010 based upon disability is dismissed.

16. Save for the way identified at 6 above, the claimant was not otherwise treated unfavourably because of something arising in consequence of disability contrary to section 15 of the Equality Act 2010.

17. The claimant was not subjected to harassment related to disability contrary to section 26 of the Equality Act 2010. The complaint under section 26 of the Equality Act 2010 (related to disability) is dismissed

18. The respondent did not breach the duty to make reasonable adjustments (section 21 of the Equality Act 2010). The complaint under section 21 of the Equality Act 2010 for breach of the duty to make adjustments is dismissed.

19. The claimant was not unfairly dismissed. Her unfair dismissal claim does not succeed and is dismissed.

20. The claimant fundamentally breached her contract of employment with the respondent and therefore the respondent was entitled to dismiss the claimant without notice. The claimant's breach of contract claim does not succeed and is dismissed.

The judgment of the majority of the Tribunal (Employment Judge Phil Allen dissenting) is that:-

21. The respondent did treat the claimant less favourably because of race in: Mr Smallbone's conduct of the suspension of the claimant on 7 July 2015; and in the decision to make a referral to the Channel Panel communicated on 17 and 24 July 2015.

REASONS

Introduction

1. The claimant had continuity of employment with the respondent from 5 July 2011, and transferred to the respondent (without a break in continuity) on 1 April 2013. This claim was entered at the Employment Tribunal on 23 March 2016 and related predominantly to matters from January 2015 onwards. The claimant was dismissed by the respondent on 27 June 2016 and the claim was subsequently amended to include claims relating to, and arising from, the dismissal. The claimant brought the following claims:

(1) Detriment and dismissal as a result of making a public interest disclosure;

(2) Harassment related to sex;

(3) Direct discrimination because of race

(4) Direct discrimination because of religion or belief;

(5) Victimisation;

(6) Direct disability discrimination;

(7) Discrimination arising from disability;

(8) Harassment related to disability;

(9) Breach of the duty to make reasonable adjustments;

(10) Unfair dismissal; and

(11) Breach of contract, in relation to notice pay.

2. The respondent denied all the claims and contended that the claimant: was fairly dismissed by reason of conduct; and had fundamentally breached the contract of employment.

Claims and Issues

3. The claim has a somewhat lengthy procedural history. Eight preliminary hearings and reconsideration hearings have been conducted, being as follows (where numbers in brackets are used in this Judgment they are page numbers from the bundle):

(1) 17 May 2016 by Employment Judge Porter (74);

(2) 5 August 2016 by Employment Judge Feeney (120);

(3) 17 November 2016 by Employment Judge Feeney (followed by a day in chambers on 23 January 2017) (266);

(4) 24 November 2017 by Employment Judge Feeney (322);

(5) 15 January 2018 by Employment Judge Feeney (337);

(6) 14 August 2018 by Employment Judge Franey (460);

(7) 24 September 2018 by Employment Judge Franey (1A 11-16); and

(8) 5 December 2019 by Employment Judge Slater (1A- 265).

4. The claim form provided some detail about the claim, but did not make clear exactly what was being alleged in a way that would enable a List of Issues to be easily identified. The claimant provided various further particulars of her claim, including a Scott Schedule (146). The claimant was also given leave to amend her claim to include certain matters which had arisen after the presentation of her original claim.

5. In a Judgment of 28 February 2017 (following the preliminary hearing on 17 November 2016)(266) Employment Judge Feeney struck out the following claims on

the basis that they had no reasonable prospects of success: disability discrimination in relation to flat shoes and toilet breaks; and religion and belief discrimination in relation to the Channel Panel referral. As part of a reconsideration hearing on 24 November 2017, the claimant's application to amend her claim for breach of the duty to make reasonable adjustments was allowed, on the basis that the claim was based on a reference to "trainers" rather than "flat shoes".

6. Following a preliminary hearing on 14 August 2018 (460) Employment Judge Franey spent some time preparing a proposed list of issues, which he appended to the case management order. His decision explained that the purpose of the list of issues was to provide a "roadmap" for the parties. He highlighted that the list of issues had not been straightforward to prepare. At the hearing on 24 September 2018 (A1-11) Employment Judge Franey confirmed that the list of issues to be determined at the final hearing remained as set out in following the previous preliminary hearing (both parties having made applications to amend it, which had been refused).That list of issues (467-477) remained the list considered by this Tribunal, which was confirmed with the parties at the start of the hearing (albeit the claimant's representative, who had only been instructed very shortly before the hearing, was also keen to emphasise that it was a roadmap).

7. The list of issues is attached as an Appendix to this Judgment. On 8 October 2020 (the fourth day of this hearing), the following issue was added to the list of issues to be determined (but is not recorded in the Appendix): did the claimant's PTSD amount to a disability as defined by section 6 of the Equality Act 2010 at the relevant time?

8. For the alleged protected disclosures, at the start of the hearing the Tribunal clarified with the claimant's representative exactly which document or documents were relied upon as containing the alleged protected disclosures.

Preliminary Matters

9. After initial matters were addressed, the Tribunal read the witness statements and documents referred to, until 2pm on the third day of hearing. It was agreed with the parties that it was preferable for the preliminary applications to be considered once the Tribunal had read the witness statements, and the documents referred to within those statements.

10. Prior to the hearing there had been an application by the claimant to strike out the response as she contended that the respondent had not adhered to case management Orders. That application was not advanced by the claimant's representative when he was given the opportunity to do so.

Evidence by CVP

11. The hearing was listed as an "in person" hearing and on the first day the parties and their representatives attended at the Employment Tribunal in person. The respondent applied to have the evidence of five witnesses heard remotely by CVP video technology. Reasons were provided for the requests made specific to each of the relevant witnesses all of which related to the Covid-19 pandemic. The claimant agreed that one witness could give evidence remotely, but opposed the

application for the other four. Submissions were heard from each of the parties regarding this application. After hearing submissions, the Tribunal determined that the evidence from those four witnesses should be heard by the Tribunal by remote CVP video technology. The Tribunal took into account the Presidential Guidance on remote and in-person hearings and, in particular, the factors outlined at paragraphs 14, 16 and 17 of that Guidance. The Tribunal also took into account the overriding objective and, in particular, the importance of: avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay; and saving expense. At the time that the decision was made, Manchester was subject to more significant local restrictions than other parts of the country and was at the heart of the Covid-19 pandemic within the UK. The reasons provided for the five witnesses' requests not to attend the hearing in person were ones that the Tribunal found to be valid. Whilst the Tribunal agreed with the claimant's representative's submission that the evidence to be heard was key, the Tribunal concluded that those witnesses' evidence could be effectively heard, and they could be effectively cross-examined, using remote video technology.

12. As a result, five of the respondent's witnesses gave evidence by remote video technology. On the days when evidence was heard remotely, all attendees (except for the Tribunal panel itself), including the representatives, attended remotely. This had the positive effect of not only enabling the witnesses to give evidence without attending the Employment Tribunal building, but it also enabled the claimant to attend and observe parts of the hearing which she indicated she otherwise would have found it difficult to attend and hear in person, had the relevant witnesses been in the same room. The submissions at the end of the hearing were also delivered remotely by CVP, at the request of the parties.

Disclosure

13. The claimant made an application for specific disclosure of unredacted copies of documents. For certain documents, the respondent's counsel confirmed that the unredacted elements disclosed were the only elements of those documents which related to the claimant. The application also related to some other documents which had been obtained by the claimant from Greater Manchester Police in a redacted form. The respondent denied that it had unredacted copies of those documents. In relation to the GMP documents, the Tribunal accepted that it could not make an order for the respondent to disclose unredacted documents which it did not have.

14. The claimant made an application for a third party disclosure order, which would require the GMP to provide unredacted copies of the documents. The Tribunal heard submissions from both parties and refused the application. The Tribunal highlighted that it would require a strong reason for the Tribunal to make a third party disclosure order for GMP to provide the documents, particularly when the hearing had started (the application being considered on day three of a 15 day hearing). The fact that the respondent referred the matter to GMP and/or the Channel Panel was accepted as being central to the case and clearly relevant. Why and how that referral was made, was something which would need to be addressed with witnesses. However, the redactions identified to the documents did not appear to the Tribunal to be central to the issues to be determined. The allegations which needed to be determined were about the making of the referral and the disclosure of the concern. It was the act of referral and the reasons for doing so which were central to the

issues the Tribunal needed to determine, and the Tribunal concluded that ordering disclosure from GMP of the content of documents which primarily recorded what had occurred after the referral had been made, would not (or would be unlikely to) assist the Tribunal in reaching its decision about the allegations made.

PTSD

15. At the start of day four of the hearing, the Tribunal was asked to consider further preliminary issues. The respondent had accepted that the claimant's endometriosis/gynaecological issues amounted to a disability at the relevant time, earlier in the proceedings. The claimant's representative wished to also rely upon the alleged disability of Post Traumatic Stress Disorder ("PTSD") in relation to four alleged acts of direct discrimination, four alleged acts of discrimination arising from disability, and one act of harassment. The respondent argued that PTSD had not previously been relied upon by the claimant in the proceedings. As an alternative, the claimant's representative also applied for permission to amend the claim to include those specific allegations relying upon PTSD. The allegations (as recorded in the list of issues) to which the claimant's representative argued that this applied were: 15.13; 15.14; 15.15; 15.17; 19.13; 19.14; 19.15; 19.17; and 22.6.

16. Submissions were heard from both parties. The Tribunal adjourned and, on the afternoon of day four (8 October), provided its decision, which is summarised below.

17. In relation to the identification of PTSD, the Tribunal took account of the fact that claimant was an unrepresented litigant in person at the time that the claim was entered and throughout the relevant period, albeit that she had some experience of pursuing an Employment Tribunal claim. There was no express reference in the claim form or the particulars provided with it, to PTSD, but the disability or disabilities relied upon was not clear from that document. On 17 May 2016 at the first preliminary hearing, Employment Judge Porter had said that the disability issues were not clear which is why further particulars were required. As a result of Orders made, the claimant had prepared a disability impact statement on 27 June 2016 (89). This had focussed primarily upon gynaecological issues, but there was also reference in it to the claimant's psychological health and the impact of traumatic incidents (91, 98) and to an occupational health report's reference to the claimant's post-traumatic stress (98). The Tribunal had been provided with that occupational health report (610). In the report the emphasis was on stress-related conditions, albeit it included multiple health issues.

18. An important document in the Tribunal's consideration was the Scott Schedule which the claimant had prepared of 23 August 2016 (146), which detailed her further particulars of the claim she had entered. That Scott Schedule contained the details of the claimant's pleaded case, and it was clear that it was the document upon which Employment Judge Franey had primarily based the relevant part of the list of issues. There were references to PTSD and state of mind in that document at: paragraph 3 (146); section 13 (159); section 14 (160); and section 16 (163).

19. In relation to the allegations made at section 13 of the Scott Schedule (159), the Tribunal's conclusion was that these issues clearly had nothing to do with gynaecological issues, because what was alleged was about the claimant's state of

mind and decisions being made for referral to the Channel Panel. The Tribunal's conclusion was that what the claimant had relied upon in the further particulars in that document, when relying upon disability, could only reasonably be read as relying upon PTSD (or at least some form of mental health impairment).

20. Section 14 of the Scott Schedule (160) was about the occupational health referral requested by the claimant. That request had initially made in an email of 13 May 2015 (976) in which the claimant stated that she was seeking the referral because she was *"tired of explaining* [my] *disability all the time".* At page 161 of her further particulars, the claimant made express reference to that complaint relating to her frequent usage of the toilet. As a result, the Tribunal concluded that what was addressed in section 14 was not a claim which relied upon PTSD, but rather was a claim that relied upon the gynaecological issues.

21. In the Tribunal's view, Section 16 of the Scott Schedule (163) was unclear. What was not unclear, however, was that what was being alleged was about the claimant's dismissal and suspension – with the latter being linked to the respondent protecting its employees from harm. The Tribunal found that those allegations, in line with the allegations referred to in section 13 of the further and better particulars, could not genuinely have been about gynaecological related conditions and could only reasonably therefore be read as being allegations of disability discrimination which relied upon PTSD (or some mental health impairment).

22. In terms of the case management orders, the Tribunal noted that Employment Judge Franey's orders and list of issues (464, 465) did not identify as an issue to be determined whether the claimant had a disability, however they also did not identify the disability relied upon. In terms of the list of issues, the Tribunal noted that, as a general rule, the issues listed should be the issues to be determined (and that was particularly the case in circumstances such as these where the list of issues had been subject to further consideration and requests for amendment). However, the Tribunal was required not to stick slavishly to the list of issues, where doing so would impair the discharge of the Tribunal's core duty to hear and determine the case in accordance with the law and the evidence (**Parekh v London Borough of Brent [2012] EWCA Civ 1630**). The list of issues was the starting point for the Tribunal in determining what was pleaded and what exactly was the case brought. However, if the particulars "shout out" that the real basis of the claim differs from the claim recorded in the list of issues, the Tribunal is required to address those issues. Here the question for the Tribunal was <u>not</u> that the claimant was seeking to deviate from the facts pleaded or the factual issues identified as needing to be determined, but rather the claimant was seeking to confirm which disability was relied upon in the issues recorded (where no record was included in the list or explicitly in any case management orders).

23. The Tribunal determined that allegations: 15.14; 15.15; 15.17; 19.14; 19.15; 19.17; and 22.6 were all to be read as relying upon the alleged disability of PTSD, and not the claimant's gynaecological issues.

24. The Tribunal identified two claims which the claimant contended related to PTSD, which were not accepted by the Tribunal as doing so, as they were allegations in the list which followed from section 14 of the further particulars/Scott Schedule (see paragraph 20 above). Those two allegations were 15.13 and 19.13.

As a result, the Tribunal went on to consider the claimant's application to amend her claim. The Tribunal considered the relevant factors following from the case law in **Selkent Bus Company Ltd v Moore [1996] IRLR 661** (which it is not necessary for the Tribunal to recite in this Judgment) and refused the application for leave to amend. In particular, the Tribunal took account of the fact that the allegations were alleged to have occurred on 10 June 2015 and the application to amend was only being made in October 2020 and at the start of the Tribunal hearing. The balance or prejudice was considered. The application to amend these allegations to rely upon PTSD as well as gynaecological conditions, was refused.

Medical reports

25. At the same time as hearing submissions relating to PTSD, the Tribunal also heard submissions in relation to medical evidence upon which the claimant wished to rely. The claimant applied to add to the Tribunal's bundle a medical report dated 4 December 2019 (1A-277). The respondent opposed that application. The report was prepared by Dr Parker, a clinical psychologist specialising in forensic mental health, who had been approached by the claimant via Dr Parker's website, to prepare a psychological opinion regarding the claimant's PTSD for the preliminary hearing on 5 December 2019.

26. After hearing those submissions, the Tribunal agreed to consider that medical evidence. The respondent had, in particular, objected to the way in which the report was obtained, the limited knowledge about what it was based upon, and emphasised the guidance in the case of **De Keyser Ltd v Wilson [2001] IRLR 324** about how experts should be instructed. The Tribunal noted those objections and confirmed that the respondent would be able to raise them at the end of the hearing during submissions, when arguing about the weight which should be given to the content of the report (as indeed the respondent's representative did). However, and particularly in the light of the fact that the report was one which had already been presented to and considered at the Tribunal hearing on 5 December 2019, the Tribunal agreed that it would be included in the bundle and considered by the Tribunal.

Adjournment application

27. After the Tribunal informing the parties of their decision on these matters, the respondent made an application for the hearing to be adjourned. This was opposed by the claimant. The Tribunal heard submissions from the parties on the application to adjourn, considered it and then delivered its decision verbally. The application was refused. The Tribunal highlighted that its decision on the PTSD argument had in fact been that some of the disability discrimination allegations made relied upon the alleged disability of PTSD as the pleaded case, it had not been that an application to amend had been granted. The Tribunal concluded that the hearing needed to go ahead in the light of the fact that: this case was already over four years old; any adjournment would delay the case for approximately a further two years; and the overriding objective included the need to avoid unnecessary delay. The respondent's witnesses would be able to respond to the claims and the reliance upon PTSD in the evidence which they gave.

28. The preliminary issues were concluded just before 3.00pm on Thursday 8 October 2020 (being the fourth day of hearing).

Procedure, documents and evidence heard

29. The claimant was represented throughout by Mr Powell, counsel. Both Mr Powell and the solicitors instructing him, had only commenced acting for the claimant shortly before the final hearing. The respondent was represented by Ms Wedderspoon, counsel.

30. The Tribunal was provided with a bundle which ran to fourteen volumes. The core bundle ran to twelve volumes (numbered 1-10 with a volume 1A and a 5A). The last page (once documents were added) was page 4,423. There were two other files presented numbered differently which (when documents were added) ran to: 294 pages; and page 173 (albeit that not all pages in that bundle were numbered). The bundles included a large number of documents to which the Tribunal was never referred and many duplicates. The Tribunal read only the documents to which they were referred in witness statements or in the course of the hearing. Some additional documents were identified by both parties during the hearing and were added to the bundle.

31. Some documents identified by one of the respondent's witnesses (Ms Gardner), were only provided after the claimant's evidence had finished and after Ms Gardner herself had been cross-examined.

32. The Tribunal was also provided with a file of witness statements containing both the claimant's and the respondent's witness statements. As recorded above, the Tribunal read those witness statements and the documents referred to at the start of the hearing. The Tribunal did make clear to the parties at the outset that it would only allow supplementary questions of witnesses with the Tribunal's leave, consistent with the case management orders which had been made.

33. The Tribunal heard evidence from the claimant, who gave evidence from mid-afternoon on Thursday 8 October until the end of Tuesday 13 October. The claimant was allowed additional breaks and was able to take a break without notice whenever she needed to do so. As a result of concerns raised about the claimant's health, the claimant was allowed to take a break from being cross-examined during Tuesday morning and Mr Urry was interposed during her evidence. The claimant then returned to finish being cross-examined on the afternoon of Tuesday 13 October.

34. The claimant also called Mr Michael Urry to give evidence on her behalf. Mr Urry was a former employee of the respondent. Mr Urry gave evidence on the morning of Tuesday 13 October. Mr Urry was subject to only very brief and limited cross-examination by the respondent's representative.

35. The claimant also provided to the Tribunal witness statements from two witnesses who did not attend the hearing: Ms N Williams and Ms L Manning. As the Tribunal did not hear from those witnesses, it only gave very limited weight to the content of their statements.

36. The respondent called the following witnesses, each of whom had prepared a witness statement, attended the hearing to give evidence, and was cross-examined by the claimant's representative:

(1) Ms N Gardner, a Human Resources Manager;

(2) Mr P Ashworth, the Head of Culture and Leisure (the investigating officer);

(3) Mr A Majothi, the Corporate Complaints Manager;

(4) Mr R Smallbone, formerly the respondent's Information and Operations Manager;

(5) Mr M Allan, an elected councillor for the respondent who is also a member of the Employment Appeals Committee (the panel who heard the claimant's appeal);

(6) Ms L Walsh, formerly the respondent's Corporate Support Services Manager;

(7) Mr S Skelton, the respondent's Strategic Head of Policy and Information Systems (the dismissing officer);

(8) Ms C Grindlay, the Head of Business Support for The Place and the Corporate and Support Services Directorate (the manager who investigated the grievance);

(9) Ms L Donnan, formerly the respondent's Deputy Chief Executive; and

(10) Ms A Stewart, formerly the respondent's Head of Improvement and Performance and Head of Business Support for Corporate and Support Services.

37. The respondent's witnesses' evidence was heard between Wednesday 14 October and Friday 23 October. Ms Donnan's evidence was interposed during the evidence provided by Ms Stewart, in order to ensure that she was able to attend and give evidence. From the start of Tuesday 20 October (day 12) each of the witnesses who gave evidence did so remotely by CVP video technology. As is often the case with CVP evidence, there were occasionally connectivity issues for some of the witnesses, nonetheless it was possible for all of the witnesses' evidence to be fully heard and understood by the Tribunal.

38. The respondent provided supplemental statements for three of its witnesses during the second week of the hearing, as a result of the fact that the claimant was relying upon PTSD for some of her allegations. The supplemental statements were provided by Mr Ashworth, Mr Skelton, and Ms Stewart. The claimant and her representative were given the opportunity to read the supplemental statements before they were accepted by the Tribunal. The claimant's representative, quite correctly, did not object to the supplemental statements being provided. The claimant did ask that it be noted that these supplemental statements were only provided on Wednesday 16 October (that is in the second week of hearing) and after the claimant's evidence had concluded. The supplemental statements were read by the

Tribunal and the claimant's representative had the opportunity to cross-examine the witnesses on the contents of those supplemental statements (when cross-examining the witnesses on their evidence generally).

39. The Tribunal was also provided with two witness statements from witnesses for the respondent who did not attend the hearing: Ms D Reeves, Team Leader in the Business Support Hub; and Mr E Morgan, counsel and adviser to the appeal hearing. As the Tribunal did not hear from those witnesses only limited weight was given to the content of their statements.

40. The witness evidence concluded at the end of the 15 days for which the case had originally been listed. As a result, the hearing reconvened on Wednesday 20 January 2021. Directions had been made for written submissions to be exchanged prior to the reconvened hearing. Both parties provided lengthy written submissions. The respondent's representative had prepared the written submissions and provided them by the date ordered. The claimant's counsel did not do so, and provided his submissions only shortly prior to the hearing reconvening. It was agreed that oral submissions were to be limited to no more than one hour and 25 minutes for each party, although in fact neither party used their full time allocated when making oral submissions.

41. Submissions concluded by lunchtime on 20 January 2021. Thereafter the panel considered their judgment in chambers on that afternoon and then on 22 and 23 January 2021 and subsequently, when it was identified that more time was required, on 25 and 26 February 2021. As the Tribunal reserved judgment, it accordingly provides the Judgment and Reasons outlined below.

42. The Tribunal heard evidence about an enormous range of issues and was provided with very extensive documentation. The Tribunal has only recorded in this Judgment those facts relevant to the issues to be determined.

Facts

Early Issues

43. The claimant was originally employed by Individual Solutions SK Limited, a company who provided services for the respondent, which was effectively under its control. She commenced employment on 5 July 2011. After transferring to the respondent, she worked for the REACH team in Adult Social Care. On 2 April 2014 she was redeployed to work in a clerical support role on an interim basis in the Welfare Rights/Debt Advice team. Following a review of support services in 2013/14, administrative staff were moved into a new business support function. The new structure came into force from 1 June 2014 and, as confirmed below, the claimant moved into that function shortly after it was created. The majority (but not all) of the claimant's allegations arose from her time in the Business Support team (the business hub).

44. On 30 August 2012 Individual Solutions SK was provided with an occupational health report regarding the claimant (2602). That related to the claimant's gynaecological problems and confirmed that the Consultant Occupational Physician who wrote the report considered that the claimant was disabled under the

Equality Act. He advised that reasonable adjustments might include taking into consideration, and accommodating, the claimant's sickness absence levels and time off for treatment.

45. On 13 June 2013 the claimant exchanged emails with Ms P Friggieri and others (557-563). The emails related to resource management in the team in which the claimant then worked. Instructions were given about arrangements for contacting social workers and managers. On 13 June 2013 the claimant emailed Ms Friggieri informing her that communication systems were poor. She made suggestions about how the system might work better, made allegations about the systems and how they worked, and complained about Ms Friggieri's personal style. The purpose of the email was clearly to address the allocation of resources and how to better assess the care of people for whom Individual Solutions SK was responsible. Within the email the claimant disclosed information about how she said the system at that time was not working.

46. A further occupational health report was provided by an occupational health adviser on 18 November 2013 (609). This related to a number of conditions of the claimant, including her gynaecological condition and her mental health. The advice provided included the following:

> *"Ms Muchilwa declined the Housing Assistant role due to concerns that the customer facing aspects of the role could impact on her psychological health. We have discussed ways of support to deal with the psychological impact of two traumatic incidents she was involved in whilst in Kenya. In view of these two very traumatic incidents, I would advise that she is not currently fit to work in a customer facing reception area."*

47. Later in the report the writer said the following:

> *"Her on-going underlying gynaecological condition may fall under the medical aspects of the Equality Act 2010 but at this point in time, I think it unlikely that the post traumatic stress would do so, as this stress is situational and is not affecting her on a day-to-day basis. However, if she were working in an environment where she felt unsafe dealing with the public, this situation may change as her symptoms could affect her day-to-day living activities substantially."*

48. The Tribunal considered this report to be important evidence in relation to the claimant's contentions relating to PTSD. The report placed the respondent on notice that the claimant was not fit to work in a customer facing reception area. Whilst the report did record that the writer did not believe that the claimant's PTSD at that time had a sufficient adverse impact on her day-to-day activities to amount to a disability, the writer did highlight that this position, and the claimant's stress, was situational and that this may change in the future, particularly if the claimant felt unsafe working with the public.

49. In the light of the advice, in 2014, Ms Gardner and others sought to find the claimant an alternative role. It appears that the respondent, including Ms Gardner, was mindful of the occupational health advice and took steps to identify a role which was not customer facing.

50. The claimant was offered a position as a Support Officer in the newly created business hub. A trial period commenced on 5 June 2014. As a back office role, it was not intended that this would be a role that had customer facing duties. Ms Gardner's evidence in relation to this move was that the claimant asked her whether the adjustments were valid after a change in role. Ms Gardner's evidence was that in January 2015 she had reviewed the claimant's file and confirmed to the claimant that triggers under the sickness procedure would be adjusted slightly as her condition was covered by the Equality Act. Ms Gardner would have had access to the report of 18 November 2013. It appears that no steps were taken by the respondent to ensure that the ongoing need for the claimant to avoid undertaking customer facing work was maintained and/or that those who made decisions about her responsibilities were made aware of what had been advised – it was effectively left to the claimant to identify if any issues arose.

51. There is no dispute that the claimant's role subsequently evolved because those undertaking administrative duties were required on occasion to sit on reception and/or were required to meet those attending training events. As a result, the claimant subsequently undertook exactly the duties which the occupational health adviser had recommended she should not undertake. In those circumstances, the Tribunal notes that the occupational health advice was effectively that the claimant's condition could substantially adversely affect her day-to-day activities, if she felt unsafe in those elements of her role. The claimant in her evidence to the Tribunal did explain why she felt unsafe in an environment where members of the public had access to her. It was her evidence that working at reception on a rota basis triggered her PTSD.

The previous Employment Tribunal proceedings

52. In 2012 the claimant brought Employment Tribunal proceedings against the respondent and Individual Solutions SK, including discrimination claims. It is not necessary for this Tribunal to record what was found in those proceedings, which were addressed under case number 2414468/2012. The reserved Judgment was issued on 19 November 2014 and recorded that the claimant's claims were not well-founded. Inasmuch as the Judgment is relevant to these proceedings, the Judgment referred to a decision which the Tribunal panel hearing that case had made to refuse a request by the claimant for reconsideration of a previous refusal of an application to amend her claim. What the Tribunal recorded in its Judgment (3042) is as follows:

> *"In her application the claimant relied on documents contained in the bundles prepared for this Hearing, which she told us, she had not previously seen. She confirmed that the last of these documents had been received no later than 21 March 2014. The Tribunal observed that the respondent failed to promptly comply with the directions of this Tribunal in relation to disclosure and its ongoing duty of disclosure generally. Had the respondent properly complied with its obligations the claimant would not have had the opportunity to make an application on these grounds. The claimant referred the Tribunal to thirty-eight documents which she maintained, contained new evidence that she did not know of, nor could reasonably have known of previously. The Tribunal has considered each the documents referred to and is satisfied that they do not contain any new evidence that would not have been known to the claimant when she had the advice of Counsel under the direct access*

scheme. She may not have had the documents in her possession, but the documents do not contain any new evidence that would raise the potential of a new claim not already contemplated."

53. Shortly after that passage, in the same Judgment, the Tribunal said (3043):

"We are satisfied that the claimant had the necessary information from both a factual and legal perspective to enable her to seek to amend her claim in the absence of the document before us. We find there is no new evidence to be found in the documents we have been referred to…."

54. On 19 December 2014 the claimant sent an email to Ms H Soren, a solicitor at the respondent, which responded to an application for costs which the respondent had made in the previous proceedings (3037). The email sent by the claimant was in the context of Employment Tribunal proceedings which the claimant had brought, and what was contended by the claimant was personal to her. The email did quote from the Tribunal Judgment. She was arguing against a costs order being made. The content of the email related to the Tribunal processes and arguments about what had occurred. It was an email prompted by the application for costs. The email did not provide information to Ms Soren or inform her that health and safety was being endangered, rather in it the claimant argued against an application that had been made.

55. On 5 January 2015 the claimant wrote to the Employment Tribunal, addressing her letter to the Regional Employment Judge at the time (3087). It was a lengthy letter (extending to 3122). In the second paragraph the claimant stated that the letter would be copied to Ms L Donnan, the respondent's Deputy Chief Executive. The claimant asked that the Regional Employment Judge *"get to the bottom of issues in an open and equitable manner".* She referred to a recently lodged appeal. She referred to *"unconfirmed reoccurring rumours over a period of time that the respondents have a contact at the Manchester Tribunal who is influential".* Later in the letter she alleged *"the respondents materially misled the Manchester Employment Tribunal for tactical reasons, frustrating me as an unrepresented party".* She referred to the respondent as allegedly using the Tribunal rules to intimidate and threaten her to withdraw her case. What is contained in the letter is a disclosure of information, albeit the information provided was limited. It appears from the letter that the claimant reasonably believed that she was disclosing that the respondents had materially misled the Employment Tribunal for tactical reasons, and she was bringing this to the attention of the Regional Employment Judge and the respondent's Deputy Chief Executive.

56. On 6 January 2015 Ms Soren emailed the claimant (3123). In that email Ms Soren recorded that she had updated Ms Donnan about the claimant's case and Ms Donnan had asked Ms Soren to acknowledge, on Ms Donnan's behalf, the copy email. Accordingly, the contemporaneous records evidence that Ms Donnan had seen the copy of the letter sent to her, albeit that in Ms Donnan's evidence to this Tribunal there was no reference to whether she recalled having seen it (and she was not questioned about it).

57. On 15 January 2015 the claimant emailed Ms Soren, copied to Manchester Employment Tribunal, about the previous case. In this email, the claimant informed

Ms Soren *"on this basis I fear for my life, so will have to report to the police as a precautionary measure. The respondents are covering up Malpractice which involves senior officials of Stockport Council".*

The hub

58. In terms of the claimant's work within the hub, the new arrangements appeared to work without issue during 2014, except occasionally for there being issues with the claimant being away from her desk. There was no evidence before the Tribunal whatsoever that the claimant was required to continue to work in the business hub after the Tribunal's Judgment (or the subsequent Judgment of the EAT) nor was there any evidence that she requested to move. There was, however, an issue around legal post and the fact that the business hub supported the respondent's legal function. The respondent's evidence was that the claimant spoke about her claim with those with whom she worked. The claimant's evidence was that those with whom she worked knew about her claim (which would have been the case for those undertaking the administrative support on legal issues).

59. What was clear from the evidence of Ms Walsh was that the claimant undertook the duties of her role well, but the claimant felt that some of the role was beneath her. Ms Walsh's evidence was that she tried to give the claimant tasks which she would feel better suited her abilities. The claimant reported to Ms Walsh for some of the relevant period, albeit there does appear to have been some change in those who managed the claimant as it included (over a relatively short period of time): Ms Walsh; Mr Majothi; Mr Smallbone; and Ms Reeves (who, it was not disputed, asked if she could stop being responsible for managing the claimant).

60. On 3 March 2015 Mr Smallbone, who was responsible for the team in which the claimant worked (and line managed Ms Walsh), noticed the claimant was outside the hub chatting to colleagues in the Adult Social Care team when he went to a meeting, and when he returned over 20 minutes later she was still there talking. Mr Smallbone emailed the claimant about this at 10:21 (768). The email was written in relatively soft terms:

> *"Can you do me a favour please, if you need to go downstairs to the DM hub to help out can you keep any conversations with friends/colleagues in the ASC team to a minimum."*

61. The claimant responded in an email at 10:44 on the same day (770):

> *"I was listening and empathising with a colleague on an emotional matter as I am in the same position."*

62. The claimant's evidence was that she had been told to wait with the other team, albeit that was not what she recorded in her email response at the time.

63. On 4 March 2015 Mr Smallbone emailed Ms Gardner, copied to Ms Walsh (783). He explained to Ms Gardner that he needed to meet with the claimant to talk through the matter which had resulted in the exchange of emails, and said that he

would like independent representation so that he was covered *"should any specific claim/complaints arise".* He provided copies of the previous email exchange.

64. A meeting was subsequently arranged for Thursday 12 March 2015 which was attended by Mr Smallbone, Ms Gardner and the claimant. A letter following the meeting was sent to the claimant on 18 March 2015 (809) which was drafted by Ms Gardner and sent by Mr Smallbone. The letter recorded that the purpose of the meeting had been to discuss the email that Mr Smallbone had sent. Mr Smallbone also highlighted that the claimant's email in response had detailed her views about the respondent and had made reference to *"sledgehammer attacks".* The letter recorded that Mr Smallbone had informed the claimant that he was treating her the same as other colleagues and that it had been necessary for him to have similar conversations with others regarding non work-related conversations. He recorded that the claimant had confirmed in the meeting that she did not believe Mr Smallbone was victimising her. The letter concluded with a hope that the incident could be put behind them.

65. The claimant responded on 19 March 2015 (812) addressing some matters with which she disagreed. She recorded in her own letter, *"I clearly clarified, you have not victimised me, in fact I praised for you management style in comparison to some few other managers"*.

66. There was an allegation raised about the conduct of a business hub meeting on 17 March 2015. The Tribunal heard no evidence that such a meeting occurred.

Conversations between the claimant and Mr Majothi

67. Mr Majothi is the Corporate Complaints manager at the respondent. He has previously worked for the Equal Opportunities Commission. He took some management responsibility for the hub because he had expressed an interest in gaining some line management experience (as he had very little), and the opportunity came up for him to support management in the hub. Mr Majothi described himself as really just being another line of support who would assist, as Ms Walsh had some time away from the hub.

68. There is a significant dispute about what occurred in a conversation or conversations between the claimant and Mr Majothi. The claimant alleged that on four different occasions between February and May 2015 Mr Majothi asked her to meet him outside work to discuss how he could help her with work related problems. The two witnesses for whom the claimant provided statements, but who did not attend in person, recounted that the claimant had spoken to them both at one of their homes in April 2015 and referred to Mr Majothi and the issues. Mr Majothi strenuously denied that this had happened or that he had said to the claimant that he wanted to help with work related problems or asked to meet her out of work. His evidence was that the claimant had approached him at the photocopier and started talking to him about her ongoing Tribunal claim, before he started working in the hub. During the course of the conversation he said the claimant told him that she had family in Kenya and he thought that was something they had in common as he had family living in Nairobi. Mr Majothi's evidence was that he did not ask the claimant about her parents or what school she attended, although she may have told him that she attended Christian schools as he said he told the claimant he was a Muslim and

the claimant said she was a Christian. In cross examination, the claimant denied that she had volunteered information about her religion. The claimant did not raise an internal complaint or grievance. When asked about this, she stated that she intended to raise matters with Mr Smallbone in June 2015 but was unable to do so because she was suspended.

69. The Tribunal found Mr Majothi's evidence to be genuine and credible. In his answers to questions he recounted his background with the EOC and explained, with that experience, why he would not have said what was suggested. The Tribunal accepted his evidence on this issue. The claimant was not someone who was reticent in raising issues, where she wished to do so. The Tribunal was shown a number of emails and other documents which showed that the claimant felt able to highlight issues and concerns that she had at that time. Had the claimant felt that she was harassed in the way she alleges, and/or had Mr Majothi made the suggestion which is alleged, the Tribunal has no doubt that the claimant would have raised it at the time; she would not have waited until June 2015 or later.

70. On 2 April 2015 Mr Majothi sent an email to the team (825) raising an issue of concern. This resulted in a lengthy and critical response from another member of the team (824). The claimant added her own email supporting her colleague and arguing for a bonus (823). Mr Majothi responded by suggesting it would be more appropriate to raise issues directly with leaders rather than copying everyone (822). The claimant further criticised his response on 7 April (821), amongst other things saying, *"honestly I am not impressed with your reply as you have not acknowledged the tone of your initial email was not appropriate considering you are in charge of complaints".* Mr Majothi's evidence was that he had been trying to smooth things over. Ms Walsh's evidence was that Mr Majothi's email was perhaps not done in the right way and she related that to him being relatively new to line management. What the emails evidence is that the claimant did feel able to raise matters with Mr Majothi (copied to a great many others) when she felt slighted and/or had issues she wished to raise.

71. On occasion around 15-17 April 2015, Mr Majothi spoke to the claimant about the way she conducted herself with a colleague, Mr Dudley. The claimant complained that this was inappropriate (and contended that this was as a result of her refusing to meet Mr Majothi outside work). Mr Majothi's evidence was that the claimant was berating Mr Dudley and that the way that she dealt with him, Mr Majothi considered inappropriate. His evidence was that he addressed this in a calm and considered way. Mr Majothi suggested to the claimant that she let Mr Dudley do his work and that she did her own. In an email of 21 April 2015 to Ms Stewart, Mr Majothi addressed a few issues relating to the claimant (846). Mr Majothi said:

> *"Last week she was berating him on his work and pressuring him not to make mistakes as he had done previously; to which I asked her to let him get on with it and for her to do her own work. She replied that I should manage him instead. I am concerned about the borderline bullying."*

72. As recorded above, the Tribunal finds Mr Majothi to be a credible and genuine witness. The Tribunal finds Mr Majothi's evidence on this issue to be true and considers his approach to the claimant, and his email to Ms Stewart, to be entirely appropriate and reasonable, in the context of his management responsibilities. The

contemporaneous record of why Mr Majothi had raised the issue, is accepted by the Tribunal as his reason for doing so.

Training and dress

73. On 15 April 2015 the claimant attended moving and handling training. The claimant contends that she was challenged by Mr Smallbone at the training for wearing trainers. In her evidence the claimant explained how she had been diagnosed with plantar fasciitis. This condition caused the claimant pain and required special shoes and insoles. Mr Smallbone's evidence was that he could not recall challenging the claimant for wearing trainers during the training, but in any event the claimant did not tell him at any time that she was wearing trainers because of a disability. The claimant sent an email to Mr Majothi on 21 April 2015 (841) explaining that she had not attended subsequent training, because she had been advised to keep off physical activities until further notice following the pain she had suffered since 15 April. She explained to Mr Majothi that she was covered under the "Disability Act", in this instance clearly being reference to issues with her feet. In terms of dress, the respondent's evidence (which the Tribunal accepts) was that: Mr White was spoken to for wearing trainers; and Mr Henshaw was not spoken to because he was seen to be wearing trainers or inappropriate dress. The Tribunal heard no evidence whatsoever about Ms Slate.

Showing the video

74. At some point in April 2015 (there was no evidence of the precise date), the claimant showed Ms Hodson (a colleague with whom she was friendly), a video which she had been watching on her mobile phone. The Tribunal has neither seen the video, nor has it heard evidence from Ms Hodson, albeit it has seen the statement which she gave to the respondent as part of their investigation. Ms Hodson's account was that the video she was shown was a video of a beheading. She was upset by this but did not want to make a fuss. Ms Hodson informed Ms Reeves, who informed Ms Walsh that Ms Hodson was really upset. As a result, Ms Walsh initially approached Ms Hodson about the incident, and subsequently spoke to the claimant. The claimant's evidence was that she had not shown Ms Hodson a video of a beheading, but rather had shown her a video of her brother who had recently died in Kenya and the video related to his death and funeral.

6 May 2015 meeting

75. The Tribunal heard a considerable amount of evidence about a meeting which took place on 6 May 2015 attended by the members of the hub, Mr Smallbone and Ms Stewart. The original minutes of the meeting (872) were relatively brief and only summarised what was said in a relatively lengthy meeting. Those minutes record dress code being explained, which included no trainers and the requirement for smart office wear because people covered reception. The minutes record, in relation to the claimant, *"Phoebe stated that management should be working with the team and not against them and is not happy with the above rules".* The Tribunal noted that a number of attendees did in fact raise issues about the dress code and the minutes therefore provide a somewhat inaccurate version of the meeting, recording the claimant (and not others besides Mr Urry) as raising the issue (see below).

76. In fact, Mr Urry recorded the meeting and therefore the Tribunal had the benefit of a full audio transcript of the entire meeting (876). In the notes about how the transcript had been prepared (876) it says, *"where a speaker is interrupted, there is no terminal full stop given and … (three dots) are used".* The transcript recorded that the meeting lasted for one hour and 37 minutes, demonstrating that the minutes do not record in any detail what was discussed. At one hour 14 minutes into the meeting the claimant said that she was not intellectually challenged by the role, and from the use of three dots it appears that she was spoken over. Whilst the transcript does not record the claimant as saying that her role was boring, the response of another attendee makes it clear that that is how a comment the claimant made (which is recorded as unintelligible) was perceived. The claimant then stated that it was not boring, but she made reference to being turned down for other jobs. A speaker recorded as "male 2" (which appears to have been Mr Smallbone) then explained that there were a number of opportunities for more challenging jobs available away from the Business Support hub, because the work in the Business Support hub was limited and dictated by the work received (it is a support service). It was explained that there were opportunities available on the relevant website for those who wished to apply.

77. Slightly later in the meeting (913) dress codes were raised and it was explained that there was a need to have a more professional dress code when people were in the office. What the transcript shows is that it was other employees who challenged this dress code being required, in circumstances when back office staff were not public facing. The transcript does not include the claimant making any comment in relation to dress code. The Tribunal noted that the transcript does not record the claimant as saying what was recorded in the minutes.

78. What the claimant did go on to say (914/915) was that the structure was very good in another team in which she had worked and she said *"this one is - - this is - - this is one of the worst hubs I've worked in".* From the subsequent use of three dots it is then clear that the next speaker did interrupt the claimant. The next speaker was recorded in the transcript as being Mr Smallbone, but the Tribunal finds that it cannot be because he refers to Mr Smallbone in the third person, which he would not have done. It appears that the speaker was therefore Mr Majothi. Mr Majothi made reference to what Mr Smallbone had said (see paragraph 76 above) and highlighted the fact that there were other jobs available within the council if people wanted to apply for them. Mr Majothi then mentioned the negative tone which he said was not really very helpful. Mr Urry then challenged the reference to a negative tone, and suggested that Mr Majothi was the person creating negativity.

May 2015

79. On 7 May 2015 Ms Walsh had a one-to-one meeting with the claimant to discuss how she was getting on. Very brief notes following the meeting were sent to the claimant at 9.16am (934). The notes record that the claimant said that she had not enough work to do. They also record Ms Walsh having talked to the claimant about personal use of the phone and internet. What is not recorded in the notes, but which was not in dispute, was that Ms Walsh raised with the claimant the video which had been shown to Ms Hodson. Ms Walsh's evidence was that the claimant explained that she had not meant to upset Ms Hodson. The claimant stated that the video had come up on her feed and she had showed it to Ms Hodson to show her

how bad it was. Ms Walsh's evidence, in her statement, recorded that having heard the claimant's explanation she did not think she would do it again and, although the video had horrific content, Ms Walsh did not think that the claimant had shown it to Ms Hodson to intentionally upset her. Ms Walsh's evidence was that she was not aware that she should consider reporting incidents like this. Ms Walsh did warn the claimant that it was unacceptable behaviour.

80. At 11:22 on 7 May 2015 (935) the claimant sent an email to Ms Walsh and others relating to the previous day's team meeting and contended that she had noticed hostility towards her. In the email the claimant stated *"As some of the management stated in the meeting, if I am unhappy I should go to* [the relevant website] *and apply for a job and leave".* In the email the claimant highlighted that she had not been successful in her applications for other roles. The relevant paragraph concluded with the statement, *"In addition I have communicated clearly to the council's legal team stating Stockport Council is an institutionally racist organisation".*

81. The claimant alleged that at a PDR meeting on 13 May 2015 she was prevented from wearing trainers. Ms Walsh's evidence was that she could not recall if the proposed PDR meeting on 13 May 2015 had gone ahead on that date or shortly after, but when the PDR went ahead Ms Walsh did discuss dress code with the claimant. Ms Walsh's evidence was that she had seen the claimant wearing a hoodie and trainers and felt that this was not consistent with the dress code policy. The Tribunal notes that there was not a dress code policy as such, but there was the requirement which had been referred to in the previous meeting for smart clothing: hoodies and trainers were clearly considered to be outside that definition. Ms Walsh's evidence was that the claimant stated that she was wearing trainers as she had a problem with her feet, which Ms Walsh was not aware of. Ms Walsh's evidence was that she told the claimant she should look at buying trainers that looked a bit more like shoes, as those she was wearing were sportswear trainers. Her evidence was that the claimant did not buy any different shoes subsequently. In terms of the hoodie, the claimant accepted that she should not wear this and wore it less frequently thereafter. The claimant's evidence was that the shoes in question were not in fact trainers but were flat soled shoes. There was no policy that the claimant could not wear flat soled shoes: the request was for her to not wear trainers. A reason for the request not to wear trainers was because the claimant, in her role, might meet members of the public and might need to work on reception.

82. The Tribunal found Ms Walsh to be a genuine witness who appeared to have tried to manage the claimant to the best that she could. The Tribunal was in no doubt that what Ms Walsh informed the Tribunal, was what she believed to be the truth. Ms Walsh had no knowledge of the claimant's mental health issues or her PTSD. When giving evidence, Ms Walsh very genuinely apologised to the claimant for not being there for her at the time of the claimant's bereavements, which was very genuine evidence and which involved a recognition that things could have been done better at that time. Where there is a dispute in the evidence between that of the claimant and Ms Walsh, the Tribunal prefers Ms Walsh's evidence.

83. The claimant also alleged that Ms Walsh challenged the claimant from January 2015 onwards about time spent away from her desk to use the toilet and in requiring her to provide evidence about the need for hospital appointments. The Tribunal heard no evidence whatsoever about occasions when the claimant was

challenged about being away from her desk, save for the specific issue on 4 March when the claimant's reason for being away from her desk had nothing to do with use of the toilet. The claimant was asked to provide evidence of her hospital appointments as part of the respondent's standard procedures for recording such absences. The Tribunal does not find that the claimant was inappropriately questioned about such matters and, as confirmed, accepts Ms Walsh's evidence for the reasons why she addressed matters with the claimant.

84. On 13 May 2015 the claimant emailed Ms Reeves (954) in an email headed "*Referral to Occupation Health*". The claimant said: *"I would like you to refer me to Occupational Health. I am tired of explaining by disability all the time".* Ms Walsh said that this was the first time that she was aware that the claimant wished to be referred to occupational health. The Tribunal find that this initial request was made in the context of issues about being away from her desk, relating the request specifically to gynaecological issues or issues with the claimant's feet.

85. One of the claimant's allegations related to a disciplinary hearing on 14 May 2015. The Tribunal heard no evidence about any hearing which took place on that date.

86. On 14 May 2015 at 9.36am the claimant sent an email to a number of members of the hub (958, 1933). The email began:

> *"I am writing this email because I would like to kindly request we as colleagues whoever keeps reporting on me to management please talk to me. Whoever I have offended I am sorry. The continuous reporting going on in this hub has resurrected bad memories…. Please I request if anyone has a problem talk to me, we are all adults. Reporting me to management reminds me of nursery days"*

87. In the email, the claimant also referred to events that had happened to her as a child. The second paragraph of the email referred to the claimant's previous Tribunal proceedings against the respondent. She stated that she was doing that to expose malpractice and related how she and colleagues had cried at their working desks empathising with adults and vulnerable people. The Tribunal finds that the account in the email was not made so as to disclose that information to colleagues, but rather as an explanation to her colleagues in the business hub about the proceedings which were ongoing. This was in the context of the claimant asking them to stop raising complaints about her. The purpose of the email was to try to improve the claimant's relations with her colleagues in the business hub, essentially asking them not to go to management behind her back. The claimant went on to address the dress issue, explaining that her shoes were not trainers but were flat casual comfortable shoes. She informed her colleagues that she was covered in relation to disability. The email then quoted Nelson Mandela, before going on to explain that the date was the claimant's late brother's birthday, and this explained why she was so upset on the day. The claimant repeated her request, *"today I request whoever is reporting on me to management, please allow me to have a quiet day"*.

88. In her evidence, the claimant did admit to sending emails which were intemperate and to feeling very low around this time due to bereavements. The

claimant had recently suffered two bereavements and the Tribunal finds from her own evidence that those bereavements had affected her. This email and subsequent emails, also evidence that there were clearly some issues between the claimant and other members of the team.

89. The claimant's email resulted in various responses, including one (962) from a colleague, Ms Scott, to senior management, saying it was not appropriate for the email to be sent, *"and quite frankly I'm getting pretty well sick of it as are others".* Mr Smallbone emailed Ms Gardner providing a copy of the email (971) saying that he was reluctant to respond as it would inflame the situation, but it was something he felt could not be ignored. He therefore informed Ms Gardner (and Mr Majothi and Ms Walsh who were copied in to the email) that he would set up a meeting to try and agree a course of action.

90. A meeting was held on 18 May 2015 attended by Ms Walsh, Mr Smallbone, Ms Gardner, Mr Majothi and Ms Stewart. Ms Stewart could not recall if she attended this meeting. No notes were taken of this meeting, Ms Gardner's explanation being that notes were not taken of meetings not attended by the relevant individual. The Tribunal is very surprised that Ms Gardner did not make a record of this meeting. The Tribunal also finds it very surprising that Ms Gardner did not either raise the issue of the claimant's PTSD in this meeting, or proactively urge those involved to progress the claimant's request for an occupational health referral in the light of the claimant's history of PTSD (of which she was aware).

91. In this meeting, various issues were discussed and it was agreed that Mr Majothi would arrange a meeting to discuss them with the claimant. Ms Walsh explained to the other attendees about the video that the claimant had shown to Ms Hodson and explained how she had dealt with it. Mr Smallbone's evidence was that he was made aware of the video but was not aware of the seriousness of the content (the content was however discussed). The claimant's request for an occupational health referral was not progressed following this meeting, but rather initially Mr Majothi, and, subsequently Mr Smallbone, endeavoured to meet with the claimant before an occupational health referral was made. Mr Majothi subsequently endeavoured to meet with the claimant following the meeting.

92. On 19 May 2015 the claimant was absent. Ms Walsh emailed the team to inform them of her absence. Ms Scott responded, "*Woooo hooooo"* (1000). In questioning, Ms Walsh accepted that this was not an appropriate email. Ms Walsh did not respond to it. In her evidence, Ms Walsh suggested that this was indicative of the difficulties those in the hub were facing with the claimant. Ms Walsh's evidence was that people did like the claimant, they just found it difficult to concentrate when she was around. The respondent submitted that the claimant was unmanageable, but the Tribunal did not find there to be evidence that was the case. The Tribunal finds these emails to be indicative of issues between colleagues which should have been addressed by management.

Appeal to the EAT and related emails

93. The claimant appealed the previous Employment Tribunal decision to the Employment Appeal Tribunal. As part of that process, the respondent had applied to remove Individual Solutions SK as a party, in summary because the respondent

wished to dissolve the company. The claimant had objected. The claimant exchanged emails with Mr Reynolds, one of the respondent's in-house solicitors who it appears was intrinsically involved in defending the claimant's claim and appeal (from whom the Tribunal did not hear), on 26 May 2015 (1010-1014). The chain of emails began with an email from the EAT itself which was sent to the claimant using her personal email address. On 26 May 2015 at 12:39 the claimant sent an email to the EAT and Mr Reynolds in fairly strident terms. In the subsequent emails the claimant expressed herself in terms which are perhaps surprising, including reference to *"the litigators of Kenya",* alleged corruption, and *"chess is a game of 23 moves".* In her email of 14:03 on 26 May 2015 (1010) the claimant stated: *"I had to back up myself in case Stockport Council decided to assassinate me. Where there is corruption one has to be careful"*. Mr Reynolds provided copies of these emails to Ms Gardner and Ms Steward (another member of the respondent's HR team). Even though the claimant had made the statements contained in the email, Ms Gardner still did not take any action to inform anyone else about the claimant's PTSD reported in the previous medical report, nor did she progress the claimant's request for an occupational health referral or urge anyone else to do so.

94. Mr Reynolds responded to the claimant at 16:18 on 26 May (1029) stating that he was very concerned by the claimant's remark that the council might decide to assassinate her, and asked her to confirm whether or not she genuinely believed this. On 26 May 2015 at 6.49pm (1028) the claimant confirmed that she was worried that the council could hire a hit-man to assassinate her.

95. On 3 June 2015 Mr Reynolds and the claimant exchanged further emails (1054) in which Mr Reynolds asked the claimant to unconditionally withdraw her suggestion that the council was looking to assassinate her. The claimant declined to do so, explaining herself at length.

96. On 7 June 2015 a letter was sent to the claimant (1056) which suggested a meeting with the claimant to discuss her belief regarding assassination and proposed that such a meeting should take place at a location away from the workplace. This meeting was stated to be one that was not under a formal procedure. The claimant's attendance was required and the request was stated to be a reasonable management instruction. The copy of the letter which was provided to the Tribunal did not have a signature nor any name from whom it was sent (1056). It appears that the letter was sent by Mr Reynolds. Taking account of the claimant's history of PTSD, it is unsurprising that the claimant found this letter somewhat concerning, suggesting as it did a meeting outside the Council and not under any procedure, to discuss questions of assassination.

Costs award

97. On 15 June 2015 the Employment Tribunal issued a Costs Judgment in relation to the claimant's previous case, ordering the claimant to pay the respondent's costs assessed in the sum of £5,000. The Judgment (3211) recorded that the claimant did not attend that hearing.

Emails - Mr Smallbone

98. On 9 and 10 June 2015 emails were exchanged regarding Mr Smallbone's proposal to meet with the claimant to discuss the proposed occupational health referral. The emails record that Mr Smallbone had been on leave and therefore had not immediately responded to the claimant's rejection of his meeting request. In an email to Ms Reeves on 10 June (1062) the claimant stated she had declined the meeting request because she had sought the occupational health referral several weeks before and the delay had made her realise it was not something that management wanted to do. She also went on to explain that she did not see why she needed a meeting to discuss her gynaecological problems with Mr Smallbone, before a referral to occupational health was made. The Tribunal entirely understands why the claimant did not wish to discuss her gynaecological problems with Mr Smallbone. It also notes that the claimant's request appeared to be related to her gynaecological issues.

99. Mr Smallbone emailed the claimant on 10 June (1064) and said that it was disappointing that the claimant would not meet with him. He apologised for the delay in responding to her. He explained the wish to meet as being because the respondent wished to understand the claimant's position and what she wished to achieve. In the email he stated that he would make the referral to occupational health anyway and await a response, and he would forward to the claimant a list of questions. He went on to say that he needed to speak to the claimant about other issues. The Tribunal was provided with no evidence of the occupational health referral being made, even though Mr Smallbone stated that it would be.

100. The claimant responded on 12 June (1075). She explained to Mr Smallbone that if he wanted a meeting it would need to be arranged with her trade union representative present. She also referred back to the business hub meeting and raised her concerns again about that meeting. The email was headed "*Current issues, declined meeting and legal conflict of interest*" (1082). The email made reference to the claimant's ongoing legal case, and the fact that the business hub was closely related to legal, who were handling the Tribunal case. The claimant alleged that the respondent was a racist organisation.

101. At 9.24 on 17 June 2015 Mr Smallbone emailed the claimant's trade union representative and asked if he could meet with the representative (1080). This request was declined because the claimant, as the trade union member, had not made a request for representation. Mr Smallbone responded at 11:30 (1081) stating that he did not want to meet with the claimant present, he just wanted to meet with the trade union official. Unsurprisingly, the trade union official rejected this suggestion (1081).

102. Mr Smallbone forwarded the email of 12 June headed "*Current issues, declined meeting and legal conflict of interest*" to Andrea Stewart at 11.41am on 17 June (1082), that is immediately after he had requested that the trade union official met with him without the claimant present. Mr Smallbone's email to Ms Stewart was considered by the Tribunal to be particularly important, and it finds that by the time that he sent it, Mr Smallbone had decided that he wished to remove the claimant from the hub. He said the following:

> *"I wonder if we can use the Legal conspiracy theory as a reason to make her position in CSS Business Support untenable? Would Business Support have to find her a new home or would she go in the redeployment pool? Just a thought, the current situation is crazy. There's an outright refusal to meet without Union involvement and a total lack of engagement in our other meetings (PDR etc). I don't want to do this via email as It'll just end up as ping pong. Might be the only choice though."*

Decisions to suspend and refer to the Channel Panel

103. At some point after 17 June, but prior to 7 July 2015, there was an informal meeting attended between Mr Reynolds, Ms Akhtar (the respondent's Head of Legal), Ms Stewart, and Mr Smallbone. There were no notes of this meeting. Ms Stewart's evidence was that she could not specifically recall the meeting, but she explained that there was an awareness that the claimant had allegedly shown a distressing video to a colleague, being the video which had been shown in April and discussed between the claimant and her manager in early May. Mr Smallbone's evidence was that at the meeting the video was discussed and, although he had previously heard about the video from Ms Walsh, he had not appreciated the seriousness of the content until this meeting. The Tribunal does not accept Mr Smallbone's evidence in this respect at all, as he was previously aware of what the video was alleged to have shown at least by the meeting on 18 May.

104. As a result of the unrecorded meeting, a further meeting took place with Ms Donnan, the Deputy Chief Executive. Ms Donnan's evidence was that the meeting with her took place in early July 2015. She described the meeting as being held with Ms Stewart, Mr Smallbone, HR and Legal, at which the video was discussed. Ms Donnan did not know how the meeting had been arranged, describing simply that it would have been arranged via her PA.

105. Ms Donnan was the lead for Prevent at the council and it was clear from her evidence that she had spent considerable time in dealing with Prevent issues and therefore was very focussed on Prevent procedures and addressing related risks. Ms Donnan's evidence was very clear that she took control of the meeting and made a decision based on what she was told. Ms Donnan's conclusion was that the claimant did not understand boundaries in the office, and if she had shown a video of that nature to a colleague she could do it again. She felt that there was a risk for the council of the claimant continuing to work alongside other members of staff when allegedly observing those types of videos. She was also made aware of the assassination comment. Ms Donnan was very clear that she personally made the decision to suspend the claimant and that it was made at this meeting. When questioned about Mr Reynolds' involvement in the decision making, Ms Donnan was entirely dismissive of the suggestion that Legal would tell her what to do, and was very clear that she expected Legal and HR to action her decisions, not to make them for her.

106. The Tribunal accepts that Ms Donnan made the decision of her own volition based on the information she was provided in that meeting. It was both her decision to suspend the claimant, and to start the process for the claimant being referred to the Channel Panel. What is clear, however, is that Ms Donnan was not given all of the information. She did not know about the length of time since the video had been

observed. She did not know about the claimant's conversations with Ms Walsh, and Ms Walsh's conclusions about the likelihood of the claimant showing a video again. She certainly was not told about the claimant's mental health history or her PTSD. The Tribunal finds that Ms Donnan reached the decision based upon the headlines of what she was told, without any attention to detail. She did not enquire into why the video had been shown, nor indeed what had been said to (or by) the claimant since. She appeared to focus upon the perceived terrorism risk.

The suspension

107. As a result of Ms Donnan's decision to suspend the claimant, Mr Smallbone met with the claimant on 7 July and suspended her. Prior to the meeting, Mr Smallbone was provided with a set of suspension notes which recorded what he should say (1128). Present at the time of the suspension were the claimant, Mr Urry (who agreed to accompany her), Ms Gardner and Mr Smallbone. Ms Gardner made limited handwritten notes (1130).

108. There is a direct conflict of evidence about the suspension meeting. Mr Urry's evidence was that the claimant was asked to attend a meeting on short notice and was informed that the outcome of the meeting was that she was likely to be suspended. She was given only 40 minutes notice, which did not give her time to arrange to be accompanied by a trade union representative (which is why Mr Urry agreed to do so). Mr Urry's evidence about the meeting was that *"I was alarmed at the severity of the hostility towards [the claimant] in the meeting…The atmosphere and the hostility in the room was horrific. It was a traumatic experience".* He also said that *"The way the suspension meeting was held was dreadful, so much hostility/anger towards [the claimant]".* He described himself as being shocked and horrified. He had been a Unison shop steward for approximately 28 years and stated of the meeting: *"I attended the most horrific suspension meeting that I have ever attended with a member of staff."* He said *"The hostility towards [the claimant] was immense".*

109. Mr Smallbone's evidence was that he conducted the meeting in an entirely appropriate way. Ms Gardner's evidence in her statement was that, although the meeting was difficult, she would not describe it as "hostile" or "heated". Her notes record the claimant as saying that she would take the suspension with grace. However, when Ms Gardner gave evidence in the Tribunal her account of the claimant's demeanour at the end of the suspension meeting was very different, portraying the claimant's response in a far more negative light. The Tribunal found Ms Gardner's evidence about the suspension meeting in the Tribunal hearing to simply not be credible (and indeed undermined her credibility generally for the Tribunal), bearing in mind she made notes at the time and had already prepared a statement for the Tribunal before she provided the evidence. Had the claimant reacted as Ms Gardner described in evidence Ms Gardner would have recorded it elsewhere.

110. Mr Urry was not challenged at all about this meeting by the respondent's representative in cross examination. The respondent's submissions contended that Mr Urry's evidence was unreliable, but the submission was inconsistent with the approach taken to cross examination. The Tribunal found Mr Urry to be an entirely credible and convincing witness and his evidence about the conduct of the

suspension meeting is accepted in its entirety. Where there is any dispute, the Tribunal prefers the account of Mr Urry to that of Mr Smallbone or Ms Gardner. The Tribunal had no reason whatsoever to doubt his evidence and perception of the meeting and what occurred. It is appropriate for the Tribunal to address one aspect of Mr Urry's evidence. Mr Urry is blind. In his statement he included the following: *"Her facial expression was one I will never forget",* in reference to Ms Gardner at the suspension meeting and the fact that Mr Urry perceived her to be uncomfortable. In answer to questions, Mr Urry explained that he imagined what her face looked like based upon his perception of the meeting, and the Tribunal accepts that evidence.

111. After the suspension meeting itself, the claimant was walked to her desk and then walked off the premises by Mr Smallbone. Mr Urry was not present. Mr Smallbone's evidence was that the claimant danced and he suggested that she had pumped her fists, saying *"yes"* in response to the suspension. He did not ask her about it at the time. The claimant denies that this is what had occurred. She explained that she danced because she was fearful, this was her way of dealing with her tension. For reasons related to her personnel experiences she found it particularly difficult to be escorted off the premises in this way by Mr Smallbone. Her evidence was that her dance was an Azonto dance and she denied that such a dance involved fist pumping as alleged. Her evidence was that it was culturally appropriate for her to undertake that particular dance in response to a situation which had caused her fear. The claimant's clear evidence was that she found the whole experience to be very threatening and it clearly had a particular impact on her in the light of her medical history. The Tribunal accepts the claimant's account of why she danced, and where there is dispute between the parties the Tribunal prefers her evidence about what occurred on 7 July (after the meeting itself). The Tribunal does not find that the claimant said *"yes"* or pumped her fist as described by Mr Smallbone.

112. A letter dated 7 July 2015 was sent to the claimant confirming her suspension (1133). This stated that the suspension was because a video of an execution, which it was understood was originally posted by a terrorist group that was a prescribed organisation in this country, had been shown to a fellow employee without first gaining her valid and informed consent to viewing such imagery. That letter, along with a number of letters which were sent following the suspension, was recorded as being sent by Mr Smallbone. Mr Smallbone was very clear in his evidence that he did not write any of the letters sent subsequent to the suspension, but they were simply sent in his name. It would appear to be the case that all of the letters were drafted by the legal team and, in particular, by Mr Reynolds.

Post suspension events and correspondence

113. There was a significant amount of correspondence both to and from the claimant following her suspension, particularly in the first couple of months. The claimant's very honest evidence to the Tribunal was that she was not well following the suspension, which included the excessive use of alcohol. The claimant's evidence was that after reading a letter in early August she cried for days, was unable to sleep and became suicidal. The claim form itself (30) recorded that "*my health has suffered, I frequently suffer from migraines and headaches, sometimes I sit in one place for hours crying, when I have headaches I am not able to type and write for long my hand shakes itself. I have considered committing suicide ...*". The

claimant confirmed under oath that the content of her claim form was true and whilst the claim form does not date these events, it was consistent with the evidence the claimant gave about how she felt following her suspension. The amount of, and manner in which, the respondent corresponded with the claimant following the suspension, appeared to be written with little (or no) consideration about what the impact on the claimant might be of receiving so much correspondence.

114. On 8 July, the claimant emailed Mr Smallbone complaining about the manner of the suspension meeting. In particular she recounted how Mr Smallbone had told her on the phone with less than 40 minutes' notice that she had to come to a meeting at which she was likely to be suspended. Mr Smallbone forwarded that email on to Ms Gardner and Ms Steward (1139) in an email in which he referred to *"I appreciate other bigger picture issues with this case…".*

115. On 9 July 2015 a letter was sent to the claimant supposedly from Mr Smallbone (1172) which explained that management had been made aware of comments which the claimant had made about the Council in recent communications with the legal team, referencing the assassination emails. The text of the letter was otherwise in almost identical terms to the letter sent on 7 June 2015 (1056) as detailed at paragraph 96 above. As with the previous letter and in the light of the claimant's history of PTSD, it is unsurprising that the claimant found such a letter concerning, as again she was being asked to meet with someone outside normal procedures and outside the Council's premises (on this occasion by the person who had suspended her and about whom she had complained). This letter appeared to the Tribunal to be particularly disingenuous, as it was presented to the claimant as being a letter from Mr Smallbone and referred to management having being made aware of something, when the evidence before the Tribunal was that in fact the letter was written by Mr Reynolds and simply sent out in Mr Smallbone's name.

116. On 13 July the claimant emailed the respondent's Chief Executive raising concerns about her suspension and an alleged data breach (1197). The response to this letter was sent by Mr Reynolds in his own name on 15 July (1224). On 16 July a separate letter was sent to the claimant, also responding to the same email, which was presented as being sent by Mr Smallbone, but in fact was written by Mr Reynolds and simply sent out in his name (1227). What that said regarding the assassination comment was:

> *"The Council has no formal procedure for such a purpose since it has never before encountered a situation where one of its employees has made such allegations. After giving this matter careful consideration I decided that the least confrontational way to deal with it was to ask you to attend a meeting in order to find out more about why you have been making these allegations and what precautions you may have taken."*

117. In the 16 July letter, Mr Smallbone also asked the claimant to correspond with him directly about any matters relating to this, suggesting that she did not raise these matters with the investigating officer for the disciplinary allegations. The claimant responded by email to Mr Smallbone (1230) and separately to Mr Reynolds (1244), albeit in practice in fact the claimant was corresponding with Mr Reynolds. The Chief Executive, who was also copied in to the correspondence, forwarded it to Ms Donnan (1244).

118. On 17 July Mr Reynolds sent an email to the claimant (1262). That email continued the correspondence about the assassination emails as well as addressing the outstanding costs order. The email was written in somewhat confrontational terms. The email addressed the claimant in the style of a strong litigator, rather than in the manner in which an employee would usually be addressed (particularly one with the claimant's medical history, of which Ms Gardner was aware).

The Channel Panel referral process

119. Following the meeting with Ms Donnan and as instigated by her, the respondent undertook a process for considering whether the claimant should be referred to Greater Manchester Police, under a process which was known as a "Channel Panel referral". The document which contained the instruction to make such a referral (1284D) was dated 17 July 2015 and was stated as being from Ms Stewart to Ms Bowman, the Prevent Officer in the respondent's Community Safety Unit. Ms Stewart's evidence was that this document was not originally drafted by her, and it appears that it was originally drafted by Mr Reynolds. Ms Stewart's evidence was that she did not know anything about Channel Panel referrals or the process prior to these issues, and she sought guidance from the legal team (in practice being Mr Reynolds) and the Community Safety Unit (being Ms Bowman to whom the instruction was addressed).

120. The instruction memo commenced by referring to the claimant's references to plans to have her assassinated which it said were sent between January and July 2015. It then referred to the allegation about watching an internet video of an execution, incorrectly dated that as occurring in May 2015, and made no reference whatsoever to any of the meetings which had been conducted with the claimant about the video, or the manager's conclusion that a repeat viewing would not occur. The memo went on to list what were stated to be the Council's concerns.

121. The first of these points of concern included a phrase which was focussed on during the Tribunal hearing, saying that the claimant *"has claimed that her employer is an organisation that might arrange for her assassination. This may represent an irrational and persecutory belief"*. The concerns went on to list that the claimant had accessed a video of what is described as *"an Isis-style execution",* and stated that the video almost certainly related to the activities of a terrorist organisation, and stated that the claimant had allegedly showed this material to a colleague.

122. Ms Stewart's conclusion, as recorded in the memo, was that these concerns indicated that the claimant was at risk of radicalisation and that her vulnerability to such radicalisation may potentially relate to her employment. The memo went on to say that the council had decided that the risk represented by these concerns required it to make a disclosure of the information contained in the letter to the Greater Manchester Police. The memo stated that the disclosure may prevent the claimant being drawn into terrorism (although there is no explanation of why this was concluded to be the belief).

123. Acting on this instruction, Ms Bowman wrote to the claimant on 17 July 2015 (1284A) explaining that the Council had arranged to make a disclosure to GMP about its concerns that the claimant may be at risk of radicalisation and being drawn

into terrorism. The letter to the claimant largely repeated the content of Ms Stewart's instruction email.

124. A further letter was sent by Ms Stewart to the claimant dated 24 July 2015 about disclosure to GMP (1294). The evidence to the Tribunal was that this letter was drafted by Mr Reynolds but reviewed by and signed by Ms Stewart. The content of the letter is contradictory to the letter of 17 July (which had informed the claimant that a referral to GMP had been made). The letter made reference at its start to both the video and the claimant's claims about the Council and suggested that these might indicate that the claimant had become interested in the activities of a terrorist organisation and that the claimant might be vulnerable to harmful influences, specifically terrorist recruitment propaganda. The letter explained the Channel Panel process and stated that the respondent proposed to use this procedure to address its concerns and sought the claimant's consent to such a referral. The letter stated that the proposed referral was entirely voluntary. However, the letter went on to say that if the claimant declined a Channel Panel referral, the respondent would nonetheless feel compelled to take other action in response to its concerns, including making a formal disclosure to GMP. In other words, the letter informed the claimant that she could voluntarily agree to a Channel Panel referral, or the respondent would refer the matter to GMP anyway (when the claimant had already been informed in the previous letter that a referral had been made). The letter went on to say:

> *"The Council has well-founded concerns about your health, your need for appropriate help and your behaviour at work. The Channel Panel procedure represents a means of dealing with all these concerns. I very much hope that you decide to accept this proposal and consent to the Council making a referral for you."*

125. The Tribunal could not see any way in which the Channel Panel referral would have addressed the respondent's concerns about the claimant's health. The best way of addressing such health concerns would have been to refer the claimant to occupational health. That is to do what the claimant had requested several months earlier, but the respondent had not done. The Tribunal found the content of this letter to amount to bullying and, if such a letter was to be sent to an existing employee, it could and should have been sent in far softer terms. Ms Stewart's evidence was that she relied upon Mr Reynolds and others for this referral and for the text of the letter that was sent.

Further correspondence

126. On exactly the same date (24 July 2015), Ms Stewart also wrote a separate letter to the claimant addressing other matters (1292). The evidence before the Tribunal was that the letter was not drafted by Ms Stewart, but rather by Mr Reynolds. In that letter Ms Stewart informed the claimant that she would take over from Mr Smallbone as acting as the claimant's liaison. The letter addressed the fact that the claimant's disciplinary investigation was now being conducted by Mr Ashworth and an investigation into a grievance that the claimant had raised, was being addressed by Ms Grindlay. The letter suggested that if the claimant wished to correspond with those individuals she should do so by post only rather than by email, albeit that it was clear from the subsequent correspondence that the respondent continued to primarily correspond with the claimant by email about both procedures.

The letter (drafted by Mr Reynolds) referred to Mr Reynolds in the third person and stated that correspondence in relation to the Tribunal claim and appeal should continue to be with him. What it went on to say was:

> *"I have arranged that from today any emails that you send to the Council will be diverted to Mr Reynolds. He will either respond to them himself or pass them on to me or to the appropriate manager."*

127. Accordingly, as a result of what was said in this letter, from 24 July 2015 onwards if the claimant corresponded by email, those emails would be diverted to Mr Reynolds, being the person conducting the defence of her previous claim and appeal and someone about whom she had raised issues (or was about to raise issues). This applied to all correspondence to: the person investigating her disciplinary; the person investigating her grievance; and the person who had been identified as her liaison, also being the person to whom she was supposed to respond to provide "consent" to a referral to the Channel Panel.

128. On 24 July 2015 the claimant raised a grievance alleging bullying and harassment against Mr Smallbone (1287). In particular the grievance raised four things: inappropriate conduct in a team meeting, making it clear that the claimant's opinion was not required; failure to address the inappropriate conduct which the claimant said she had challenged and raised in several emails; using his strength and power to coerce the claimant by fear to withdraw victimisation issues that she had raised; and persistently picking on her and failing to reply to an email dated 18 June.

129. The grievance email was acknowledged by the respondent's Human Resources team. The claimant endeavoured to add to her grievance with a further allegation about Mr Smallbone's conduct around the suspension (1298), but that email was responded to directly by Mr Reynolds on 28 July (1297) informing the claimant that the respondent could only investigate allegations which were contained in appropriate detail. It is not clear why Mr Reynolds directly responded to the claimant, rather than the person tasked with conducting the grievance investigation.

130. On 28 July 2015 Mr Ashworth, as part of his investigation into the alleged disciplinary issues, interviewed Ms Hodson, that is the person to whom the claimant had shown the video. The Tribunal saw notes of this interview, although did not hear from Ms Hodson directly (1304). Ms Hodson recorded that she had heard what sounded like a mosque call on an occasion in April 2015 and she turned and asked the claimant *"what's that?".* The claimant had said, *"that's what they're doing to Christians",* and she had then shown Ms Hodson her phone, which was described as being a line of men in the sea with what was described as *"cut off heads. It was horrible"*. Ms Hodson described herself as shocked and explained that she had told the claimant not to show her things like that again. It was confirmed that the claimant had not done it again. There had been no repetition. Ms Hodson had subsequently informed a colleague. She said that it had stayed with her for a while but she was better by the date of the interview. The notes which provided that account were signed by Ms Hodson on 5 August 2015.

131. On 29 July 2015 Mr Ashworth invited the claimant to an investigatory meeting (1309). The meeting was arranged for Monday 10 August 2015. Monday was not one of the claimant's normal working days and she did not attend for that reason.

132. On 29 July 2015 the claimant emailed Ms Stewart and Mr Reynolds (1311). This email addressed the proposed Channel Panel referral. The claimant sought documentary evidence of the basis for the respondent's belief that she was being radicalised. Mr Reynolds responded on the same afternoon (1312) informing the claimant that Ms Stewart was on annual leave and that in her absence he would respond *"on her behalf".* This email confirmed that the referral to the Channel Panel was based upon both the views expressed in the assassination emails and the video. The email responded to the claimant's requests for documents and did not provide any. The claimant responded later the same afternoon (1314) asserting her innocence and confirming that she would respond via recorded delivery on 5 August 2015.

133. Ms Grindlay was tasked with addressing the claimant's grievance. In an exchange of emails between her and a colleague in the respondent's HR team on 29 July 2015 (1316) Ms Grindlay explained that she needed to run her proposed addressing of the claimant's grievance past Mr Reynolds as *"no contact should be made with her unless through him".*

134. On the morning of 30 July 2015 Mr Reynolds emailed the claimant in response to her previous email (1320). In this email Mr Reynolds said:

> *"I wish to make it clear that the Council's concerns are not about your innocence or guilt, but about your apparent state of mind, the possibility that this might make you vulnerable to radicalisation and the need to take appropriate steps to avoid this possibility."*

135. On 30 July 2015 Ms Grindlay wrote to the claimant regarding her grievance and invited her to a meeting on 6 August (1327). On 31 July Ms Hinchley, the HR officer supporting the grievance, wrote to the claimant providing some questions that she would be asked (1328).

136. On 2 August 2015 the claimant wrote to Mr Ashworth (1331). The claimant declined to meet Mr Ashworth on 10 August as it was not her working day. The claimant also addressed some issues raised in correspondence by Mr Reynolds and Ms Stewart. The claimant enclosed a copy of an article from the Guardian newspaper on 1 August which referred to graphic videos of beheadings filmed by Islamic State being released on the internet. The claimant asked whether, if journalists and members of the public watched such videos, it made them terrorists. The claimant referred to Mr Reynolds and Mr Smallbone and suggested that they were subjecting her to bullying and harassment.

137. On 2 August the claimant also wrote to Ms Stewart (1334). This letter provided a formal response to the council's proposals to refer the claimant to the Channel Panel. The claimant said:

> *"I have nothing to hide and I am innocent. I give permission to Stockport Council to disclose their concerns to Greater Manchester Anti-Terrorism*

> *Police Unit. Greater Manchester Anti-Terrorism Police Unit will carry out a meticulous investigation in to Stockport Council's concerns. I do NOT CONSENT to the council making a channel referral."*

138. On 6 August 2015 Mr Reynolds emailed the claimant (1354). He referred to the claimant's letter to Ms Stewart of 2 August and stated:

> *"I believe that I should mention to you that the police also have power to make a Channel panel referral if they believe there are reasonable grounds to believe that the individual is vulnerable to being drawn into terrorism. I wanted you to know this before the council proceeds to refer its concerns as directed by you."*

139. As with previous correspondence, whilst the claimant was being presented with what was called a voluntary choice, Mr Reynolds appeared to be indicating that the choice was anything but voluntary.

140. The claimant replied later that day (1353) to say that she had reported the matter to the police and provided them with all the relevant documentation.

Notification to the police

141. On 10 August 2015 Ms Stewart sent a letter to the GMP Chief Constable making a disclosure under section 26 of the Counter-Terrorism and Security Act 2015 (1379). That letter repeated a summary of the background to issues, similar to that contained in the instruction document. It confirmed that the claimant had declined to consent to a Channel Panel referral, but had agreed that the concerns could be communicated to the police for further action.

Criteria for a Channel Panel referral

142. The Tribunal was referred to extensive documentation regarding Channel Panel referrals and the respondent's duties in relation to such matters. The Government's statutory guidance on the Channel duty and protecting vulnerable people from being drawn into terrorism (2908) includes a section on identifying vulnerable individuals (2919-2922). Vulnerability to being drawn into terrorism was identified as being assessed based on a three criteria framework: engagement with a group cause or ideology; intent to cause harm; and capability to cause harm. The document stated that the three criteria were assessed by considering 22 factors that could contribute to vulnerability. There was also a section in relation to links with extremist groups. The list of example indicators includes the following: spending increasing time in the company of other suspected extremists; changing style of dress or personal appearance to accord with the group; day-to-day behaviour becoming increasingly centred around an extremist ideology; possession of material or symbols associated with an extremist cause; attempts to recruit others to the group/cause/ideology; speaking about the imminence of harm from the other group and the importance of action now; expressing attitudes that justify offending on behalf of the group, cause or ideology; condoning or supporting violence or harm towards others; and having a history of violence. Annex C to that document (2937) provides a description of the vulnerability assessment framework. One of the

phycological hooks listed is feeling under threat, alongside such matters as susceptibility to indoctrination.

143. The Tribunal has carefully considered the criteria. The Tribunal cannot see that any of the criteria were genuinely met by the claimant at all. There was no evidence of: engagement with a group cause or ideology; intent to cause harm; or capability to cause harm. At the time of the referral the only two indicators relied upon were: that the claimant had referred to the risk of her being assassinated in correspondence regarding her ongoing Tribunal proceedings (that is that there was a risk to her not a threat by her); and the claimant had shown a colleague a video which appeared to have shown up in her own stream after she had been asked what it was and, when she was told she should not have done this, was apologetic and had not done it again. Neither of these were factors which were identified as demonstrating vulnerability to terrorism, save for the limited indicator of feeling under threat (explained above). There was no suggestion whatsoever that the claimant otherwise fitted any of the criteria or had any connection with an extremist group or extremist views. Indeed, as identified in her interview with Mr Ashworth by Ms Hodson, what the claimant had said when the video was shown to her contained no suggestion of supporting what was being seen in the video (or any connection to terrorism) at all.

144. The referral actually made, however, was not a Channel Panel referral, but a reporting of the issue to GMP. That notification followed the claimant consenting to it being made, and indeed it would appear to have occurred after the claimant herself had reported matters to the police.

CQC

145. On 5 August 2015 the claimant sent something to the CQC. The only evidence that was before the Tribunal was: an email which acknowledged receipt (1348); and an email which thanked the claimant for contacting the CQC dated 27 August 2015 (1532). The Tribunal was not provided with a copy of what was sent by the claimant nor was there any evidence of what it was that she sent to them. The 27 August 2015 email contained a little detail about the CQC but contained no information about what the claimant had raised with the CQC. There was no evidence that the claimant provided any information to the CQC on 27 July.

Disciplinary investigation and issues

146. On 10 August Mr Ashworth wrote to the claimant regarding her non-attendance at the investigatory meeting (1377). He stated that the claimant had failed to attend the meeting, although in fact the claimant had explained her non-attendance, but that explanation appeared not to have reached Mr Ashworth. The meeting was rescheduled for 24 August. Mr Ashworth continued to undertake the disciplinary investigation by interviewing others.

147. The claimant operated a website. That website included the claimant providing details of previous proceedings and seeking, by way of crowdfunding, to raise money to assist her in paying the costs which she had been ordered to pay. The claimant also provided a lengthy account of her history with the respondent and

the previous proceedings which had been conducted. The website appears to have been accessible to all. What the claimant said included the following (at 1441):

> *"I then turned to the Manchester Employment Tribunal for help to expose malpractice but the tribunal ruled in favour of Individual Solutions SK Ltd and Stockport Council. In fact, the way the entire case was handled by the tribunal has made me question the British legal system and I sometimes feel I have been too naïve to believe in my father's ideology about justice being delivered to even the ordinary ones in this great democratic country. Surprisingly, the tribunal gave verbal bad faith evidence priority over written documented evidence which is an aberration. Throughout the trial, I heard from many quarters that the Respondents (Individual Solutions SK Ltd and Stockport Council) had an influential contact within the tribunal and I would not gain anything out of this case. It is pretty evident now that the tribunal's judgment was biased and not all facts and pieces of evidence were duly considered";*

at 1438:

> *"Stockport Council failed to disclose documentation despite 3 different Judges giving orders, withheld information, deliberately mislead Manchester Tribunal Court";*

and (after the letter written below) the claimant added:

> *"Stockport Council has communicated giving me formal instructions to remove all material in my website that contain whistle blowing, malpractice and sub-standard care. Stockport Council management also ordered I should disconnect my website from public access within 7 days. I will not remove information and disconnect my website because I have full documentary evidence to support my claims, which can be provided on request."*

148. The claimant's website was brought to the attention of the respondent. Ms Donnan's evidence was that the relevant pages were sent to her on 13 August 2015. Ms Donnan passed them to Ms Stewart. Ms Stewart wrote to the claimant on 14 August 2015 (1486). That letter made reference to the ongoing disciplinary investigation. It also referred to the claimant's website and made reference to some of the allegations on it. The letter said:

> *"The Council considers that your website contains unjustified criticism of the Council, repeats allegations which have already been rejected by the Employment Tribunal and impugns the credibility of both the Council and the Tribunal. This may amount to misconduct under the Council's disciplinary code on the grounds that it could be expected to bring the public services into disrepute."*

149. The letter concluded with a section headed "*formal management instruction*" which said the following:

> *"In view of my comments in the previous paragraph, I now give you formal instructions as an employee of the Council to remove all material in your*

website that references the issues that I have described within the previous paragraph of this letter."

150. The letter went on to state that the claimant should do so within seven days, and that any failure to comply with the instruction may lead to disciplinary action.

151. On 20 August 2015 the claimant emailed both Ms Grindlay and (separately) Mr Ashworth about proposed meetings. In both emails she referred to the fact that she had been instructed by her solicitor to cancel the meetings that had been arranged until the solicitor had been able to read through all correspondence and documentation.

152. Following the previous letter from Ms Stewart, the claimant did make some changes to her website and made some amendment to what was said, but did not remove all of the elements cited and (as confirmed above) she added an extract to her website referring to the request to remove information. Ms Stewart wrote to the claimant again on 24 August 2015 (1527) in a letter headed *"Disciplinary Investigation: additional allegations".* That letter referred back to the 14 August letter. It referred to the claimant's new comments on her website. What the letter went on to say was:

"Rather than engage in further debate with you on this issue I now give you a specific instruction to:

(i) immediately remove the following comments within your website and any other social media site that includes them, because in my view you cannot reasonably assert that they are supported by 'full documentary evidence'; and

(ii) send me confirmation by email at the above email address that this has been done."

153. The letter included extracts from the website (that is part of what is quoted above). It concluded that the entries were indirect intimation that ISSK Ltd, the Council and the Tribunal panel conspired together to have the claimant's claim dismissed. It stated that the passages appeared to be disparaging to the Council and were, in Ms Stewart's view, untrue and, if believed, were likely to bring the council into disrepute.

154. The respondent has a Code of Conduct for officers which it was accepted applied to the claimant. That addressed conduct outside working hours. The code said (2784) *"In general terms, what employees do outside of work is their own concern but they should avoid doing anything which may result in the Council's reputation being damaged".*

155. On 24 August 2015 a senior officer within the respondent's HR Directorate Services emailed Mr Reynolds, Ms Stewart and Ms Steward (1530) stating that Mr Ashworth intended to invite the claimant to a rescheduled investigatory meeting on 8 September, and the invite would include the new allegation (that the claimant had not complied with the reasonable management instruction). As was highlighted by the claimant's representative in the Tribunal hearing, the timing of the email meant

that the respondent had assumed that the claimant would not respond to the request which was made on 24 August, even though at that point she had had no opportunity whatsoever to comply. In fact, the claimant did not comply with the request or make any further changes to her website.

156. On 1 September 2015 Mr Ashworth wrote to the claimant inviting her to an investigatory meeting on 8 September. That letter confirmed that Mr Ashworth had, subsequent to his previous investigations, been asked also to investigate a further allegation that the claimant had not complied with the management instruction given in Ms Stewart's letter of 24 August 2015 (1535). The claimant asked that the meeting be postponed, but Mr Ashworth declined to do so in a letter of 4 September 2015 (1548). In a subsequent letter of 9 September (1556) Mr Ashworth responded to further correspondence from the claimant in which she had suggested that her health meant that she was unable to attend an investigatory meeting. He explained to the claimant that he thought the best and fairest way to proceed was to continue with the investigation without meeting with the claimant but to hold himself available to meet with the claimant should her health improve. In that letter Mr Ashworth also explained that he would prepare a draft report of the evidence based on his investigation and would send the report to the claimant for her comments.

7 September letter

157. On 7 September 2015 Ms Stewart wrote to the claimant (1550). As with previous correspondence, this letter was drafted by Mr Reynolds but approved by Ms Stewart. It rejected a suggestion that the Channel Panel referral was made in bad faith. It stated that Ms Stewart was satisfied that the Council's actions were appropriate and proportionate. It stated that *"The purposes of a channel panel referral is for treatment, it is not a penalty or a punishment, and so your references to your innocence are misconceived"*. As explained above, the Tribunal could not understand how the respondent could suggest that a Channel Panel referral was in some way a method of treatment for the claimant. The letter concluded with a paragraph about the claimant's complaints of bullying and harassment by Mr Smallbone and Mr Reynolds. It said:

> *"I note what you say this but I have not seen any emails or letters that support this claim, and invite you to specify any that do so. Mr Smallbone is your manager, and Mr Reynolds is the solicitor who is responsible for dealing with your current claim and providing legal advice to the Council on employee matters. I believe that during their communications with you they have both acted appropriately and in accordance with their roles."*

158. The Tribunal found this paragraph to be particularly disingenuous and inappropriate, being as it was a paragraph written by Mr Reynolds which rejected the claimant's complaints about him personally (as well as those against Mr Smallbone), without any investigation or without those issues being addressed under the grievance process (at a time when a grievance investigation was ongoing). Whilst Ms Stewart did check the letters, the evidence was that this letter was written by Mr Reynolds.

Suspension review and grievance

159. On 16 September 2015, Mr Ashworth reviewed the claimant's suspension and wrote to the claimant (1570). The letter confirmed the disciplinary allegations which were now being investigated. He invited the claimant to provide written representations regarding his review of the suspension. The claimant did provide a response on 21 September (1572) albeit that did not provide any particular grounds for the suspension to be lifted. The suspension was reviewed on 7 October 2015 as confirmed in a letter of the same date (1597A). Mr Ashworth decided that the suspension should not be lifted, notably taking account of the fact that the claimant was signed off due to work related stress at the time.

160. On 23 September 2015 (1578), Ms Grindlay wrote to the claimant explaining the grievance process and again inviting the claimant to a meeting. Clare Grindlay wrote again on 5 October 2015 (1594).

Occupational health assessment

161. The claimant was signed off on ill health grounds from 1 October 2015 due to work related stress. Ms Stewart wrote to the claimant explaining that the claimant had been referred to occupational health (1592), that is within one day of her absence on ill health grounds commencing, but four and a half months after the claimant had asked to be referred.

162. On 21 October 2015 the claimant had an occupational health assessment undertaken by telephone, which was reported on the same date (1610). The report referred to the claimant's gynaecological issues, stress, and bereavements. It stated that the claimant was fit to attend a workplace meeting with third party support in place, or else with written representation if she was unable to do so. The claimant was recorded as not fit to resume work due to increased stress whilst the investigation continued. The report recommended a stress risk assessment (which was never undertaken).

December 2015

163. On 2 December 2015 Ms Grindlay wrote to the claimant confirming that, further to previous discussions with the claimant's solicitor, she would now be continuing with the grievance investigation (1613)

164. On 7 December 2015 Mr Ashworth wrote to the claimant (1614A) regarding the disciplinary investigation. In this letter he confirmed the issues that were being investigated. The letter recounted that Mr Ashworth had informed the claimant that he would shortly be sending a provisional investigatory report when the claimant was absent on ill health grounds, but there had been an interruption in the disciplinary process with the agreement of the claimant's solicitor. That solicitor had now notified Mr Ashworth of the resumption of the disciplinary process. Mr Ashworth's letter stated that, to prevent further delay, he had decided to send the claimant a provisional investigation report to enable the claimant to make written submissions. He invited written submissions by 18 December.

165. The provisional report (1615) addressed each of the allegations, provided various documents by way of appendices, and reached conclusions on each of the matters alleged. The report also included a summary of the conclusions. The recommendation section of the report was left blank. The Tribunal was of the view that it may have been better practice for the draft report to have been provided without draft conclusions included in it. However, the Tribunal found Mr Ashworth to have been a credible witness who endeavoured to investigate matters in a fair and appropriate way. It finds that what was included in the draft report was what Mr Ashworth had found based upon his investigation (which had not, at that stage, had the benefit of input from the claimant). The report was clearly provided in draft. The claimant was invited to either provide written responses or to meet with Mr Ashcroft if she wished to do so.

166. The same letter confirmed that Mr Ashworth had carried out a further review of the claimant's suspension and advised that it would be continuing. The letter of 18 December explained that he was extending the claimant's suspension retrospectively to cover the period from 28 October until 2 December, and extending it further to 4 January 2016.

167. On 9 December 2015 Ms Grindlay wrote to the claimant providing the outcome to the grievance procedure stage one investigation (1740). Ms Grindlay explained that as she had been unable to meet with the claimant she had only addressed two of the issues raised, namely the inappropriate conduct at the meeting and failure to respond to an email dated 18 June 2015. On these two issues Ms Grindlay's conclusion was that the grievance was not upheld. Ms Grindlay's letter explained that the claimant had a right to appeal. Ms Grindlay's evidence was that she had no knowledge of previous Employment Tribunal proceedings. The Tribunal's view was that the way in which the grievance was considered was very limited and it certainly did not get to the crux of the issues which the claimant had wished to raise. Ms Grindlay was generally kept in dark about the way in which the respondent was addressing the claimant's issues and other matters (such as her subsequent complaints about Mr Reynolds and Mr Smallbone). The Tribunal finds that based upon her perception of the grievance and the information that she was provided, Ms Grindlay endeavoured to address the grievance as best as she could. In a letter of 21 December (1761) the claimant stated that she had made a decision not to appeal the grievance outcome (she stated that she was not the one who had initiated the investigation, although that was not, in fact, correct).

168. The Tribunal was informed that, on 30 December 2015, the police investigation into the claimant was closed.

2016

169. On 4 January 2016 Mr Ashworth further extended the claimant's suspension and extended the deadline for the claimant to respond to his draft report (1772).

170. On 11 January 2016 the claimant wrote to the respondent's Chief Executive. The letter commenced with a statement about the issues the claimant had originally raised in her previous Tribunal proceedings. She said, *"I never knew what oppression and injustice meant until I became a victim. I never knew what injustice and corruption meant until vulnerable adults and the elderly cried on the phone, they*

were hungry, frustrated by Individual Solutions SK failure to provide adequate Home Care Support Services". She stated that she had recently received an audio recording of the team meeting on 6 May 2015 and had compared it with the minutes which had been provided to her as part of the grievance outcome. She alleged that she had been subjected to *"a deliberate racial campaign to comprehensively disparage my reputation"*. She said that the team meeting minutes were fabricated. She asked for the matter to be dealt with under the Confidential Reporting (Whistleblowing) Procedure.

171. On the same date, the claimant sent a lengthy statement to Mr Ashworth providing her input to the disciplinary investigation (1818). The document concluded by alleging discrimination on the grounds of race and disability, as well as "*perception discrimination*", victimisation, and whistleblowing.

172. On 13 January 2016 Ms Donnan responded to the claimant's letter to the respondent's Chief Executive (1831). Ms Donnan confirmed that the claimant's letter would be considered by a panel convened under the Confidential Disclosure policy. She asked for the claimant to provide a copy of the audio recording to which she had referred. On 14 January 2016 Ms Donnan confirmed that the panel had met and again sought a copy of the audio recording (1834). The audio recording was subsequently provided by the claimant.

173. On 11 February 2016 Ms Ashworth wrote to the claimant inviting her to attend a disciplinary hearing on 4 March 2016 (1846). The letter confirmed that the purpose of the hearing was to consider possible disciplinary action arising from the following three allegations:

(1) "*In April 2015 in an open plan office at work and during working hours you viewed on your personal telephone a video of an execution which it was understood was originally posted by a terrorist group that is a proscribed organisation in this country. Again, during working time you showed part of this video to a fellow employee without first gaining her valid and informed consent to be viewing such imagery*";

(2) "*In August 2015 you failed to follow formal management instruction given by letter to immediately remove the following comments on your website… and any social media site that contained them*", with the extracts from the website being quoted; and

(3) "*The comments contained specific or implied allegations of corrupt or dishonest behaviour by officers of the council, and were, by reference to the formal record of the proceedings to which they related, untrue. A member of the public reading the comments and believing them to be true would form an adverse view of the Council's probity, and so their overall effect was to bring the Council into unjustified disrepute*".

174. The letter went on to confirm that the maximum penalty was summary dismissal. The claimant's right to call witnesses and right to be accompanied was confirmed. The letter also appended the management report/statement of case.

175. The appended report (2007) had been amended by Mr Ashworth. His evidence was that he had taken into account the claimant's information submitted on 11 January and had incorporated the documents attached into the relative appendices. The report was amended, but the conclusions remained the same.

176. The Tribunal found Mr Ashworth to be a genuine and credible witness. The Tribunal finds that Mr Ashworth genuinely did what he thought he needed to, considered the matters he was investigating, and reached conclusions based upon the information provided to him. The Tribunal accepts Mr Ashworth's evidence that he did not know that the claimant had PTSD. It is, perhaps, unfortunate that Mr Ashworth never had the opportunity to meet with the claimant. Mr Ashworth did amend his report in the light of the information the claimant provided.

177. On 19 February 2016 Ms Donnan wrote to the claimant following the confidential disclosure panel considering the alleged falsification of records and the alleged fabrication of evidence in relation to the meeting on 6 May 2015 (2000). The panel had listened to the recording of the meeting (which had been taken by Mr Urry). Ms Donnan, in her letter, referred to the recording as generally being of poor quality and almost inaudible in parts. The panel's conclusion was that the minutes provided were consistent with the recording and that, although some contentious issues were discussed during the meeting, there was no inappropriate behaviour by managers, which is what the panel considered the claimant had in substance alleged. As a result, the panel found no evidence to support the claimant's allegation of either falsified records or inappropriate managerial conduct.

178. On 24 February 2016 Mr Ashworth confirmed amended arrangements for the disciplinary hearing. The hearing had been moved to take place at a location that was not a Council office (2002).

179. The claimant asked the confidential disclosure panel to review its decision, and provided an improved quality audio recording. On 3 March 2016 Ms Donnan wrote to the claimant (2005) to say that her request had been refused and a review would not be undertaken, as the quality of the original recording had been sufficiently clear to enable the panel to understand what was said.

The disciplinary hearing

180. The claimant prepared a lengthy statement of case for the disciplinary hearing (2239). The claimant was assisted, both in the preparation of her statement and at the disciplinary hearing, by Ms R Heald, an HR professional appointed to assist the claimant. The statement prepared by the claimant was lengthy. The claimant addressed the allegations made. Amongst other things, the claimant accepted that the Code of Conduct stated that she needed to follow reasonable management instructions, but stated that as the information she placed on her website was (in her view) in the public interest and it had already been discussed in a public forum at the Tribunal, she did not believe it was a reasonable management instruction for the information to be taken down. In her document the claimant also asserted that she was a Christian. Within the document the claimant made no reference to having PTSD nor did she put forward health issues as being a factor that needed to be considered in relation to the disciplinary allegations.

181. The claimant's disciplinary hearing was conducted by Mr Skelton, the Strategic Head of Policy and Information Services for the respondent. Mr Skelton had no knowledge of the claimant before he was asked to chair the disciplinary hearing and had no prior knowledge of any issues between the claimant and the respondent. Mr Skelton was not aware that the claimant had PTSD. He was assisted by Ms H Flynn of Human Resources. Mr Ashworth attended the hearing to present the management case. Ms Richards-Halford of HR also attended. The claimant attended and was supported by Ms Heald. The hearing took place on 19 April and 10 May 2016.

182. In the course of the disciplinary hearing Mr Skelton heard from various witnesses, including Ms Hodson, Mr Smallbone and Ms Stewart. Mr Skelton offered to adjourn the hearing as Mr Urry was unavailable. The hearing was adjourned and reconvened on 10 May with the same attendees. Notes were taken of the hearing. At the end of the hearing Ms Heald summarised the claimant's position and concluded that she did not think that the claimant's conduct amounted to gross misconduct. At the end of the hearing Mr Skelton confirmed that he would consider his decision and provide the outcome in writing

183. Mr Skelton's disciplinary decision was contained in a letter dated 27 June 2016 (2487). In his letter Mr Skelton addressed the three allegations in some detail. In relation to the Channel Panel referral and the claimant's contention that this was excessive, it was noted by Mr Skelton that this fell outside the remit of his decision.

184. In relation to the first allegation regarding the video, Mr Skelton found Ms Hodson to be a reliable witness and stated that he was not presented with any evidence to suggest that she had in any way fabricated her story. On the balance of probabilities, he found that the claimant did show the video as described by Ms Hodson, without her consent. Mr Skelton found this allegation to be proven and to be misconduct. However, in reaching his decision on the sanction, Mr Skelton reached that decision only based upon the two allegations arising from the website and not taking the issues in relation to the video into account.

185. With regard to the two allegations that related to the postings on the website, Mr Skelton found that reasonable management instructions had been given by Ms Stewart on 14 and 24 August. He found that the claimant had wilfully made the comments and refused to remove them when instructed to do so. He noted that one of the comments was slightly amended, but he did not consider that this was sufficient to deem compliance with the management instruction, as the allegations of impropriety on the part of the council remained. Mr Skelton's letter said that he considered that the actions negatively affected the relationship of trust between the claimant and the council. Mr Skelton's evidence to the Tribunal was that these comments would be damaging to any organisation, but were particularly damaging to a Council where the public demand extremely high standards. His view was that the claimant had no intention of admitting or rectifying any wrongdoing. Her comments were extremely damaging to the Council. He concluded that he did not see how the council could continue to employ someone that thought it was a corrupt organisation and had told this to the world. Mr Skelton's decision was that, based upon the two allegations relating to the website, these were proven and he considered them to be gross misconduct. As a result the sanction was summary dismissal. The claimant's last day of employment was 29 June 2016.

186. The Tribunal found Mr Skelton to be a genuine and credible witness who had done what he could to the best of his ability on the information that he had available. Insofar as he was able, he carried out a reasonable hearing and the Tribunal find that he came to reasoned decisions based on the information that he had. In practice Mr Skelton was not given the full picture. No evidence was provided to him about the claimant's mental health issues or her history of PTSD. This information was not brought to his attention at any point during the disciplinary hearing by the respondent's witnesses (including Ms Gardner), the claimant, or her representative. There was no reference made to the claimant's PTSD or her mental health in the hearing whatsoever.

Appeal

187. The claimant appealed in a letter to Ms Donnan of 8 July 2016 (2502). The appeal hearing was arranged for 27 July 2016 and the details were confirmed in a letter to the claimant of 12 July 2016 (2518).

188. The appeal was conducted by the respondent's Employment Appeals Committee, which is made up of three elected councillors. This included Mr Allan, a councillor and experience HR professional, who gave evidence at the Tribunal hearing. The claimant wrote to the clerk to the appeal in advance of the hearing confirming the documents on which she wished to rely at her appeal hearing (2520). The appeal took place on 27 July 2016. Mr Skelton and Ms Flynn attended. Ms C Hargreaves attended as the clerk, as well as Mr McNare of HR. Mr Ashworth attended for part of the hearing. Mr Morgan, counsel, attended to advise the panel. The claimant attended and was supported by Ms R Heald, the HR consultant who had also accompanied her at the disciplinary hearing.

189. The claimant was able to present her case at the appeal hearing. At the hearing it was confirmed that the appeal was on the grounds that: there was unfairness in the judgment; it was too severe a penalty; and there were alleged procedural irregularities. The appeal hearing focussed on the postings on the website, as these had formed the basis for the decision. Mr Allan's evidence was that the role of the appeal panel was to review the decision not to reinvestigate, and he saw the process as looking at whether an offence had been committed and whether that could be justified as gross misconduct. Mr Allan's view was that the claimant (and Ms Heald) had been fully able to put forward their grounds of appeal and explain the basis for that appeal, during the hearing.

190. The appeal panel deliberated for a full morning of around three hours, before reaching its decision. The appeal hearing reconvened on 28 July 2016 when the outcome was provided.

191. The decision of the appeal committee was that the appeal was not upheld. This outcome was confirmed in a letter of 29 July 2016 (2572). The committee concluded that the findings made by the dismissing officer were reasonably open to him on the evidence available and that the sanction of summary dismissal was one reasonably open to him.

192. The letter listed as a series of bullet points a summary of the principal reasons for its decision, which included:

- that the claimant was aware of the Code of Conduct for officers;
- that the material posted by the claimant on her website by innuendo implicated officers of the Council in dishonest and corrupt conduct within the Tribunal proceedings which the claimant had brought and, objectively considered, it suggested deliberate concealment of information and improper influence upon the Employment Judge;
- there was nothing within the Judgments and Orders of the ET or EAT to support such an allegation or to provide any basis to substantiate it;
- the detailed nature and context of the statements on the website were likely to convey to an objective reader that officers of the Council had participated in the misconduct identified;
- whilst the council had not established any actual detriment, the prospect of such reputational harm was sufficient;
- that the instructions made were reasonable management instructions;
- that neither instruction was complied with; and
- that the procedural irregularities cited by the claimant, did not have any bearing upon the conclusion identified or the evidence in support of it.

193. The Tribunal finds that the respondent's appeal committee made their decision appropriately, following the appropriate process. It considered and (based on the evidence of Mr Allan) thoughtfully reached a conclusion. What was considered in the appeal hearing were the matters raised by the claimant and her representative. Notably this did not include any reference to the claimant's PTSD or any arguments on appeal based upon her ill-health. The Tribunal finds that the decision reached and recorded in the letter was a considered and thorough decision.

194. One of the allegations made by the claimant was that the respondent's legal adviser shouted the claimant down in the disciplinary hearing, saying *"ignore her, we don't [know] where she got that document from"*. There was no evidence whatsoever presented to the Tribunal that this occurred at the disciplinary hearing as alleged. The appeal was attended by an experienced barrister instructed as the legal adviser to that panel. There was no evidence that any comments were made by that barrister which were inappropriate or of the type alleged.

Other medical evidence

195. The Tribunal was provided with the following letters from the claimant's GP:

- 16 August 2018 (1A-90) - "*I also confirm that Miss Muchilwa has a diagnosis of Post-Traumatic Stress Disorder and she takes an antidepressant medication for this ... these medications can cause drowsiness, especially in combination";*

- 19 November 2018(1A-91) - "*I have known Phoebe for many years as her GP. She has PTSD from traumatic childhood events and more recent experiences following events in Kenya. The recent court case has triggered these memories and she is currently suffering from severe hypervigilance and stress*"; and

- 17 December 2018 (1A-225) – "*I confirm that Phoebe has Post Traumatic Stress Disorder with a current stress reaction…Although PTSD can take many years to resolve, a stress reaction is likely to resolve in the next six months*".

The report provided by Dr Parker of 4 December 2019 (referred to at paragraph 26 above) (1A-277) recorded that the claimant "*has a long-standing diagnosis of PTSD that relates to traumatic experiences from her childhood. Her PTSD experiences have been re-triggered by recent events*". The report recorded that the writer had not been able to corroborate much of the background information and had not had access to full medical records. Her report detailed the background issues which had led to the PTSD and recounted how the claimant had informed the writer that she had suffered from feelings of hopelessness and feeling empty, did not eat well for days, consumed more alcohol than was healthy, and other significant matters which the Tribunal will not reproduce in this Judgment (A1-283 para 6.1.14). The respondent in its submissions about the content of this report, highlighted that the Tribunal had not been provided with copies of the information provided to the Doctor (including the instruction) and highlighted what the Doctor herself said about the information provided to her for compiling the report.

Advice

196. The claimant confirmed in evidence that: she was aware that there were time limits imposed by the Tribunal on the bringing of discrimination claims as a result of her previous Tribunal claim; she was a member of the GMB; she spoke to the Citizens Advice Bureau in July 2015; and she had solicitors instructed by her between August and December 2015 (and again in September 2020).

The Law

Unfair dismissal

197. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.

198. The respondent bears the burden of proving, on the balance of probabilities, that the dismissal was for misconduct. If the respondent fails to persuade the tribunal that it had a genuine belief in the claimant's misconduct and that it dismissed her for that reason, the dismissal will be unfair.

199. If the respondent does persuade the tribunal that it held the genuine belief and that it did dismiss the claimant for that reason, the dismissal is only potentially fair. The tribunal must then go on and consider the general reasonableness of the dismissal under section 98(4) Employment Rights Act 1996. That section provides that the determination of the question of whether a dismissal is fair or unfair depends

upon whether in the circumstances (including the respondent's size and administrative resources) the respondent acted reasonably or unreasonably in treating the misconduct as a sufficient reason for dismissing the claimant. This is to be determined in accordance with equity and the substantial merits of the case. The burden of proof in this regard is neutral.

200. In conduct cases, when considering the question of reasonableness, the Tribunal is required to have regard to the test outlined in **British Home Stores v Burchell [1980] ICR 303**. The three elements of the test are:

(1) Did the employer have a genuine belief that the employee was guilty of misconduct?

(2) Did the employer have reasonable grounds for that belief?

(3) Did the employer carry out a reasonable investigation in all the circumstances?

201. The additional question is to determine whether the decision to dismiss was one which was within the range of reasonable responses that a reasonable employer could reach.

202. It is important that the Tribunal does not substitute its own view for that of the respondent, **London Ambulance Service NHS Trust v Small [2009] EWCA Civ 220** at paragraph 43 says:

> "*It is all too easy, even for an experienced ET, to slip into the substitution mindset. In conduct cases the claimant often comes to the ET with more evidence and with an understandable determination to clear his name and to prove to the ET that he is innocent of the charges made against him by his employer. He has lost his job in circumstances that may make it difficult for him to get another job. He may well gain the sympathy of the ET so that it is carried along the acquittal route and away from the real question- whether the employer acted fairly and reasonably in all the circumstances at the time of the dismissal*"

203. The appropriate standard of proof for those at the employer who reached the decision, was whether on the balance of probabilities they believed that the misconduct was committed by the claimant. They did not need to determine or establish that the misconduct was committed beyond all reasonable doubt.

204. In considering the investigation undertaken, the relevant question for the Tribunal is whether it was an investigation that fell within the range of reasonable responses that a reasonable employer might have adopted. Where the Tribunal is considering fairness, it is important that it looks at the process followed, as a whole, including the appeal. The Tribunal is also required to have regard to the ACAS code of practice on disciplinary and grievance procedures. It has also taken into account the Human Rights Act 1998, the Article 8 right to respect for private life, and the Article 10 right to freedom of expression.

Public interest disclosures

205. Section 43A of the Employment Rights Act says:

> "*In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.*"

206. Section 43B says:

> *"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –*
>
> *(a)…*
>
> *(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
>
> *(c)…*
>
> *(d)that the health or safety of any individual has been, is being or is likely to be endangered"*

207. Section 43C provides that a disclosure to a worker's employer is a qualifying disclosure. Section 43F similarly provides for a disclosure to a prescribed person (which includes the CQC). For disclosures in other cases, Section 43G (including only the main provisions which apply to this case) says:

> *"(1) A qualifying disclosure is made in accordance with this section if –*
>
> *(b) the worker reasonably believes that the information disclosed, and any allegations contained in it, are substantially true,*
>
> *(c) he does not make the disclosure for personal gain,*
>
> *(d) any of the conditions in subsection (2) are met, and*
>
> *(e) in all the circumstances of the case it is reasonable for him to make the disclosure.*
>
> *(2) the conditions referred to in subsection (1)(d) are –*
>
> *(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer in accordance with section 43F, …*
>
> *(3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to -*
>
> *(a) the identity of the person to whom the disclosure is made…"*

208. The word "*likely*" in section 43B requires more than a possibility or a risk that a person might fail to comply with a legal obligation or that health and safety is endangered, the information had to show that it was probable or more probable than not, that there would be a breach (**Kraus v Penna PLC [2004] IRLR 260**).

209. The Court of Appeal in **Chesterton Global Limited v Nurmohamed [2018] ICR 731** held that the question for the Tribunal was whether the worker believed at the time she was making it, that the disclosure was in the public interest; whether, if so, that belief was reasonable; and, while the worker must have a genuine and reasonable belief that disclosure is in the public interest, that does not have to be her predominant motivation in making it. The claimant's representative submitted that the test of showing that the disclosure was made in the public interest was not a particularly high burden.

210. **Kilraine v Wandsworth London Borough Council [2018] ICR 1850** confirmed that there is no rigid dichotomy between making an allegation and conveying information, so that a disclosure may be a mixture of the two. The submissions of both parties emphasised this. The respondent's representative cited the Court of Appeal in **Kilraine** as authority for the fact that it was important to consider the context of the disclosure and

> "*in order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1).*"

211. The claimant's representative referred to other authorities on the same point, but included in his submissions an extract from the EAT Judgment in the same case (**Kilraine**) **[2016] IRLR 422** in which it was said:

> "*The question is simply whether it is a disclosure of information. If it is also an allegation, that is nothing to the point*"

212. **Blackbay Ventures Limited v Gahir (trading as Chemistree) [2014] ICR 747** highlighted the need for each disclosure to be identified by date and content and for each alleged failure or likely failure to comply with a legal obligation to be separately identified. In his submissions, the claimant's representative included a lengthy citation from this judgment, which he emphasised showed the structured approach which should be adopted. He also relied upon **London Borough of Harrow v Knight [2003] IRLR 140** and **Easwaran v St George's University of London EAT/0167/10** as authorities for the approach which should be adopted and the steps required.

213. The test of what the claimant believed is a subjective one. Whether or not the employee's belief was reasonably held is an objective test and a matter for the Tribunal to determine. The test is what the disclosure "tends to show". **Babula v Waltham Forest College [2007] ICR 1026.**

214. Section 47B provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. Under section 48(2) it is for the employer to show the ground on which any act, or deliberate failure to act, was done (where it is asserted that it was on the ground of having made a public interest

disclosure). The employer must prove on the balance of probabilities that the act, or deliberate failure, was not on the grounds that the employee had done the protected act.

215. In determining whether a claimant has suffered a detriment as a result of having made a public interest disclosure, the Tribunal must focus on whether the disclosure had a material influence, that is more than a trivial influence, on the treatment - **NHS Manchester v Fecitt [2012] IRLR 64.** The respondent's representative emphasised that **Panayiotou v Kernaghan [2014] ICR 641** held it is important to draw a distinction between: a detriment by reason of a protected disclosure; and one imposed by reason of the unreasonable way in which the employee makes the disclosure. The claimant's representative in his submissions summarised the approach required, as outlined in **Kuzel v Roche Products Limited [2007] IRLR 309.**

216. The claimant's submissions highlighted that a worker is subject to a detriment if she is put at a disadvantage, and cited **Jesudason v Alder Hey Children's NHS Foundation Trust [2020] IRLR 374**:

> "*It is now well established that the concept of detriment is very broad and must be judged from the view point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment."*

217. For dismissal and section 103A of the Employment Rights Act 1996, the question is whether the principal reason for the dismissal is that the claimant made a public interest disclosure. **Kuzel v Roche Products Limited [2008] EWCA Civ 380** is authority that when an employee positively asserts that there was a different and inadmissible reason for her dismissal, she must produce some evidence supporting the positive case. The employee does not have to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show that the reason advanced by the employer for the dismissal, and to produce some evidence of a different reason.

Discrimination

218. The claim relies on section 13 of the Equality Act 2010 which provides that:

> **"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."**

219. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination can occur and these include any other detriment and dismissal. The characteristics protected by these provisions include race, religion or belief, and disability.

220. In this case the respondent will have subjected the claimant to direct discrimination if, because of her race, religion or belief, or disability, it treated her less favourably than it treated or would have treated others. Under Section 23(1) of the Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case.

221. The claimant's representative highlighted that section 13 encompasses someone who is perceived to have a protected characteristic, even though they do not have that protected characteristic. He also referred to the EHRC Code of Practice in support of this, paragraph 3.21. He also referred to paragraph 3.15 of the code, which explains that direct discrimination includes less favourable treatment of a person based on a stereotype relating to a protected characteristic, whether or not that stereotype is accurate.

222. Section 136 of the Equality Act 2010 sets out the manner in which the burden of proof operates in a discrimination case and provides as follows:

> **"(2) If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.**
>
> **(3) But sub-section (2) does not apply if A shows that A did not contravene the provision".**

223. In short, a two-stage approach is envisaged:

(a) At the first stage, the Tribunal must consider whether the claimant has proved facts on a balance of probabilities from which the Tribunal could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. This can be described as the prima facie case. However it is not enough for the claimant to show merely that she has been treated less favourably than her comparator(s) and that there is a difference of race or other protected characteristic between them; there must be something more.

(b) The second stage is reached where a claimant has succeeded in making out a prima facie case. In that event, there is a reversal of the burden of proof: it shifts to the respondent. Section 123(2) of the Equality Act 2010 provides that the Tribunal must uphold the claim unless the respondent proves that it did not commit (or is not to be treated as having committed) the alleged discriminatory act. The standard of proof is again the balance of probabilities. However, to discharge the burden of proof, there must be cogent evidence that the treatment was in no sense whatsoever because of the protected characteristic.

224. In **Shamoon v Chief Constable of the RUC 2003 IRLR 285** the House of Lords said the following:

> *"In deciding a discrimination claim one of the matters employment tribunals have to consider is whether the statutory definition of discrimination has been satisfied. When the claim is based on direct discrimination or victimisation, in practice tribunals in their decisions normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator*

> *(the 'less favourable treatment' issue) and then, secondly, whether the less favourable treatment was on the relevant proscribed ground (the 'reason why' issue). Tribunals proceed to consider the reason why issue only if the less favourable treatment issue is resolved in favour of the claimant. Thus the less favourable treatment issue is treated as a threshold which the claimant must cross before the tribunal is called upon to decide why the claimant was afforded the treatment of which she is complaining. No doubt there are cases where it is convenient and helpful to adopt this two step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined."*

It also said:

> *"Employment Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as [she] was, and after postponing the less favourable treatment issue until after they have decided why the treatment was afforded. Was it on the proscribed ground or was it for some other reason?"*

And that there may be cases where:

> *"The act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, ie by the "mental processes" (whether conscious or unconscious) which led the putative discriminator to do the act. Establishing what those processes were is not always an easy enquiry, but tribunals are trusted to be able to draw appropriate inferences from the conduct of the putative discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). Even in such a case, however, it is important to bear in mind that the subject of the enquiry is the ground of, or the reason for, the putative discriminator's action, not his motive: just as much as in the kind of case considered in James v Eastleigh, a benign motive is irrelevant…the ultimate question is – necessarily what was the ground of the treatment complained of (or - if you prefer - the reason why it occurred)."*

225. In **Johal v Commission for Equality and Human Rights UKEAT/0541/09** the EAT summarised the question as follows:

> *"Thus, the critical question we think in the present case is the reason why posed by Lord Nicholls: "Why was the claimant treated in the manner complained of?""*

226. In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867**. In order for the burden of proof to shift in a case of direct discrimination it is not enough

for a claimant to show that there is a difference in race or other protected characteristic, and a difference in treatment. In general terms "something more" than that would be required before the respondent is required to provide a non-discriminatory explanation. The claimant's representative emphasised, relying upon **Madarassy**, that the Tribunal must consider all the relevant evidence in considering whether the prima facie case has been established, which includes evidence adduced by the respondent.

227. Unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment: **Zafar v Glasgow City Council [1998] IRLR 36.** It cannot be inferred from the fact that one employee has been treated unreasonably that an employee of a different race (or with any other difference of a protected characteristic) would have been treated reasonably.

228. The protected characteristic does not have to be the only reason for the conduct provided that it is an "*effective cause*" or "*significant influence*" for the treatment. As authorities for this the claimant's representative relied upon: **Owen and Briggs v James [1982] IRLR 502; Nagarajan v London Regional Transport [199] IRLR 572**; and **O'Neill v Governors of St Thomas More RCVA Upper School [1997] ICR 33** (the question is the "*effective and predominant cause*" or the "*real and efficient cause*").

229. Both parties emphasised the 13 guidelines the Tribunal should follow, which the Tribunal has taken into account, from **Barton v Investec Limited [2003] IRLR 332**. The claimant's representative also relied upon **Nagarajan** as authority for the proposition that it is unnecessary for the claimant to show a conscious motive or intent on the part of the respondent to treat the claimant less favourably on proscribed grounds, the motivation may be conscious or unconscious.

230. The 13 guidelines in **Barton** are as follows:

> (1) It is for the Claimant to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination which is unlawful. These are referred to below as "such facts";
>
> (2) If the Claimant does not prove such facts she will fail;
>
> (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of race discrimination. Few employers would be prepared to admit such discrimination even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that he or she would not have fitted in;
>
> (4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal;

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

(6) In considering what inferences or conclusions can be drawn from the primary facts the Tribunal must assume that there is no adequate explanation for those facts;

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw from an evasive or equivocal pleading in response to a claim;

(8) Likewise, the Tribunal must decide whether any provision of any relevant code of practice is relevant and if so take it into account in determining such facts. This means that inferences may also be drawn from any failure to comply with any relevant code of practice;

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of race then the burden of proof moves to the respondent;

(10) It is then for the respondent to prove that he did commit, or as the case may be, is not to be treated as having committed that act;

(11) To discharge that burden it is necessary for the respondent to prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of race since no discrimination whatsoever is compatible with the Burden Of Proof Directive;

(12) That requires a Tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that race was not a ground for the treatment in question;.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof. In particular the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

Disability

231. Section 6 of the Equality Act 2010 provides that:

“A person (P) has a disability if:

(a) P has a physical or mental impairment, and

(b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

232. Section 212 of the Equality Act 2010 provides that "substantial" means more than minor or trivial.

233. Schedule 1 Part 1 of the Equality Act 2010 includes further provisions regarding determination of disability. Paragraph 2 provides that:

"The effect of an impairment is long-term if:

(a) It has lasted for at least 12 months;

(b) It is likely to last for at least 12 months; or

(c) It is likely to last for the rest of the life of the person affected.

If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur"

234. Schedule 1 Part 1 of the Equality Act 2010 also includes provisions which relate to the effect of medical treatment and to progressive conditions.

235. The guidance on matters to be taken into account in determining questions relating to the definition of disability, issued by the Secretary of State, confirms that "likely" should be interpreted as meaning that it could well happen. That guidance also addresses: substantial; the effects of behaviour (at B7-B10) confirming that it would not be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person; the meaning of adverse effects on the ability to carry out normal day-to-day activities (including in particular D16 and D19); and day to day activities.

236. The onus is on the claimant to prove that the relevant condition was a disability at the relevant time.

237. Section 6(3) of the Equality Act 2010 provides, in relation to disability, that:

"**a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability; a reference to persons who share a protected characteristic is a reference to persons who have the same disability**"

Discrimination arising from disability

238. Section 15 of the Equality Act 2010 provides that:

"(1) A person (A) discriminates against a disabled person (B) if

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

239. **Pnaiser v NHS England [2016] IRLR 170** says:

"From these authorities, the proper approach can be summarised as follows:

(a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport*. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises….*

(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. ….

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(h) Moreover, the statutory language of s.15(2) makes clear … that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.

(i) As Langstaff P held in Weerasinghe, it does not matter precisely in which order these questions are addressed."

The duty to make reasonable adjustments

240. Sections 20 and 21 of the Equality Act 2010 say:

> **"(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.**
>
> **(2) The duty comprises the following three requirements.**
>
> **(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."**
>
> **"(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.**
>
> **(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person."**.

241. The claimant's representative referred to the EHRC code which suggests that (6.10) the phrase provision criterion or practice should be construed widely.

Victimisation

242. Section 27 of the Equality Act 2010 says:

> **"(1) A person (A) victimises another person (B) if A subjects B to a detriment because – (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act – (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act…"**

243. The first question is whether the claimant did do a protected act. If the claimant has done the protected act, for victimisation the next question for the Tribunal is whether the respondent subjected the claimant to a detriment because of that protected act, in the sense that the protected act had any material influence on subsequent detrimental treatment.

244. That exercise has to be approached in accordance with the burden of proof. If the claimant proves facts from which the Tribunal could reasonably conclude that her protected act had a material influence on subsequent detrimental treatment, her

case would succeed unless the respondent could establish a non-discriminatory reason for that treatment.

245. If the Tribunal concludes that the protected act played no part in the treatment of the claimant, the victimisation complaint fails even if that treatment was otherwise unreasonable, harsh or inappropriate. Unreasonable behaviour itself does not necessarily give rise to any inference that there has been discriminatory treatment.

Harassment

246. Section 26 of the Equality Act 2010 says:

> **"A person (A) harasses another (B) if – (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of – (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B."**
>
> **"In deciding whether conduct has the purpose or 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."**

247. The EAT in **Richmond Pharmacology v Dhaliwal [2009] IRLR 336**, stated that harassment is defined in a way that focuses on three elements: (a) unwanted conduct; (b) having the purpose or effect of either: (i) violating the claimant's dignity; or (ii) creating an adverse environment for her; (c) on the prohibited grounds. Although many cases will involve considerable overlap between the three elements, the EAT held that it would normally be a 'healthy discipline' for Tribunals to address each factor separately and ensure that factual findings are made on each of them.

248. The alternative bases in element (b) of purpose or effect must be respected so that, for example, a respondent can be liable for effects, even if they were not its purpose (and vice versa). It is important that the Tribunal states whether it is considering purpose or effect, something for which the claimant's representative relied upon **Lindsay v LSE [2013] EWCA Civ 1650** as authority.

249. In each case even if the conduct has had the proscribed effect, it must also be reasonable that it did so. The test in this regard has both subjective and objective elements to it. The assessment requires the Tribunal to consider the effect of the conduct from the claimant's point of view; the subjective element. It must also ask, however, whether it was reasonable of the claimant to consider that conduct had that requisite effect; the objective element. The claimant's representative submitted that the claimant's subjective perception of the conduct in question must be considered.

250. In **Nazir and Aslam v Asim and Nottinghamshire Black Partnership [2010] ICR 1225**, the EAT gave particular emphasis to the last element of the question, i.e. whether the conduct related to one of the prohibited grounds. When considering whether facts have been proved from which a Tribunal could conclude that harassment was on a prohibited ground, the EAT said it was always relevant, at the first stage, to take into account the context of the conduct which is alleged to

have been perpetrated on that ground. That context may in fact point strongly towards or against a conclusion that it was related to any protected characteristic.

Time limits/jurisdiction

251. Section 123 of the Equality Act 2010 provides that proceedings must be brought within the period of three months starting with the date of the act to which the complaint relates (and subject to the extension for ACAS Early Conciliation), or such other period as the Tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.

252. The key date is when the act of discrimination occurred. The Tribunal also needs to determine whether the discrimination alleged is a continuing act, and, if so, when the continuing act ceased. The question is whether a respondent's decision can be categorised as a one-off act of discrimination or a continuing scheme. The Court of Appeal in **Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96** makes it clear that the focus of inquiry must be not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but rather on whether there was an ongoing situation or continuing state of affairs for which the respondent was responsible in which the claimant was treated less favourably. **Lyfar v Brighton & Sussex University Hospitals Trust [2006] EWCA Civ 1548** highlights that Tribunals should look at the substance of the complaints in question as opposed to the existence of a policy or regime and determine whether they can be said to be part of one continuing act by the employer. **Aziz v FDA [2010] EWCA Civ 304** shows that one relevant factor is whether the same or different individuals were involved in the incidents, however this is not a conclusive factor.

253. If out of time, the Tribunal needs to decide whether it is just and equitable to extend time. Section 123(1)(b) of the Equality Act 2010 states that proceedings may be brought in, *"such other period as the Employment Tribunal thinks just and equitable"*

254. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice to the parties. The factors which are usually considered are contained in section 33 of the Limitation Act 1980 as explained in the case of **British Coal Corporation v Keeble [1997] IRLR 336**. Those factors are:

- the length of, and reasons for the delay;
- the extent to which the cogency of the evidence is likely to be affected by the delay;
- the extent to which the relevant respondent has cooperated with any request for information;
- the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and
- the steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action.

255. Subsequent case law has emphasised that these are factors which should usually be taken into account, but their relevance depends upon the facts of the particular case, and it is wrong to put a gloss on the words of the Equality Act to interpret it as containing such a list. This has recently been reinforced by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**. Also relevant to the exercise of the discretion are: the presence or absence of any other remedy for the claimant if the claim is not allowed to proceed; and the medical condition of the claimant, taking into account, in particular, any reason why this should have prevented or inhibited the making of a claim.

256. **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434** confirms that the exercise of a discretion should be the exception rather than the rule and that time limits should be exercised strictly in employment cases. It says, of the discretion, *"There is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A Tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule".* The onus to establish that the time limit should be extended lies with the claimant.

Breach of contract

257. In **British Heart Foundation v Roy UKEAT/49/15** the Employment Appeal Tribunal sets out the difference between the test in an unfair dismissal claim and the test for wrongful dismissal. That Judgment helpfully summarises what the Tribunal needs to decide when considering the wrongful dismissal claim and identifies why the questions to be asked are so different in respect of the two claims. It says:

> *"The law as to wrongful dismissal (in respect of which the appeal arises) needs to be set out. A member of the public might express some surprise if the law were to the effect that an employee whom the employer, on reasonable grounds, suspected of having been guilty of theft and in respect of whom a Judge concluded that indeed she probably was, had to be kept on at work until the expiry of her full notice period and could not be dismissed immediately. Whereas the focus in unfair dismissal is on the employer's reasons for that dismissal and it does not matter what the Employment Tribunal thinks objectively probably occurred, or whether, in fact, the misconduct actually happened, it is different when one turns to the question either of contributory fault for the purposes of compensation for unfair dismissal or for wrongful dismissal. There the question is, indeed, whether the misconduct actually occurred. In a claim for wrongful dismissal the legal question is whether the employer dismissed the Claimant in breach of contract. Dismissal without notice will be such a breach unless the employer is entitled to dismiss summarily. An employer will only be in that position if the employee is herself in breach of contract and that breach is repudiatory"*

258. In considering its decision the Tribunal took into account the submissions made by each of the parties (including their lengthy written submissions) and all matters referred to within them, whether or not they have been reproduced in this Judgment.

Conclusions – applying the law to the facts

Protected disclosures

259. As is recorded in the list of issues, for each of the alleged protected disclosures the Tribunal needed to consider whether the claimant: disclosed information; which she reasonably believed tended to show that a person has failed, was failing or was likely to fail to comply with any legal obligation to which he was subject, or that the health and safety of any individual had been, was being or was likely to be endangered; which she reasonably believed was disclosed in the public interest; and which was disclosed to her employer or another person falling within sections 43C-43G of the Employment Rights Act 1996.

260. The first alleged disclosure relied upon was an email of 13 June 2013 to Ms P Friggieri and others (557), see paragraph 45. That was an email about the allocation of care to service-users and how to ensure access to the appropriate manager and social work resource. The claimant disclosed information. There was no legal obligation identified with which anyone was failing to comply. However, as it was about access to resource for those with health issues, the Tribunal finds that the claimant reasonably believed that the health and safety of the service-users wishing to access the services was likely to be endangered (whether or not that was in fact true). The claimant did believe it to be in the public interest, as what she was saying in her email was about the access to services for members of the public. It was a disclosure to her manager. The Tribunal does find this to have been a protected disclosure.

261. The second alleged disclosure that the claimant relies upon, was the email to Ms Soren, one of the respondent's in-house lawyers, of 19 December 2014. That was an email about the potential costs award in the claimant's previous Tribunal claim against the respondent (3037), see paragraph 54. That email did not provide information. It was not about whether the respondent was complying with a legal obligation, it was just correspondence about the claim. It was not about health and safety being endangered. It was about proceedings which were personal to the claimant and there is no evidence that the claimant believed that what she was saying was in the public interest. The Tribunal does not find this to been a protected disclosure.

262. The document of 5 January 2015 relied upon was in fact a letter addressed to the Regional Employment Judge, but which was copied to the Deputy Chief Executive of the respondent, Ms Donnan (3087) – see paragraph 55. The claimant relied upon the fact that the letter was copied to Ms Donnan as meaning it was a protected disclosure to the respondent (as her employer). Ms Donnan received the letter. The lengthy letter contained a number of allegations which were not genuinely the provision of information. For example, it (3087) contained the allegation that there were rumours that the respondent had a contact at the Tribunal who was influential. Even if that were genuinely a disclosure of information, it was not something which was objectively a reasonable belief of the claimant. However, later in the letter (3089) the claimant disclosed/alleged that the respondent materially misled the Tribunal for tactical reasons. That was a disclosure of information to Ms Donnan. The claimant did genuinely believe that the respondent failed to comply with a legal obligation by materially misleading the Tribunal. It was not unreasonable for

her to do so, in proceedings in which the respondent was recorded as having failed to have promptly complied with the directions of the Tribunal in relation to disclosure (see the extract from the judgment at paragraph 52). The claimant believed this to be in the public interest. Had the respondent materially misled the Employment Tribunal for tactical reasons, it would have been in the public interest for this to be disclosed. It was a disclosure made to her employer (inasmuch as it was cc'ed to Ms Donnan). The Tribunal does find this to have been a protected disclosure.

263. Alleged disclosure (issue 1.4) was stated to be during the disciplinary hearing on 14 May 2015. There was no disciplinary hearing on 14 May, however the Tribunal has considered this to be an allegation that a protected disclosure was made in the email of 14 May 2015. That is the email which the claimant sent to her colleagues asking them to talk to her directly about any problems, and not to report her to management (962/1933) – see paragraphs 86-88. In the content of the email, the claimant was not providing information to her colleagues. The purpose of the email was not to disclose information, but to explain her behaviour and to put any complaints in context. The detail about her previous proceedings was provided by the claimant to put her request in context, not to inform her colleagues about what she had previously alleged. It was not provided in the public interest, nor did the claimant believe it was – it was addressing her colleague's responses to herself personally. The email was not disclosing a failure to comply with a legal obligation or that someone's health and safety was being endangered. The Tribunal does not find this to have been a protected disclosure.

264. The fifth alleged disclosure was claimed to have been made in an email to the Care Quality Commission on 5 August 2015. The Tribunal was not provided with a copy of what was sent to the CQC, only an email received in response (1348). That was an acknowledgement of a concern having been raised, but it provided no information whatsoever about what it was the claimant had sent. The Tribunal had no evidence provided to it which would enable it to find that a protected disclosure was made to the CQC, as there was no evidence given about what was said in the information provided to the CQC. The Tribunal does not find this to be a protected disclosure.

265. The claimant relied upon the postings made on her website as referred to in a letter from the respondent of 14 August 2015, as being public interest disclosures. The pages referred to were 1438-1441, being extracts from the claimant's own website, including the extracts which led to her dismissal. Unlike the other alleged disclosures relied upon, these disclosures were not made to the claimant's employer. During submissions the claimant's representative was asked which provision was being relied upon to contend that these were protected disclosures, and he explained that the claimant was relying upon section 43G of the Employment Rights Act 1996.

266. Applying the subsections of that provision:

- under (1)(b) the Tribunal does accept that the claimant believed the information disclosed, and the allegations made, to be substantially true (and for at least some of the statements that belief was reasonable);

- the claimant did reasonably believe that, at the time that she made the disclosure, she would be subject to a detriment if she made the disclosure to her employer ((1)(d) and (2)(a)), taking into account the manner of the claimant's suspension and the referral to the Channel Panel.

- a difficulty with the claimant relying upon the content of a lengthy posting, is that the reason for the posting would appear to vary depending upon which part of the website is read. Part of the posting was made for personal gain ((1)(c)) as information was included on the website to obtain crowd funding. However, as the posting also addressed an attempt by the claimant to promote a change in the law, anything posted for that reason would not appear to have been for personal gain. The Tribunal did not determine which parts of the posting were for personal gain (in the light of the conclusion reached on (1)(e)).

- the Tribunal went on to consider whether, in all the circumstances of the case, it was reasonable for the claimant to make the disclosure (1)(e). As part of that test, sub-section (3)(a) requires the Tribunal to take account of the identity of the person to whom the disclosure was made. In the circumstances of this case, the claimant made the disclosure to absolutely anybody who chose to look at her website. Taking that into account and, in particular the generic and unlimited nature of the disclosure, the Tribunal finds that it was not reasonable for the claimant to make that disclosure and therefore section 43G was not satisfied. Accordingly, the Tribunal did not find this to have been a protected disclosure.

267. Issue 1.7 concerned an email to the Care Quality Commission on 27 August 2015 (1532). In fact, the document relied upon was an acknowledgement of a concern having been raised by the claimant, but it was not a disclosure by her nor did it provide any information whatsoever about what it was that the claimant had sent. At the start of the hearing when the list of issues was addressed with the claimant's representative, it was confirmed that the document relied upon containing the alleged disclosure was 1532. That cannot have been a protected disclosure, as it was an email from the CQC to the claimant, and not a disclosure by her.

268. The claimant also relied upon her letter to the respondent's Chief Executive of 11 January 2016 (1816-1817) as being a protected disclosure – see paragraph 170. That letter began with the claimant informing him about vulnerable adults and the elderly allegedly crying on the phone because they were hungry and frustrated by the respondent's/ISSK's failure to provide services. That part of her letter was: disclosing information; that the health and safety of individuals had been endangered; that the respondent (and ISSK) had failed to comply with its legal duties (albeit the precise legal duty was not expressly addressed); and the claimant reasonably believed the disclosure was in the public interest. The disclosure was made to her employer. The Tribunal does find that to have been a protected disclosure.

269. In summary, of the alleged disclosures relied upon, the Tribunal found those in the list of issues at 1.1 (email to P Friggieri of 13 June 2013), 1.3 (the letter copied to Ms Donnan of 5 January 2015) and 1.8 (the letter to the chief executive of 11 January 2016) to be protected disclosures. For the reasons explained, the other alleged disclosures were not found to be protected disclosures.

Alleged detriments for making a public interest disclosure

270. The claimant alleges that she suffered two detriments as a result of having made the public interest disclosures (albeit that one of the alleged detriments is in practice composed of more than one alleged detriment). These were: the decision to suspend her on 7 July 2015 and the subsequent reviews maintaining that suspension; and the decision of 24 February 2016 to bring disciplinary charges against the claimant.

271. The list of issues recorded the questions as: were these detriments which the claimant suffered; and if, bearing in mind the obligation on the respondent to show the ground on which any act was done, was any such act done on the ground that the claimant had made a protected disclosure?

272. The decision to suspend and to maintain the suspension were clearly detriments for the claimant.

273. Ms Donnan made the decision to suspend at the meeting shortly before 7 July 2015. That decision cannot have been made as a result of the disclosure of 11 January 2016, as the disclosure was made after the decision. It was not explicitly put to Ms Donnan that she made the decision to suspend because of 13 June 2013 email. There was no evidence that Ms Donnan was aware of the email of 13 June 2013 (nor is there any evidence about why it would have any particular significance for her). Ms Donnan had seen the letter of 5 January 2015. The Tribunal has found that Ms Donnan made the decision to suspend based upon what was explained to her in the meeting – see paragraphs 105 and 106 above. The respondent has shown the ground upon which the decision was made. Ms Donnan did not make the decision because of the disclosures of 13 June 2013 or 5 January 2015, and those disclosure had no influence on that decision/treatment.

274. Mr Ashworth subsequently reviewed the suspension. He reviewed it on 16 September 2015, 7 October 2015, 7 and 18 December 2015, and 4 January 2016 (see paragraphs 159, 166 and 169). These reviews all pre-date the letter of 11 January 2016. Mr Ashworth made his decision to renew the suspension based upon the allegations being investigated and, from 7 October, also taking account of the claimant's health. From 7 December 2015 his views on what had been identified in his investigation were recorded in the provisional report, which supported his reasons for continuing the suspension. There was no evidence that Mr Ashworth was aware of the email of 13 June 2013, or that it had any relevance to him. The Tribunal finds that he did not renew the existing suspension because of any of the three protected disclosures. None of the protected disclosures had any influence on his decisions when he reviewed the suspension.

275. The decision to bring disciplinary charges was Peter Ashworth's. The allegation contends that this was a decision of 24 February 2016. It was repeated in

a letter of that date, but the decision was in fact first recorded in a letter of 11 February 2016. As explained at paragraph 176, the Tribunal has found that Mr Ashworth reached conclusions based upon the information provided to him during the investigation. That includes Mr Ashworth's decision that a disciplinary hearing would be required to determine the disciplinary allegations identified. His reasons are explained in the report he compiled. The decision was not made because of any of the protected disclosures and none of the protected disclosures had any influence on his decision.

276. If the suspension was an ongoing act, the claim for alleged detriment was brought in time. For the decision of 11 February 2016, the claim was brought within time. As individual decisions, the original decision to suspend and the first two reviews were out of time, however as the later reviews were in time, had the maintenance of the suspension been found to be detrimental treatment as a result of a protected disclosure, it would have been a continuing act. As the Tribunal may have had jurisdiction to consider the claims if they were all part of a continuing act, the Tribunal has determined the claims for detriments for making public interest disclosures on the basis that it did have jurisdiction to consider the claims. In the light of the findings that the claimant did not suffer such a detriment, it is not necessary for the Tribunal to determine issue 4.

Harassment related to sex

277. The alleged incidents upon which the claimant relies as harassment related to sex are:

- In requests made by Mr Majothi on four different occasions between February and May 2015 to meet the claimant outside work to discuss how he could help her with work related problems;

- In Mr Majothi accusing the claimant on 15 or 17 April 2015 of bullying Mr Dudley;

- In Mr Majothi sending the claimant a meeting request [for a meeting] to take place on 19 May 2015 and then holding the meeting in the claimant's absence to discuss how unacceptable her behaviour had been?

278. The third of these allegations was abandoned by the claimant during her answers to questions in cross-examination, and this was confirmed by her when she was re-examined.

279. The Tribunal does not find that the claimant was harassed on the grounds of sex. As explained at paragraphs 67-72 above, the Tribunal found Mr Majothi to be a credible and genuine witness and it does not find that he requested that the claimant meet him outside work to discuss how he could help her with work related problems at all. His evidence about the single conversation at the photocopier is accepted as true. The Tribunal also finds that the reason why Mr Majothi addressed the issues he perceived with the claimant's conduct towards Mr Dudley, was because of the fact that he perceived that conduct to be inappropriate and he believed that it appropriately needed to be addressed. He did so in an appropriate manner.

280. Whilst it was the case that Mr Majothi raising his issues with the claimant about her treatment of Mr Dudley was unwanted, the Tribunal finds that: the reason for the treatment was not related to her sex; it did not have the purpose of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; and, if it had such an effect, it was not reasonable for it to do so.

281. As a result, the allegations of harassment related to sex are not found. It is not necessary for the Tribunal to determine whether it had jurisdiction to consider the claims, which (as they were out of time) would have required the Tribunal to decide whether it would have been just and equitable to extend time.

Direct discrimination (race and religion or belief)

282. The Tribunal considered each of the allegations of direct discrimination in respect of both discrimination on the grounds of race, and discrimination on the grounds of religion or belief (save for issues 8.2 and 8.9 which were in respect of race only). In this Judgment, the decisions reached in respect of race are recorded first, with the decision in respect of religion or belief addressed afterwards. Many of the factual findings recorded in considering the race discrimination allegations also applied when considering the ground of religion or belief, but those matters have not been re-produced (and the decision in respect of the religion or belief allegations should be read in conjunction with those recorded for race).

Direct discrimination because of race

283. For each allegation the first question asked in the list of issues was whether there are facts such that the Tribunal could conclude that the claimant was treated less favourably because of race. If so, the next question was whether the respondent could nevertheless show that it did not contravene section 13 of the Equality Act 2010. That is, the Tribunal was required to consider whether the claimant had demonstrated the prima facie case required to shift the burden of proof and, if so, then go on to determine whether the respondent had nonetheless proved that the treatment was not because of her race. In considering the prima facie case, the Tribunal has been mindful of the law as explained in the legal section and, in particular, of the need for something more to shift the burden of proof (over and above unfavourable or poor treatment, and an allegation that a hypothetical comparator who was not black would have been treated differently). In respect of each allegation it has been considered that it was based upon a hypothetical comparator who was not black (but in all other material respects was in the same circumstances), the exceptional nature of the allegations meaning that no actual comparators existed who were in the same position (or the same circumstances without any material differences)

The conduct of the suspension (race discrimination)

284. Allegation 8.1 was that Mr Smallbone's conduct of the claimant's suspension on 7 July 2015 was less favourable treatment because of her race. This allegation focussed on the manner in which the suspension was conducted and not the decision to suspend itself. Whilst the decision to suspend was made by Ms Donnan, the suspension was conducted by Mr Smallbone.

285. As explained in more detail at paragraphs 107-112 above, the Tribunal finds that, based upon Mr Urry's evidence (being an experienced trade union representative), the conduct of the suspension was hostile and aggressive. It was described by the person accompanying the claimant as a traumatic experience with so much hostility and anger directed towards the claimant. There was no need: for the claimant to given only 40 minutes notice of the suspension meeting; or for the suspension to be conducted in this way. The claimant was being suspended because of something which she had done approximately three months earlier, and which had already been addressed by her line manager two months before. There was no urgent need for suspension nor any good reason for the hostile way in which the suspension was conducted. At that point in time, the issue had been resolved so far as her line management were concerned. As confirmed in the findings above and based upon the Tribunal's acceptance of Mr Urry's evidence, the evidence of both Mr Smallbone and Ms Gardner to the Tribunal was not credible and provided a thoroughly misleading account of what occurred.

286. All the members of the panel are in agreement that the manner in which the suspension was conducted was entirely inappropriate. However, the Tribunal panel is not agreed about whether there is sufficient to shift the burden of proof – whether the prima facie case of race discrimination has been made out. The majority find that the claimant has shown sufficient facts to decide, in the absence of any explanation, that the manner of the suspension was less favourable treatment because of race, particularly taking account of the fact that the Tribunal has found that Mr Smallbone and Ms Gardner misled the Tribunal about what occurred in the evidence that they gave. When that is considered together with: the hostile conduct of the suspension as described by Mr Urry (and found by the Tribunal); the absence of any explanation for the level of hostility on 7 July; the fact that matters had been resolved in May; and as it was inextricably linked to the Channel Panel referral (see allegation 8.2 below), that shifts the burden of proof. A further factor is that an experienced trade union official, who had dealt with a number of similar cases, evidenced that he had never seen such a suspension and he attributed that to the claimant's race. It also fits with a pattern of behaviour where the claimant was singled out: as being identified as objecting to the dress issues raised in the 6 May meeting when others had objected; in Mr Smallbone's email of 12 June (see paragraph 102) when he had made clear that he wanted the claimant out of his team; and meetings about the claimant having taken place without notes, minutes, or any real explanation of why managers were meeting.

287. The minority (Employment Judge Phil Allen), however, does not find that the claimant has shown the something more to shift the burden. Whilst Mr Smallbone's conduct was hostile and aggressive and he was not honest about that in his evidence to the Tribunal, the conclusion of EJ Phil Allen is that the claimant has not evidenced the something more required to show that such treatment was on the grounds of race (taking into account that unreasonable conduct by an employer is not, of itself, sufficient for the burden to shift).

288. The panel is in unanimous agreement that if the burden has shifted, the respondent has not proved that the reason for the way in which the suspension was conducted was in no sense whatsoever because of race. The views of the panel only differ on whether the claimant has evidenced the "something more" required to shift the burden in the first place. The respondent has provided no evidence which

explains the hostile conduct of the suspension meeting, the respondent's evidence having been that the hostile conduct did not occur – something the Tribunal finds to be untrue. In the absence of any explanation, as the burden has shifted, the Tribunal finds on the balance of probabilities that the way in which the suspension was conducted was hostile and there is no cogent evidence that the treatment was in no sense whatsoever because of race.

Decision to refer to the Counter Terrorism Unit (or Channel Panel) (race discrimination)

289. Allegation 8.2 is that the decision to make a referral to the Counter Terrorism Unit communicated on 8 July 2015 was direct discrimination on the grounds of race. In fact this was a decision which was made in stages, but which was ultimately made by Ms Stewart. Ms Donnan, at the meeting shortly before 7 July, made the initial decision that this should be considered and a process undertaken. However, the decision to inform the claimant that she would be referred to the Channel Panel was ultimately made by Ms Stewart. The email from Ms Stewart to Ms Bowman on 17 July 2015 (1284D) in fact contained the decision and the reasons for it. The decision was explained to the claimant in letters from Ms Bowman of 17 July 2015 (1284A) and from Ms Stewart of 24 July (1294), which was when the claimant was informed that she was, or might be, referred to the Channel Panel. The findings of fact are at paragraphs 119-125 above.

290. As with much of the correspondence and other documentation which the Tribunal has needed to consider following the suspension, the precise authorship of the documents is somewhat uncertain, as therefore is the actual identity of the decision-maker. Ms Stewart's evidence was that she had support with the documents and decisions and the decision was reached in conjunction with Ms Bowman, the Community Safety Unit, and the legal team (in practice Mr Reynolds). Mr Reynolds drafted the document which evidenced the decision to make the referral (1284D). However, in her witness statement, Ms Stewart was clear that the decision was hers and her evidence was that even where Mr Reynolds drafted letters for her, she checked them and therefore (unlike Mr Smallbone for the post-suspension correspondence) effectively made the decision to take the relevant action (or to explain it in the particular way).

291. As addressed at paragraphs 142-144. the Tribunal has carefully considered the statutory guidance document which set out the criteria for Channel Panel referral. The Tribunal does not find that the facts of the matters set out in the email of 17 July (1284D) met the criteria for referral contained in the Government's guidance (2919-2922, 2937), see paragraph 143 above. There is no evidence whatsoever in this case of why the respondent thought the claimant would be vulnerable to radicalisation. It is correct that the Claimant had seen a posting on a feed and had shown a video clip to a colleague. However, viewing one email was not genuinely evidence of radicalisation. The Tribunal's own experience is that, at the time, such videos were a major news feature and videos were being carried by generally-accessible media. Those managing the claimant had no real concerns about her. Two months before the referral, Ms Walsh had accepted the claimant's apology. When they spoke, the claimant had been shocked that Ms Hodson was upset, and there was no suggestion that the action would be repeated. Ms Walsh accepted that the issue was resolved. Ms Walsh confirmed in her oral evidence that the claimant

took on board that what she had done was wrong, and Ms Walsh genuinely felt that there would be no repetition of the conduct. There were no subsequent incidents. There was no evidence that colleagues were at risk or that the claimant had even spoken to her colleagues about such issues again. In deciding to refer the claimant to the Channel Panel the Tribunal finds that Ms Stewart was not genuine in making the suggestion that the referral was to help the claimant. Whilst the claimant had made some irrational statements in correspondence with the respondent, those statements did not provide evidence of radicalisation or of any link between the claimant and those types of organisations or people who would raise Prevent-related issues. There was no evidence before the Tribunal that Ms Stewart was advised by the Community Safety Team that the threshold for referral had been met. There was no evidence that demonstrated that the claimant fitted the criteria for referral.

292. All the members of the Tribunal panel are in agreement that the decision to refer to the Channel Panel was made without the criteria being met. However, as with the previous allegation, the Tribunal panel has not reached a unanimous agreement about whether there is sufficient to shift the burden of proof – whether the prima facie case of race discrimination has been made out. The majority find that the claimant has shown sufficient facts to decide, in the absence of any explanation, that the decision to refer to the Channel Panel was less favourable treatment because of race. The factors in this decision include the complete absence of the claimant meeting any of the criteria referred to in the statutory guidance document. As a result, the majority of the panel have concluded that the reason relied upon by the respondent for the referral was wrong, that is it cannot be the reason at all. As a result, the burden of proof has shifted. The minority (Employment Judge Phil Allen), however, does not find that the claimant has shown the “something more” required to shift the burden. Whilst the respondent has not evidenced that the criteria laid down in documentation which provided the reason for the referral has been met, the decision of EJ Phil Allen is that the claimant has not evidenced the something more required to show that such treatment was on the grounds of race. Whilst an unreasonable decision, he notes that unreasonable conduct by an employer, of itself, is not sufficient for the burden to shift, and, in his view, here the claimant has not shown the something more which makes out the prima facie case of race discrimination.

293. The panel is in unanimous agreement that if the burden has shifted, the respondent has not proved that the reason for the Channel Panel referral was in no sense whatsoever because of race. The respondent is unable to meet that test, as there is no evidence of the grounds upon which the claimant genuinely met the criteria laid out in the documents provided to the Tribunal. The broad assertion that she did so, is not sufficient to evidence that the reason for the Channel Panel referral was in no sense whatsoever because of race. The confused evidence about who made the decision does not assist the Tribunal, but on the basis that the decision was made by Ms Stewart as recorded in her statement and the document (1284D) (even if on advice), the respondent has not evidenced why the decision was made in the circumstances identified (including the time since the video had been viewed, the claimant’s conversation with her manager, and the absence of any other repetition of that behaviour – whatever the claimant may have said in correspondence with the respondent’s solicitors). As the majority of the Tribunal has found that the burden of proof has shifted and as the Tribunal finds on the balance of probabilities that there

is not cogent evidence that the decision was in no sense whatsoever because of race, this claim succeeds.

Allegations 8.3-8.5 (race discrimination)

294. The discussion held by the respondent with Sean Reynolds on 9 July 2015 was the basis for allegation 8.3. There was no evidence of such a discussion. The allegation in fact appears to relate to a letter from Mr Smallbone to the claimant (1172) which is almost identical to the letter from Mr Reynolds of 7 June 2015 (1056) and, based upon the evidence heard by the Tribunal, was in fact written by Mr Reynolds. In the findings of facts above, the Tribunal has explained why it is critical of both of these letters and the terms used. However, in practice, all the 9 July letter did was change the person who was inviting the claimant to meet. The Tribunal does not find that there is any evidence that this letter amounted to less favourable treatment of the claimant than a hypothetical comparator in the same circumstances and, even if it did, there is not "something more" which provides the prima facie case that the content of the letter was on the grounds of race.

295. Allegation 8.4 was the alleged pre-judgment of the claimant's case evidenced by a note of 9 July 2015. The Tribunal has not been shown a note of 9 July 2015 and therefore this allegation is not found. The claimant's representative's submissions did not identify any evidence of any such note.

296. Allegation 8.5 arose from the email from Sean Reynolds of 17 July 2015 (1262). That email was part of the lengthy correspondence with the claimant about the claimant's assertion in respect of assassination. The text of the email to the claimant is confrontational, but there is nothing which suggests that it was on the grounds of race (or that the claimant was treated less favourably than a hypothetical comparator in materially the same circumstances). As recorded at paragraph 118, the email is written in the style of a strong litigator. For the Tribunal, a fundamental problem with this series of emails (including the one relied upon for this allegation) was that the claimant should have been referred to occupational health so that advice could be provided about her mental health, in the light of what Ms Gardner knew about the claimant's medical history. However, there is no evidence that this did not occur because of the claimant's race (and, in any event, that is not what was alleged in this allegation).

The emails/letters of 24, 29 and 30 July (allegations 8.6-8.8) (race discrimination)

297. The Tribunal has considered these three allegations together, as they arise from closely-related correspondence. The first of these allegations related to the letter from Ms Stewart to the claimant of 24 July 2015 (1294) in which the claimant was told that she was able to voluntarily agree to a Channel Panel referral, but if she did not do so the respondent would refer her to GMP in any event. This is addressed at paragraph 124 above. The letter was drafted by Mr Reynolds, but checked and signed by Ms Stewart. The content of the letter was based upon the instruction by Ms Stewart to Ms Bowman of 17 July to make the disclosure (1284D). The evidence was also that the 17 July document was initially drafted by Mr Reynolds. That document described the claimant as having an irrational and persecutory belief and led with reference to the assassination email.

298. The 24 July letter included the statement that the respondent had well-founded concerns about the claimant's health and need for appropriate help regarding her behaviour at work. As was submitted by the claimant's representative, the content of the letter did not illustrate the conduct of a caring employer who wished to properly address health concerns. The Channel Panel referral procedure did not address concerns about health at all. How the respondent could (and should) have addressed health concerns, would have been to refer the claimant to occupational health, something which it had failed to do.

299. The Tribunal considers the content of the 24 July letter to amount to bullying and believes that the letter should have been written in a far more conciliatory way, appropriate for an employee of the respondent. In the context of an employee who had apologised as soon as the issue regarding the video had been raised with her by her manager, and for whom her manager had considered the issue closed over two months before the letter, the Tribunal does not consider the content of the letter to be supported by the facts.

300. That letter was followed by an email of Mr Reynolds of 29 July (1312). That email was misleading. The way in which it was written by Mr Reynolds, referring to Ms Stewart in the third person, suggested that because she was on annual leave he was responding separately. In fact, Mr Reynolds had drafted the previous document. The claimant had sought evidence of her supposed conduct and radicalisation, but no evidence was provided in the email of 29 July.

301. The third document in the sequence which formed the basis of these allegations, was a further email from Mr Reynolds of 30 July (1320). In that email Mr Reynolds stated that the council’s concerns were not about the claimant's innocence or guilt, but about her state of mind and the possibility that she might be vulnerable to radicalisation. Considering the criteria for a Channel Panel referral as addressed above, the Tribunal does not consider that the claimant's conduct fitted within the criteria upon which such a referral should be based, nor did it evidence a vulnerability to radicalisation. The erroneous statement in the email of 30 July that there was a possibility of the claimant being vulnerable to radicalisation, exacerbated the issues already addressed in relation to the letter from Ms Stewart (but written by Mr Reynolds) of 24 July, where statements were made about the claimant's state of mind with no supporting evidence (when the claimant's manager had addressed the matter and considered it resolved over two months prior to the email being sent).

302. Taking these three documents together, the Tribunal has found that there are facts which could demonstrate that the claimant was treated less favourably because of race. The Tribunal has found that the “something more” required to shift the burden of proof is present because: the matters had been resolved two months previously; the correspondence taken together was aggressive; the claimant did not fulfil the criteria for referral to the Channel Panel at all; and the correspondence was deliberately misleading in that Mr Reynolds appeared to suggest that different people were writing the letters/emails, when the same person had drafted them all (albeit that the Tribunal is mindful that it has not heard evidence from Mr Reynolds himself). The claimant was a black woman being told that a Channel Panel referral was required due to: the terminology she had used; what was asserted to be her state of mind; and (unsupported and unsubstantiated) vulnerability to radicalisation. This all suggests that a white employee would not have been subject to the same action and

assertions. The Tribunal finds that the assumptions made about the claimant representing a threat and having a state of mind vulnerable to radicalisation, provide the something more which shifts the burden of proof.

303. Having shifted the burden, it is for the respondent to prove that the treatment was in no sense whatsoever because of the claimant's race. The claimant did not meet the criteria for Channel Panel referral at all. There was an absence of any genuine explanation in the three documents for why the claimant might do so. The respondent questioned her state of mind at a time when the respondent had failed to refer the claimant to Occupational Health. None of the witnesses heard by the Tribunal provided any genuine explanation for the way these documents were written or the assertions made. The Tribunal has also not heard evidence from the writer of the two emails and, the drafter of the first letter, and therefore the respondent has not presented the evidence of why the content was included by the relevant person. The Tribunal concludes that the respondent has not proved that the treatment was not because of the claimant's race.

304. As a result, the Tribunal does find that the three documents together amounted to less favourable treatment of the claimant on the grounds of race.

Allegations 8.9-8.12 (race discrimination)

305. The claimant alleged that the disclosure of concerns under section of the Counter Terrorism and Security Act 2015 which was sent to the Chief Constable of GMP on 10 August 2015 was less favourable treatment on the grounds of race (1379). In a letter of 2 August 2015 (1334) the claimant had consented to the respondent disclosing their concerns to GMP. Accordingly, the Tribunal finds that the letter of 10 August was sent with the claimant's consent and it was not less favourable treatment of her for the respondent to do so. An appropriate comparator in the same circumstances would have been treated in the same way, as that would have been someone of a different race who had also consented to a referral to GMP.

306. The letter from Ms Stewart of 7 September 2015 about the purpose of the Channel Panel referral was also alleged by the claimant to be discrimination on the grounds of race. That letter (1550) also addressed other matters. The third paragraph addressed the contention that the Channel Panel referral had been made in bad faith. The evidence before the Tribunal was that the letter was likely to have been written by Mr Reynolds, albeit signed and checked by Ms Stewart. The Tribunal would observe that the content of the letter was somewhat ill-considered and it would have expected a relatively senior manager with responsibility for the claimant (as an employee) to have considered whether its content was appropriate. For this allegation, the claimant's representative in his submissions relied upon the final sentence of that paragraph which said *"the purpose of a channel panel referral is for treatment, it is not a penalty or a punishment, and so your references to your innocence are misconceived".* The submission he made was that such an approach was remarkable given what Ms Gardner and Ms Steward (in HR) and others knew about the claimant's mental health. However, the Tribunal accepts Ms Stewart's evidence that she did not know about the claimant's history of mental health issues and nobody raised it with her. There was no evidence that Mr Reynolds knew about the claimant's PTSD. Accordingly, based upon the case asserted in submissions, the Tribunal does not find: there was any less favourable treatment of the claimant; that

what was included in the letter was on the grounds of race; or that she has shown the "something more" required to reverse the burden of proof. The Tribunal does find that it was inappropriate for the letter to refer to the Channel Panel referral as being for the treatment of the claimant, which was patently not true. However, neither Ms Stewart nor Mr Reynolds had the knowledge referred to by the claimant's representative in his submission and, in those circumstances, this allegation has not been made out.

307. The Tribunal has considered together allegations 8.11 and 8.12 which related to the suspension review of 8 December 2015 and the contents of the provisional disciplinary investigation report of the same date. These were a decision of, and a provisional report written by, Mr Ashworth. For reasons explained earlier in this Judgment, the Tribunal does not find that there was anything inappropriate about the review of the claimant's suspension on 8 December. In terms of the provisional disciplinary investigation report (1615) the Tribunal accepts that the report is based upon the investigation undertaken by Mr Ashworth. It is perhaps unfortunate that the claimant's input had not been obtained prior to the provisional report being drafted, but Mr Ashworth had explained to the claimant the approach he intended to take and the claimant's input was subsequently considered before the report was finalised. There is nothing intrinsically wrong with the approach that he took and it certainly was not evidence of discrimination. The Tribunal finds that Mr Ashworth endeavoured to investigate in a fair and appropriate way and therefore the content of the report was not less favourable treatment on the grounds of race, but what he had identified and believed based upon the investigation he had undertaken.

Direct race discrimination and jurisdiction/time

308. The List of Issues records that, insofar as any of the matters for which the claimant sought a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), could the claimant show that: they formed part of conduct extending over a period which ended within three months of presentation; or that it would be just and equitable for the Tribunal to allow a longer period for bringing her claim.

309. What the Tribunal has found is that direct race discrimination occurred on: 7 July 2015 in Mr Smallbone's conduct of the claimant's suspension; in the decision to make a referral to the Channel Panel communicated on 17 and 24 July 2015; and between 24 July and 30 July 2015 in correspondence. What has been found all occurred prior to 5 November 2015. The claim was not presented within the primary time limit in section 123 of the Equality Act 2010.

310. The Tribunal finds that the matters found together amount to a continuing course of conduct, on the basis that the suspension, the referral, and the correspondence all follow from the meeting with Ms Donnan shortly prior to 7 July and the decision (or initial decision) made in that meeting. If they are all a continuing course of conduct, the last date of that course was 30 July 2015. The one allegation found which may arguably not be part of the same continuing course of conduct, was the manner in which Mr Smallbone conducted the suspension, involving as it did a different individual in making that decision. Accordingly, whilst the Tribunal has considered all of the allegations found to be a course of conduct even though there

were different individuals involved, it has also considered the just and equitable extension for that act alone (occurring on 7 July 2015)

311. What the Tribunal needed to determine was whether the proceedings were brought in such other period as the Tribunal thought just and equitable. The Tribunal noted the point made in **Robertson,** that an extension should be the exception and not the rule. It also considering the factors outlined in **Keeble** (but taken into account what is said about the list from that case in **Adedeji** and other authorities). The key factors noted were:

(1) That the claim was entered on 23 March 2016, when, based upon the acts found, it should have been entered by 29 October 2015, or ACAS conciliation commenced by that date (or 6 October for allegation 8.1 if not part of a continuing act);

(2) There was nothing which suggested that the cogency of the evidence had been affected by that delay, which was relatively brief in the context of proceedings which had taken over four years to be heard. There was no evidence that the non-attendance of Mr Reynolds was as a result of the delay in the claim being entered;

(3) There was an absence of any genuine explanation for the delay in bringing the claim. However, the claimant's PTSD diagnosis and the evidence about her ill health generally in the latter part of 2015 did demonstrate that the claimant was unwell at the time;

(4) The claimant knew about the Tribunal time limits and had received advice from solicitors and others during the period, and in particular during the period when the claim should have been entered (see paragraph 196);

(5) the prejudice to the respondent of an extension of time being allowed appeared to be limited, save of course for the fact that it would have a finding against it. No other prejudice has been identified; and

(6) the prejudice to the claimant would be very significant if an extension was not granted as it would deny her a finding of discrimination and a remedy, in circumstances in which the Tribunal had determined that discrimination occurred.

312. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice of the parties, albeit all the factors outlined have been taken into account. In balancing that prejudice and taking account of the claimant's health during 2018 and her history of PTSD, the Tribunal has found that it was just and equitable to extend time. The Tribunal also found that it would be just and equitable to extend time for allegation 8.1, even had it not formed part of a continuing act with the other discrimination found.

Direct discrimination because of religion or belief

313. The Tribunal has addressed in detail each of the allegations of direct discrimination in relation to race above. However, in relation to religion or belief, the claimant's evidence was that she is a Christian. Mr Majothi was aware that she was a Christian. The claimant recorded that she was a Christian in her statement for the disciplinary hearing. What they perceived the claimant's religion to be, was not put to any of the respondent's other witnesses, albeit that they also did not lead evidence on their perception. There was simply no evidence whatsoever before the Tribunal that the claimant was perceived to be Muslim by any of the respondent's witnesses or decision-makers. There was no evidence which would provide the "something more" to shift the burden of proof in respect of the direct discrimination allegations on the grounds of religion or belief. Accordingly, the Tribunal does not find that the claimant was discriminated against because of religion or belief (or perceived religion or belief) in any of the ways alleged.

Victimisation – protected acts

314. The claimant relied upon three protected acts in her victimisation claim, one of which was accepted by the respondent as being a protected act at the start of the hearing, and another which was accepted as being a protected act in submissions.

315. Bringing proceedings under the Equality Act 2010 under case number 2414468/2012 was conceded by the respondent to be a protected act.

316. The second protected act relied upon by the claimant (issue 11(b)) was in refusing to accept the removal of Individual Solutions SK as a named respondent in the previous proceedings. The Tribunal considered very carefully the precise terms of section 27(2)(c) of the Equality Act 2010 which provides that doing any other thing for the purposes of, or in connection with, the Equality Act 2010 is a protected act. In the view of the Tribunal, not agreeing to the removal of a party in an existing appeal in a claim brought under the Equality Act 2010 must come within the ambit of the very wide wording in that sub-section ("in connection with"). As a result, the Tribunal has found that the claimant's refusal to accept the removal of ISSK was a protected act.

317. The claimant pursuing an appeal to the Court of Appeal against the decision of the Employment Tribunal in the previous claim, was accepted by the respondent in closing submissions as being a protected act.

Victimisation – detrimental treatment

318. The question asked in the list of issues was whether the facts were such that the Tribunal could conclude that the respondent subjected the claimant to a detriment because of one (or more) of the protected acts in the ways alleged. If so, could the respondent nevertheless show that it did not contravene section 27 (that is that it did not subject the claimant to detrimental treatment for having done a protected act). For each alleged detriment the Tribunal below has explained the decision reached. The Tribunal has considered each of the protected acts separately and the protected acts collectively, in respect of each detriment. However, in

explaining the decision reached the Tribunal has generally referred to the protected acts collectively, without referring to each separately for each detriment.

Allegations 12.1 – 12.11 (victimisation and detrimental treatment)

319. Alleged victimisation detriment 12.1 was the respondent making an application on 17 June 2014 for earlier Tribunal proceedings to be struck out because the claimant had not attended on 10 April 2014. There was no evidence before the Tribunal of, or about, such an application on 17 June 2014. There was also no evidence whatsoever which would suggest that any such application was made because of any of the one protected act which had occurred at that time, or that it was the reason for it. Indeed, it is difficult to see how an application to strike out a claim can genuinely be contended to be an act of unlawful victimisation based upon that claim being brought in the first place. The respondent's submissions was that any such application was a litigation step. The Tribunal does not find that the claimant has made out her case that such conduct was as a result of a protected act or that a protected act had a material influence on it, nor indeed has she evidenced that it occurred.

320. The second alleged detriment (12.2) was that the respondent required the claimant to continue to work in the business hub after the Judgments of the Tribunal and the Employment Appeal Tribunal in her earlier claim. As found at paragraph 58, there was no evidence that the claimant was required to continue to work in the hub as alleged. There was no evidence before the Tribunal that the claimant had asked to be moved out of the hub. At the 6 May 2015 meeting it was said to the claimant that if she was not happy in the business hub, she was able to apply for vacancies elsewhere in the Council. This was something about which the claimant subsequently complained. That complaint is inconsistent with the claimant's allegation that she was required to continue to work in the business hub. The Tribunal does not find that what was alleged, occurred.

321. The third detriment relied on alleged inappropriate email comments between colleagues and a complaint by Mr Smallbone to Human Resources on 14 May 2015. This allegation appears to relate to an email from a colleague of the claimant to the various managers in the Hub (962), addressed at paragraph 89. This was an email sent about the claimant's own email of the same date (in which she asked her colleagues not to raise issues with management but to address them with her directly). The colleague commented that she did not think it was appropriate for such an email to be sent to everyone in the hub. The Tribunal notes that this email is part of, and demonstrative of, issues existing between members of the team, but there is no evidence whatsoever that the email was sent because of the claimant's previous protected acts (or that they materially influenced it being sent). Rather, it appears to have been sent in response to the claimant's own email. Mr Smallbone forwarded the email to Ms Gardner on the same day (971). In that email he was seeking advice. The content of that email was entirely appropriate, being a manager seeking the view of Human Resources on an issue in the team. There was nothing inappropriate about Mr Smallbone's email and the Tribunal does not find that what was said was as a result of the protected acts (or materially influenced by them).

322. The detriment alleged at 12.4 was in relation to the conduct of a business hub management meeting on 18 May 2015, at which the claimant said she was criticised.

In its submissions, the respondent highlighted that there was a paucity of evidence about this meeting. That is entirely right as there were no notes. It was a meeting about the claimant. The outcome of the meeting was that Mr Majothi emailed the claimant suggesting a date for a meeting to discuss her recent request for a referral to occupational health and the support that could be provided in the hub (1002). The meeting is addressed at paragraphs 90 and 91 above. Holding the meeting was not necessarily of itself a detriment. There is no evidence that what was said in the meeting was detrimental treatment of the claimant. There is certainly no evidence that it was because of, or materially influenced by, the protected acts. The outcome of the meeting was not detrimental for the claimant, being one of the managers endeavouring to meet with her (and the video issue not being progressed).

323. Alleged detriment 12.5 was the failure to make an occupational health referral and inappropriate email comments by Mr Smallbone on 10 June 2015. The Tribunal does find that the respondent should have arranged for the claimant to see occupational health. The Tribunal cannot see why the respondent's managers needed to speak with the claimant before a referral was made. There were a number of reasons for the delay, however, once the respondent had decided that a meeting should take place. Mr Majothi had asked for a meeting, which the claimant had declined. Mr Smallbone was away on holiday. The claimant informed Ms Reeves on 10 June 2015, quite understandably, that she did not want a meeting regarding her gynaecological problems with Mr Smallbone before a referral was made. The email about which the claimant complains of 10 June 2015 (1064) was Mr Smallbone's explanation to the claimant regarding the occupational health referral. He apologised for the delay. He explained his wish to understand the claimant's situation at the time and to have a conversation about it before the referral took place. He confirmed that a referral would be made anyway (although that did not in fact occur). The Tribunal cannot see any inappropriate comments in the email of 10 June (1064) and therefore that part of the allegation is not found. The Tribunal does not find that the reason why the claimant was not referred to occupational health was her protected acts (or was materially influenced by them) even though a referral should have been made. There was no evidence which supported the contention that the failure to refer was because of the protected acts (or was materially influenced by them).

324. The claimant alleged that she was subject to the detriment of being challenged about frequent usage of the toilets from June 2015 onwards by Ms Walsh (12.6). There was no dispute in the evidence that the claimant was on occasion challenged by Ms Walsh for being away from her desk for periods of time. There was no evidence this was related to the claimant's use of toilets, nor was there any evidence that this was related to (or materially influenced by) the protected acts. As recorded in the findings of fact above, the Tribunal found Ms Walsh to be someone who tried her best as the claimant's manager and tried to address issues appropriately. The Tribunal does not find that the claimant was subject to the detriment alleged. If the claimant being questioned about being away from her desk was a detriment, the Tribunal finds that was not materially influenced by the protected acts.

325. In relation to the decision to suspend the claimant, as recorded above, that appears not to have been made on 7 July 2015 as alleged, but shortly before by Ms Donnan at a meeting (see paragraphs 103-106). The reason why Ms Donnan made the decision has been explained above. Ms Donnan was focussed on Prevent issues

and made the decision based on the facts which she had been told. There is no evidence that the decision was made because of the claimant's previous proceedings or because of the protected acts (or was materially influenced by them). The decision was made by Ms Donnan because of her Prevent focus (and in the context where she was not informed about all of the facts).

326. Issue 12.8 relates to the letter from Mr Reynolds of 15 July 2015 (1224). That is Mr Reynolds' letter to the claimant sent in response to her email to the respondent's Chief Executive. That letter addressed: the allegations which led to the suspension of the claimant; the Employment Tribunal claim; the possibility of victimisation; and the disciplinary allegation against the claimant. There is nothing in the content of that letter that the Tribunal finds to be inappropriate or which, of itself, amounted to a detriment for the claimant.

327. In issue 12.9 the allegation is that Mr Reynolds was "advising managers" about the claimant. The Tribunal has not heard evidence from Mr Reynolds nor was there any evidence about this allegation. The 15 July letter (1224) did confirm that Mr Reynolds had raised the claimant's assertions that she felt the respondent was going to assassinate her, with the respondent's Human Resources team. The Tribunal does not find that there was anything inappropriate in the solicitor conducting the litigation bringing to the attention of managers and/or HR the wording being used by the claimant in her email. That of itself, was not a detriment. Indeed, the more concerning issue in the view of the Tribunal was that the respondent's HR team, and Ms Gardner in particular, did not raise the issue of PTSD, the claimant's health, or the need for an occupational health referral, when they/she became aware of the information provided by Mr Reynolds. In any event, there is no evidence that Mr Reynolds informed the HR team about what the claimant had said because the claimant had conducted the protected acts or that it was materially influenced by them, rather than because of what she said in her emails and how it was expressed.

328. Issue 12.10 was the claimant's complaint that Mr Reynolds contacted the claimant using her private email address. There were emails in the bundle which showed this occurring, but these also showed the claimant herself using her private email address when corresponding with Mr Reynolds (1010). This may have occurred because the claimant's correspondence with the Employment Appeal Tribunal was conducted using the claimant's personal email address (1014). In any event, the Tribunal does not find that the use of such an email address was detrimental treatment where there was no request for it not to be used. It also appears to have occurred because of the claimant and the EAT's use of the address, not because of the protected acts.

329. Alleged detriment 12.11 was the letter from Mr Smallbone of 16 July 2015 (1227). The evidence before the Tribunal was that this was a letter written by Mr Reynolds in the name of Mr Smallbone. The letter does retain the pretence that it is written by Mr Smallbone, referring as it does to Mr Reynolds in the third person. It is a response to an email sent by the claimant to the respondent's Chief Executive. The letter does mix Employment Tribunal proceedings and other issues. However, the letter is largely an explanatory letter which responds to some of the matters raised by the claimant. The Tribunal does not find that the content of this letter was a detriment to the claimant and, in any event, the content responded to the claimant's

letter rather than being because of any protected act (or being materially influenced by them).

Allegation 12.12 (victimisation and detrimental treatment)

330. Allegation 12.12 relies upon the letter from Ms Stewart of 24 July 2015 as detrimental treatment. This was clarified as being the letter at 1292, there being two letters from Ms Stewart of the same date. The evidence was that this letter was drafted by Mr Reynolds. This is addressed in the facts section of this Judgment at paragraphs 126 and 127.

331. As confirmed above, what this letter required of the claimant was that all email correspondence from her was to be diverted to Mr Reynolds. Ms Stewart's evidence was that this was because the claimant had been sending a lot of emails to various different people in the Council and the respondent wanted to ensure that everything was being dealt with properly. The Tribunal does not accept that evidence as being a feasible or appropriate explanation as to why all of the correspondence should be directed through a lawyer employed by the Council (not least because it could have been achieved by correspondence being directed via someone more junior, the identified liaison manager, or a member of the HR team). The requirement that all email correspondence be directed through Mr Reynolds was detrimental to the claimant, particularly in the light of the fact that he had been conducting the defence of the proceedings brought by the claimant and in the light of the content of the correspondence from him to the claimant. As a result, the claimant was unable to correspond directly by email with the following people and unable to provide information to them by email without Mr Reynolds seeing it first: the person conducting her grievance investigation (Ms Grindlay); the person investigating the disciplinary allegations (Mr Ashworth); or her identified liaison (Ms Stewart). That was a detriment.

332. Why was the claimant subjected to this, and was it because of (or materially influenced by) one or more of the protected acts? There was no evidence presented to the Tribunal that this was something which the respondent applied as standard, or had required in other comparable cases. The Tribunal's view was that it fell outside the standard practice of most employers. Mr Reynolds involvement in correspondence had initially been because of the previous proceedings and the appeal in those proceedings (the Tribunal finds that the in-house solicitor would not have otherwise been involved). There is, in the view of the Tribunal, an intrinsic or direct link between: the protected acts, the proceedings and the appeal (including the claimant's refusal to agree to the request for one of the parties to be released from the appeal, which clearly caused the respondent's in-house legal team some issues); and the redirection of emails decision made by Mr Reynolds (included in the letter drafted by him but sent out by Ms Stewart).

333. The Tribunal finds that the requirement for a prima facie case is made out and the burden of proof is reversed taking into account: how unusual this requirement was; the fact that it fell outside what would be standard practice; the fact that it applied to correspondence with those conducting the grievance, the disciplinary process and the identified liaison manager (and not just to correspondence with other employees of the respondent); and the fact that the Tribunal did not accept Ms Stewart's explanation for it as being feasible/true. The Tribunal has not heard

evidence from Mr Reynolds as to why this was required, and on the basis that it does not find Ms Stewart's explanation to be feasible, the Tribunal concludes that the respondent has been unable to demonstrate that the detrimental treatment to which the claimant was subjected was not materially influenced by a protected act. As a result, the Tribunal finds that the requirement that all correspondence would be diverted to Mr Reynolds detailed in the letter of 24 July 2015 was a detriment as a result of the protected acts.

Allegation 12.13 (victimisation and detrimental treatment)

334. Allegation 12.13 was that the referral of the claimant to Greater Manchester Police on 10 August 2015 was detrimental treatment (1379). In the List of Issues this was erroneously referred to as a Channel Panel referral, when in fact what occurred on that date was that Ms Stewart sent a letter to the GMP Chief Constable reporting the issue. As is recorded at paragraph 144, the claimant consented to the referral and therefore this was not a detriment, nor was it materially influenced by the protected acts.

Allegation 12.14 (victimisation and detrimental treatment)

335. Issue 12.14 contains reference to a large amount of correspondence. The allegation recorded in the List of Issues is that the claimant was subject to a detriment in correspondence with her following her suspension on 24 July 2015, 30 July 2015, 7 September 2015 and continuing up to 29 June 2016. The respondent's representative in her submissions highlighted that this is a general and vague allegation and asserted that none of the correspondence referred to was related to the protected acts. The Tribunal agrees with the respondent's representative's assertion that the general reference to correspondence continuing up to 29 June 2016 cannot be effectively considered by the Tribunal as it is too vague. However, the Tribunal has considered the correspondence on the specific dates referred to.

336. The letter from Ms Stewart of 24 July 2015 (1294 as opposed to 1292) and Mr Reynolds' email of 30 July 2015 (1320) have already been determined to have been acts of discrimination on the grounds of race. The Tribunal has concluded that that correspondence was not sent because the claimant had done a protected acts (nor was it materially influenced by them), and therefore does not find that the contents of those documents amounted to victimisation.

337. The letter of 7 September 2015 (1550) was a letter sent by Ms Stewart, but in fact drafted by Mr Reynolds. It is addressed in the findings of fact at paragraphs 157 and 158. The letter rejected the claimant's assertion that the Channel Panel referral was made in bad faith partly by asserting that it was made for treatment for the claimant. As the Tribunal has confirmed above, the Tribunal does not understand that statement or find it to be true. As explained in paragraphs 157 and 158, Mr Reynolds rejected the claimant's complaints against himself personally (and Mr Smallbone) and stated that he/they had acted entirely appropriately and in accordance with their roles, without any process having been followed (and whilst holding out that this was the independent view of Ms Stewart, when it was a letter drafted for her by Mr Reynolds).

338. The Tribunal finds that the content of the letter of 7 September 2015 was detrimental treatment of the claimant. As identified in relation to allegation 12.12, Mr Reynolds involvement in the correspondence and decision-making was as a result of a direct link to the proceedings and the protected acts (and there is no evidence that he would otherwise have been involved, were it not for the protected acts and the proceedings). On the basis that the letter was purported to have been written by one person, but in fact in evidence it was clear that it had been drafted by someone else, the Tribunal finds that the burden of proof has shifted. The respondent has failed to present any evidence from the drafter of the letter about the its content, nor any genuine explanation for: the assertion that the Channel Panel referral was treatment; or why the issues raised in relation to Mr Reynolds and Mr Smallbone were considered to be concluded without any process or investigation. The Tribunal finds that, in this letter, the claimant was subjected to a detriment because she had done the protected acts.

Allegations 12.15 – 12.24 (victimisation and detrimental treatment)

339. Allegation 12.15 related to the contents of the provisional disciplinary report prepared by Mr Ashworth on 8 December 2015. As already recorded in relation to other allegations, the Tribunal finds that Mr Ashworth did the best he could in the circumstances, did not treat the claimant detrimentally by preparing the draft report, and wrote the report based upon what he thought he had identified in the course of his investigation. The Tribunal does not find the content to be detrimental and, even if it was, does not find it to have been written because of protected acts (or to have been materially influenced by them).

340. Ms Grindlay rejected the claimant's grievance in a letter of 16 December 2015 (1740). As identified in the findings above, Ms Grindlay undertook a grievance investigation which was limited to a very narrow ambit and only two issues. Ms Grindlay did not in fact meet with the claimant, although there were attempts to do so. Ms Grindlay's evidence was that she had no knowledge of the previous Tribunal proceedings. Ms Grindlay informed the Tribunal that Mr Reynolds had asked that all correspondence should be checked with him, but Ms Grindlay's evidence was clear that she made the decision and she did not believe that he amended anything substantial. The Tribunal find that there is no evidence that the content of Ms Grindlay's grievance outcome was materially influenced by the protected acts.

341. Allegation 12.17 referred to a complaint about the claimant on 23 December 2015 by Ms Walsh and allegations made by Mr Smallbone about the claimant. The Tribunal has heard no evidence whatsoever about issues being raised by Mr Smallbone or Ms Walsh on this date, being five months after the claimant had been suspended.

342. With regard to allegation 12.18, the Tribunal also heard no evidence about any costs warning made to the claimant in January 2016 in relation to her previous Tribunal proceedings. Costs were awarded in those proceedings on 15 June 2015. The difference in the dates suggests that this was a complaint about a later event. The claimant's representative did not expand upon this assertion in his submissions. The respondent representative asserted in submissions that any application for costs was part of the normal litigation process. The Tribunal has not heard evidence which would enable this complaint to be made out, but in any event does not find that a

costs warning was made because of any protected acts (or was materially influenced by them).

343. The claimant also relied upon the disciplinary investigation report of Mr Ashworth dated 24 February 2016, which recommended disciplinary proceedings, as being a detriment (allegation 12.19). As recorded above and as already explained in relation to allegation 12.15 (which concerned the draft report), the Tribunal found that Mr Ashworth did the best he could in the circumstances, and wrote the report based upon what he thought he had identified in the course of his investigation (not materially influenced by the protected acts).

344. The letter from Ms Donnan of 4 March 2016 (allegation 12.20) was the decision in response to a request to review the decision of the confidential disclosure panel. The panel had concluded that the quality of the original recording provided had been sufficiently clear to enable the panel to understand what was said. It did not review its decision or listen to the clearer recording provided. This correspondence, and the decision of, the confidential disclosure panel, had nothing whatsoever to do with protected acts relied upon, nor was it materially influenced by them. There was also no detriment to the claimant arising from a decision not to listen to a clearer recording.

345. Allegation 12.21 was that the respondent failed to consider properly the claimant's defence to the disciplinary allegations. The document which the claimant relied upon in this assertion (2239) was the lengthy document prepared by the claimant and her HR representative as a statement for the disciplinary hearing. Mr Skelton's evidence, which the Tribunal found to be genuine and credible, was that he did consider what the claimant put forward. Allegation 12.22 was that the conduct of the disciplinary hearing was a detriment. Allegation 12.24 was that the dismissal was materially influenced by the protected acts. The Tribunal's findings about Mr Skelton's evidence, the reasons for his decision, and the process followed, are addressed at paragraphs 180-186 above. The Tribunal does not find that that there was any detriment to the claimant in the way her arguments were considered, or the way the hearing was conducted. None of the consideration given to her arguments, the way the hearing was conducted, or the decision reached, was materially influenced by the protected acts.

346. In relation to allegation 12.23, there was no evidence whatsoever of anybody shouting the claimant down or saying what was alleged, during the disciplinary hearing. The Tribunal does not find that this occurred.

Victimisation and jurisdiction/time

347. The position in relation to jurisdiction and time is similar to that already outlined in relation to direct discrimination. If any of the matters occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016) the claims are out of time and the Tribunal only has jurisdiction to consider the claims if the claims were brought within such other period as the Tribunal determines just and equitable.

348. As a result of the findings made, the acts of victimisation found occurred on 24 July and 7 September 2015. Both detriments found are letters from Ms Stewart to the claimant, originally drafted by Mr Reynolds. The Tribunal finds them to amount to conduct extending over a period, which is therefore to be treated as being done on 7 September 2015 (being the end of that conduct). Albeit it might be arguable that the conduct extended throughout the time when the claimant's email correspondence was redirected to Mr Reynolds, as the allegation included in the List of Issues was focussed on the correspondence, the Tribunal has treated the end of the conduct as being on 7 September 2015 when the letter containing the decision was sent. As a result, the claim was entered out of time as the claim should have been entered (or ACAS early conciliation commenced) by 6 December 2015, when it was only entered on 23 March 2016.

349. The Tribunal has considered whether time should be extended on a just and equitable basis. Exactly the same considerations apply in respect of the victimisation claim, as applied for the direct race discrimination and are detailed above (save that the delay is slightly shorter in entering the claim). For exactly the same reasons as applied to the extension of time for direct race discrimination, the Tribunal has concluded that it is just and equitable to extend time for the victimisation found, particularly taking account of the balance of prejudice to the parties.

Disability

350. The respondent accepted that the claimant's endometriosis and gynaecological issues amounted to a disability at the relevant time. It is of relevance to the determination of the allegations contained within the List of Issues, that at no point in her pleaded case or in the clarification of the disabilities relied upon at the start of the hearing, was any reliance placed upon plantar fasciitis (or any issue with the claimant's feet) being a disability. It was not raised by the claimant's representative as being an additional issue and was not conceded by the respondent. Accordingly, the Tribunal has not considered any of the disability claims, based upon the claimant's issues with her feet being a disability.

351. As confirmed at paragraphs 7 and 22 and as was explained to the parties on the fourth day of hearing, an additional issue to be determined (in addition to those in the List of Issues) was whether or not the claimant's PTSD amounted to a disability at the relevant time as defined by section 6 of the Equality Act 2010? The relevant time has been considered by the Tribunal as being 24 July 2015 to 27 June 2016, based upon the dates of the alleged discrimination which it was determined relied upon PTSD (rather than gynaecological issues). Importantly, the relevant time falls after the claimant was suspended by the respondent.

352. In considering whether the claimant's PTSD was a disability at the relevant time, the Tribunal has considered: the claim form (30); the disability impact statement (91,98); the Scott Schedule (146, 159, 160 and 163); the claimant's witness statement (and in particular paragraphs 43 and 98 of that statement); the occupational health report of 18 November 2013 (609 – see paragraphs 46-48 above); the fact that the claimant did work in the customer facing role (see paragraph 51); the impact of recent bereavements on the claimant (paragraph 88); the claimant's evidence about the impact which her suspension had upon her mental health (paragraph 113); the fact that the claimant was signed off on ill health grounds

from 1 October 2015 and the occupational health assessment on 21 October 2015 (1610, see paragraph 162); and the letters from the claimant's GP of 16 August, 19 November and 17 December 2018 (1A-90, 91 and 225, see paragraph 195) inasmuch as they shed light on the relevant period, as the letters were written well after it ended.

353. The most important source of medical advice about the impact which the claimant's PTSD had upon her was the occupational health report of 18 November 2013 (609), being a report of which the respondent (and Ms Gardner in particular) was fully aware. As addressed at paragraph 48, whilst the report-writer's conclusion was that the claimant's day to day activities at the time were not substantially adversely affected by the claimant's PTSD, the report: made clear that the claimant was not fit to work in a customer facing reception area; as the impact was situational, clearly indicated that it would have such an affect if circumstances changed (such as the claimant fulfilling a customer-facing role); and said that, if the situation changed, it may impact upon the claimant's day to day activities substantially.

354. It is unfortunate that the Tribunal was not provided with a clear medical report which addressed specifically the impact of the claimant's PTSD upon her at the relevant time. However there is evidence that: the claimant has a lengthy history of PTSD; even in 2013 the impact of the condition was that she could not work in an environment with customers coming into her work-area, something which may indicate that there were normal day to day activities the claimant could not undertake; the claimant was adversely affected in 2018 by being placed in a customer-facing role (something the 2013 advisor predicted), bereavements, and the suspension (and related issues); in mid-2018, as described at paragraph 113, the claimant's mental health conditions had a significant adverse impact on her normal day to day activities; and in 2018 comparable impacts on the claimant's day to day activities are described by her GP and related back to her PTSD diagnosis.

355. Accordingly, the Tribunal finds that the claimant's PTSD was long term. It did have a substantial adverse effect on her ability to carry out normal day to day activities, at least from shortly after the suspension on 7 July 2015 and for a significant period thereafter (being unable to concentrate or read, undertake activities which are required to maintain personal well-being - see D16 of the Secretary of State's guidance - or organising thoughts and a plan of action – D19). The condition and its effects has been long-term, providing evidence that this was likely to be the case at the relevant time. That decision is reached without any reference to what the impact of the claimant's PTSD would have been on her if she had not taken medication or received treatment, as no such evidence was presented by the claimant.

356. In the light of the respondent's objections to the report of Dr Parker and how that was obtained, the Tribunal has reached the decision recorded above based upon the other materials and evidence cited. Having done so, the Tribunal has also then considered Dr Parker's report. The Tribunal is concerned about the lack of information available about what Dr Parker was informed or provided with prior to the preparation of the report. The Tribunal has found that the report provides corroboration for the decision reached (and provides other examples of the claimant's condition having a substantial adverse effect on her ability to carry out

normal day to day activities at the relevant time), but it was not part of the evidence considered initially when reaching its decision.

Direct disability discrimination and discrimination arising from disability

357. In considering the claimant's claims for disability discrimination, the Tribunal has considered each of the allegations of direct disability discrimination (allegations 15.1-15.17 and 16) alongside the equivalent allegation of discrimination arising from disability (19.1-19.17 and 20). The two sets of allegations are based upon the same alleged events. In doing so, however, the Tribunal has been mindful of the importance of applying both legal tests when considering each of the matters alleged.

358. For the claims of direct disability discrimination, the relevant alleged discriminator must know about the claimant's disability in order to treat her less favourably because of it (or at least suspect and make decisions because of it). For the claimant's gynaecological conditions and endometriosis, it appears that the decision-makers (or at least most of them) were aware of the claimant's disability (although not necessarily the details of it). Whilst Ms Gardner knew about the claimant's PTSD diagnosis, there was no evidence that those responsible for either her day to day management, or the decisions made in 2018, knew about the diagnosis. Mr Ashworth, Mr Skelton and Ms Stewart gave evidence in supplemental statements that they did not know about the claimant's PTSD, and the Tribunal finds that evidence to be true.

359. For discrimination arising from disability, the question is very different. As explained at issue 18, the question is whether the respondent did not know and could not have been expected to have known that the claimant had the disability. For the claimant's gynaecological conditions and endometriosis, there is no argument that the respondent was aware of the claimant's disability. For the PTSD, and as recorded above, from November 2013 the respondent was aware of the diagnosis and what the impact of the condition could be. Ms Gardner was aware of the report. As the claimant was then required in her role to undertake exactly the type of work which the occupational health advisor advised may change her symptoms and it (combined with other "*situational*" triggers) unsurprisingly, did so, the respondent could reasonably have been expected to know that the claimant had a disability (even though the writer of the 2013 report had advised that at the time the PTSD did not have the required effect in the absence of situational triggers). In addition, Mr Reynolds and Ms Stewart also recorded in correspondence their concerns about the claimant's mental health (see, for example, the letters of 24 and 30 July 2015 – see paragraphs 124 and 134 above) and, on that basis, the respondent has not shown that it could not reasonably have been expected to know that the claimant had a disability.

360. In terms of comparators for the direct discrimination claims, the claims have been considered for a hypothetical comparator, save for the issues relating to dress, where the claimant's identified actual comparators have also been considered.

Disability discrimination allegations 15.1-15.12 and 19.1-19.12 (relying upon the disability - endometriosis/gynaecological issues)

361. Allegations 15.1 and 19.1 arose from the allegation that the respondent made an application on 17 June 2014 for earlier Tribunal proceedings to be struck out because the claimant had not attended on 10 April 2014. The Tribunal heard no evidence whatsoever about an application made on 17 June 2014. The claimant's representative in his written submissions dated this as occurring on 11 April 2014, but that was not explained until the written submission document. In any event, there was no evidence presented to the Tribunal that the decision-maker in the proceedings knew about the claimant's endometriosis/gynaecological issues, or that any such application was because of those conditions; or was significantly (meaning more than trivially) influenced because of something arising in consequence of those conditions.

362. Allegations 15.2 and 19.2 were that the respondent challenged the claimant from January 2015 onwards about time spent away from her desk to use the toilet and in requiring her to provide evidence about the need for hospital appointments. The subject of the allegation reflects (although differs from) allegation 12.6. There was no dispute in the evidence that the claimant was on occasion challenged by Ms Walsh for being away from her desk for periods of time. There was no evidence this was related to the claimant's use of toilets or her endometriosis/gynaecological issues (see paragraph 83). A manager is entitled to question an employee about being away from their desk. As recorded in the findings of fact above, the Tribunal found Ms Walsh to be someone who tried her best as the claimant's manager and tried to address issues appropriately. Ms Walsh did not treat the claimant less favourably because of her disability. There was no evidence before the Tribunal that the occasions when the claimant was challenged about being away from her desk were significantly influenced by something arising in consequence of her disability.

363. The claimant was asked to provide evidence of her hospital appointments as part of the respondent's standard procedures for recording such absences. This was not: less favourable or unfavourable treatment; or because of the claimant's disability. There was not sufficient evidence from the claimant to prove that it was significantly influenced by something arising from her disability.

364. Allegations 15.3 and 19.3 were that on 3 March 2015 Mr Smallbone formed an unfavourable view that the claimant was going to other departments to talk, when that was not correct. As recorded at paragraphs 60 to 65, Mr Smallbone challenged the claimant about an occasion when she was away from her desk on 3 March 2015, but on the claimant's own evidence that was about her spending time empathising with a colleague or staying where requested, not her conditions. This was not less favourable treatment because of disability, nor was it unfavourable treatment significantly influenced by something arising from the claimant's disability.

365. Allegations 15.4 and 19.4 arose from the contents of an email sent by Mr Smallbone about the claimant on 4 March 2015. That email (783) followed from what Mr Smallbone had observed on 3 March (as addressed in the previous paragraph/allegations), was to Ms Gardner in HR, and said that he intended to meet with the claimant to talk things through. As with the previous allegation and based upon the claimant's own explanations, this was not because of the claimant's disability nor was it significantly influenced by something arising from that disability.

366. There was no evidence of a Business Hub meeting on 17 March 2015, which was the basis for allegations 15.5 and 19.5. There was a meeting on 12 March 2015 between the claimant, Mr Smallbone and Ms Gardner. That followed the matters addressed in respect of the previous two pairs of allegations. The meeting was not less favourable treatment or unfavourable treatment, which was effectively accepted by the claimant in the wording of her email of 19 March (812). In any event, as with the previous two pairs of allegations and based upon the claimant's own explanations, this was not because of the claimant's disability nor was it significantly influenced by something arising from that disability.

367. Allegations 15.6 and 19.6 arose from the conduct of moving and handling training on 15 April 2015, where the claimant alleged she was challenged for wearing trainers. This is addressed at paragraph 73 above. If the claimant was challenged, the reason Mr Smallbone did so was because she was wearing trainers (or what he perceived to be trainers in the light of the claimant's evidence that they were flat shoes and not trainers), not her disability. It was not less favourable treatment – the claimant has not evidenced that the named comparators were treated differently in respect of wearing trainers or shoes perceived to be trainers. There was not sufficient evidence from the claimant to prove that it was because of something arising from her disability: either that the reason for wearing flat shoes was because of endometriosis/gynaecological issues, as opposed to plantar fasciitis and issues with her feet; or because the something arising was a need to wear trainers or shoes that were perceived to be trainers, as opposed to other flat shoes. Such a conversation was a proportionate means of achieving the legitimate aim of the respondent that its employees dress professionally and smartly (particularly where, as with the claimant, she might meet members of the public).

368. Issues 15.7 and 19.7 have been addressed in detail as allegations of sexual harassment above. The Tribunal finds that the reason why Mr Majothi addressed the issues he perceived with the claimant's conduct towards Mr Dudley, was because he perceived that conduct to be inappropriate and he believed that it appropriately needed to be addressed. He did so in an appropriate manner. It was not because of the claimant's disability nor was it significantly influenced by something arising from the claimant's disability. Even on the claimant's own case, this conduct was not because of her disability or something arising from it, as she attributes it to occurring for an entirely different reason (addressed in respect of sexual harassment).

369. Issues 15.8 and 19.8 arose from a personal development review (PDR) meeting conducted by Laura Walsh on 13 May 2015 (the allegations also referred to emails, but it is not clear what those emails were). This meeting is addressed at paragraph 81. The claimant was spoken to about her attire, including wearing a hoodie and what were perceived to be trainers (albeit the claimant's evidence was that they were not). The Tribunal does not find a discussion about attire in a PDR meeting to be unfavourable treatment. There is no evidence that it was less favourable treatment, Mr White (one of the claimant's named comparators) was also spoken to about wearing a hoodie and trainers. There was insufficient evidence from the claimant to prove that it was significantly influenced by something arising from her disability: either that the reason for wearing hoodie or flat shoes was because of endometriosis/gynaecological issues (for the shoes as opposed to plantar fasciitis and issues with her feet); or because the something arising was a need to wear hoodie, trainers or shoes that were perceived to be trainers, as opposed to other

clothes or flat shoes. Such a conversation was a proportionate means of achieving the legitimate aim of the respondent that its employees dress professionally and smartly (particularly where, as with the claimant, she might meet members of the public). The claimant appeared to accept this for the hoodie – no action was taken following the meeting.

370. Issues 15.9 and 19.9 were about alleged inappropriate email comments between colleagues and a complaint by Mr Smallbone to Human Resources on 14 May 2015. This reflects allegation 12.3 and appears to relate to an email from a colleague of the claimant to the various managers in the Hub (962), addressed at paragraph 89. This was an email sent about the claimant's own email of the same date and it appears to have been sent in response to the claimant's own email. Mr Smallbone forwarded the email to Ms Gardner on the same day (971). In that email he was seeking advice. The content of that email was entirely appropriate, being a manager seeking the view of Human Resources on an issue in the team. There was nothing inappropriate about Mr Smallbone's email. These emails having nothing whatsoever to do with the claimant's disability (endometriosis/gynaecological issues), nor were they significantly influenced by something arising from her disability.

371. Allegations 15.10 and 19.10 were of the conduct of a Business Hub management meeting on 18 May 2015 at which the claimant alleged she was criticised. This reflects allegation 12.4. This was a meeting about the claimant for which there were no notes. The outcome of the meeting was that Mr Majothi emailed the claimant suggesting a date for a meeting to discuss her recent request for a referral to occupational health and the support that could be provided in the hub (1002). The meeting is addressed at paragraphs 90 and 91 above. The holding of the meeting was not necessarily the claimant being treated less favourably or unfavourably, and the outcome of the meeting was not unfavourable or less favourable. There is no evidence that what was said in the meeting was critical, unfavourable, or less favourable treatment of the claimant. There is insufficient evidence for either of these allegations to be made out.

372. Allegations 15.11 and 19.11 relied upon the reaction of Laura Walsh when the claimant explained on 19 May 2015 she was unable to attend work. The only evidence of Ms Walsh's reaction is an email to the claimant's colleagues informing them that she will not be in. There is a reaction to that email by Ms Scott (a colleague) to that email (1000 – see paragraph 92 above) – that was not the reaction of Ms Walsh as alleged. The Tribunal found the email in response to be indicative of issues between colleagues which should have been addressed by management. There was no evidence that the content of the email was because of the claimant's disability, or was significantly influenced by something arising from the claimant's disability (that is the content rather than the occasion upon which it was sent). There was no evidence of any adverse reaction from Ms Walsh, which is what is alleged; these allegations are not found.

373. Allegations 15.12 and 19.12 were that Laura Walsh challenged the claimant about frequent usage of the toilets from June 2015 onwards. This is the same allegation as has already been addressed for 15.2 and 19.2, but for a later period. There was no evidence of these issues arising in the later period. The findings have already been addressed more generally in relation to the earlier allegations.

Disability discrimination allegations 15.13 and 19.13 (relying upon the disability - endometriosis/gynaecological issues*)*

374. Allegations 15.13 and 19.13 were the two allegations which the claimant's representative had contended should be considered for the claimant's disability of PTSD instead of her endometriosis/gynaecological issues, but for which (based upon the pleaded case) the Tribunal did not accept that was the case (and also refused leave to amend the claim to rely upon PTSD). These allegations were: the failure of the respondent to make an occupational health referral; and in alleged inappropriate email comments made by Mr Smallbone on 10 June 2015 (1064).

375. The content of the email is addressed at paragraph 99. The Tribunal does not find there were any inappropriate comments made in the email of 10 June and, accordingly, that part of the allegations is not upheld.

376. The Tribunal has found that the request for an occupational health referral was made in the context of issues with the claimant being away from her desk, relating either to gynaecological issues (which are a disability) or issues with the claimant's feet (which have not been relied upon as a disability) (see paragraph 84). The respondent endeavoured to arrange for the claimant to meet first Mr Majothi, and then Mr Smallbone, before the referral was made. The 10 June email (1064) explained this as being because the respondent wished to understand the claimant's position and what she wished to achieve. The Tribunal understands why the claimant did not wish to discuss her gynaecological issues with Mr Smallbone (paragraph 98). In 10 June email Mr Smallbone stated that the referral would be made, but there was no evidence that it was. A referral was only made in October 2015 after the claimant had been signed off work on ill-health grounds (see paragraphs 161-162). The Tribunal cannot understand why the respondent did not progress the occupational health referral more quickly, and was not directed to evidence of anything in the respondent's policies for such a referral being delayed when it had been requested. In the light of the claimant's PTSD diagnosis and the allegations which led to the Channel Panel referral, it would have been both advisable and sensible for the respondent to have sought occupational health advice much earlier, and the Tribunal would have expected Ms Gardner to have ensured that an occupational health referral was made (however that observation relates to the PTSD and not the gynaecological issues, about which these allegations were raised).

377. There was no evidence that the reason for non-referral was the claimant's disability. The claimant has not demonstrated the "something more" which would reverse the burden of proof for this allegation of direct discrimination.

378. The Tribunal has considered very carefully how the allegation fits with the requirements of section 15 of the Equality Act 2010 (for discrimination arising from disability). The delay in referring was unfavourable treatment. However, the claimant has not shown that the reason for the unfavourable treatment was significantly influenced by something arising in consequence of the disability. The claimant's representative's submissions stated that the difficulties that Ms Muchilwa experienced at work arose from her endometriosis and the need for an occupational health referral was because of that disability. However, that does not satisfy what is required under section 15. Section 15 requires that the reason for the respondent subjecting the claimant to the unfavourable treatment must be significantly

influenced by something arising in consequence of the disability, and the claimant has not evidenced (or even submitted) what that "something arising" was (that being the reason for the failure to make the occupational health referral). Accordingly, the claim has not been made out.

379. The respondent in its submissions does not rely upon a legitimate aim for the non-referral to occupational health. It emphasised that Mr Smallbone apologised for the delay and explained the reasons for it up to the 10 June email. The Tribunal did not consider this allegation was limited to the delay to 10 June and cannot understand why the referral wasn't made after Mr Smallbone had said it would be on 10 June. The Tribunal believes that the referral should have been made earlier than 10 June, without the extra step being inserted of a requirement for a meeting with a manager first. The respondent has not justified the insertion of that extra step. Indeed, the Tribunal would observe that had this issue been raised as part of a claim for indirect disability discrimination, it appears likely that the claim would have succeeded (albeit of course the respondent may have raised additional arguments had such a claim be brought). However, as a claim for discrimination arising from disability and not indirect discrimination, the Tribunal does not find that the claimant was treated unfavourably because/significantly influenced by something arising in consequence of the claimant's disability.

Allegations 15.14 and 19.14 (relying upon PTSD as the disability)

380. Allegations 15.14 and 19.14 relied upon the correspondence with the claimant following her suspension on 24 July 2015, 30 July 2015, 7 September 2015 and continuing up to 29 June 2016. This mirrors allegation 12.14 and, as for that allegation, the Tribunal agrees with the respondent's representative's assertion that the general reference to correspondence continuing up to 29 June 2016 cannot be effectively considered by the Tribunal as it is too vague. However, the Tribunal has considered the correspondence on the specific dates referred to, which includes letters for which the Tribunal has already found direct discrimination because of race (allegations 8.6 and 8.8).

381. The Tribunal has considered the letter from Ms Stewart of 24 July 2015 (1294 as opposed to 1292). As recorded at paragraphs 119 to 125, this letter was sent by Ms Stewart to the claimant about making a Channel Panel referral to GMP, and the content followed from the document which contained the instruction from Ms Stewart to Ms Bowman on 17 July 2015 (1284D) to make the Channel Panel referral. Both the letter and the referral instruction were originally drafted by Mr Reynolds.

382. Ms Stewart did not know that the claimant had PTSD. There is no evidence that Mr Reynolds knew that the claimant had PTSD. The letter was not written because the claimant had PTSD. It was not less favourable treatment because of disability. The Tribunal has already found that the content of the letter amounted to less favourable treatment because of the claimant's race. Whilst the "something more" required to reverse the burden of proof was found for direct race discrimination, it has not been found for direct disability discrimination.

383. However, in terms of discrimination arising from disability, the 24 July letter includes the statement that the respondent had well-founded concerns about the claimant's health and need for appropriate help regarding her behaviour at work.

The 17 July memo leads with concerns about the claimant's statement about assassination, which it describes as an irrational belief. These documents and, in particular, the second to last paragraph of the 24 July letter, make a clear link between the claimant's mental health and the content of the correspondence.

384. As has already been recorded in this judgment, the Tribunal does not find that the content of the letter illustrated the conduct of a caring employer who wished to properly address health concerns. The Channel Panel referral procedure did not address concerns about health at all. How the respondent could (and should) have addressed health concerns, would have been to refer the claimant to occupational health, something which it had failed to do. The Tribunal believes that the letter should have been written in a far more conciliatory way, appropriate for an employee. In the context of an employee who had apologised as soon as the issue regarding the video had been raised with her by her manager, and for whom her manager had considered the issue closed over two months before the letter, the Tribunal does not consider the content of the letter to be supported by the facts.

385. The content of the letter of 24 July is clearly unfavourable treatment (that is telling the clamant she must either consent to the Channel panel referral or she will be reported to GMP anyway).

386. Ms Stewart herself clearly spells out that the reason for writing the letter is because of concerns about the claimant's mental health – that is concerns about the claimant's conduct, which was something arising from the claimant's disability. The claimant's assertions about assassination and paranoia about the actions of the respondent, were clearly something arising from her disability. That was part of the reason for the referral as spelt out in the instruction memo.

387. The respondent has not shown that the content of the letter was a proportionate means of achieving a legitimate aim. The respondent has not identified a legitimate aim, one is not referred to in the respondent's representative's submissions. In any event and even had there been some Prevent-related aim put forward, the action would not have been a proportionate means of achieving such an aim (inasmuch as it is possible to determine this without an actual aim being identified), taking into account the wording of the letter and the illusory option to volunteer, in the absence of the claimant meeting the criteria for referral.

388. The personal lack of knowledge of Ms Stewart and Mr Reynolds of the claimant's PTSD does not determine the claim for discrimination arising from disability, which is determined based upon the respondent's knowledge (as a whole). The respondent knew about the claimant's disability.

389. Having reached that decision in relation to the letter of 24 July 2015, the Tribunal has considered the letter of 30 July 2015 from Mr Reynolds (1320), but that does not add anything to the decision already reached, save for providing further evidence of the link made by the respondent between the claimant's state of mind and the referral being proposed. The letter of 7 September 2015 (1550) sent by Ms Stewart, but drafted by Mr Reynolds, also addressed the Channel Panel referral, but in relation to the claims for direct disability discrimination and discrimination arising from disability, add nothing to what has been determined with regard to 24 July letter.

Allegations 15.15, 15.17, 19.15 and 19.17 (relying upon PTSD as the disability)

390. Allegations 15.15 and 19.17 relied upon the contents of the provisional disciplinary report of 8 December 2015. This reflects allegations 8.12 and 12.19. As recorded in relation to that allegation, the Tribunal accepts that the provisional disciplinary investigation report (1615) was based upon the investigation undertaken by Mr Ashworth. It is perhaps unfortunate that the claimant's input had not been obtained prior to the provisional report being drafted, but Mr Ashworth had explained to the claimant the approach he intended to take and the claimant's input was subsequently considered before the report was finalised. The Tribunal finds that Mr Ashworth endeavoured to investigate in a fair and appropriate way. He did not know that the claimant had PTSD. The content of the report was not less favourable treatment on the grounds of disability. It was not unfavourable treatment because of something arising in consequence of the claimant's disability. There was no evidence before the Tribunal that either the showing of the video or the claimant's posting on her website were things arising in consequence of her disability.

391. Allegations 15.17 and 19.17 arose from the conduct of the disciplinary hearing on 19 April 2016. This mirrors allegation 12.22. The Tribunal's findings about Mr Skelton's evidence and the process followed at the hearing, is addressed at paragraphs 180-186 above. The Tribunal does not find that the claimant was treated less favourably or unfavourably in the way the hearing was conducted. Mr Skelton did not know that the claimant had PTSD. His conduct of the hearing did not amount to direct disability discrimination. The Tribunal accepts Mr Skelton's evidence that the claimant was given the opportunity to explain her case at the hearing. The claimant was accompanied by an HR person. There is no evidence that the claimant was treated unfavourably because of something arising from her disability.

Allegations 15.16 and 19.16 (relying upon the disability - endometriosis/gynaecological issues*)*

392. The List of Issues detailed these as being that the claimant was discriminated against by allegations by Mr Smallbone about the claimant and in Ms Walsh's reaction to a complaint from a colleague about the claimant on 23 December 2015. This reflects allegation 12.17. The Tribunal has heard no evidence whatsoever about issues being raised by Mr Smallbone or Ms Walsh on this date, being five months after the claimant had been suspended.

Discrimination arising from disability – jurisdiction/time limits

393. The Tribunal has found that the respondent breached section 15 of the Equality Act 2010 by treating the claimant unfavourably because of something arising in consequence of the claimant's disability in the content of the letter of 24 July 2015. As this occurred prior to 5 November 2015 the claim was entered outside the primary time limit. The claim should have been entered (or ACAS early conciliation commenced) by 23 October 2015, when it was only entered on 23 March 2016. The Tribunal only has jurisdiction to consider the claim if it was brought within such other period as the Tribunal determines just and equitable.

394. The Tribunal has considered whether time should be extended on a just and equitable basis. Exactly the same considerations apply in respect of the victimisation

claim, as applied for the direct race discrimination and are detailed above (save that the delay is very slightly longer in entering the claim). For exactly the same reasons as applied to the extension of time for direct race discrimination, the Tribunal has concluded that it is just and equitable to extend time, particularly taking account of the balance of prejudice to the parties.

Harassment related to disability

395. As identified in the List of Issues, for the claims of harassment, the first question is whether there are facts such that the Tribunal could conclude that, in relation to any of the listed allegations, the respondent subjected the claimant to unwanted conduct related to her disability which had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? If the answer to that question is yes, the burden of proof is reversed, and the second question is whether the respondent can nevertheless show that it did not contravene section 26 of the Equality Act 2010? For allegations 22.1-22.5 the disability being considered is the claimant's endometriosis/gynaecological issues; for 22.6 it is PTSD.

396. The first allegation of harassment (22.1) was that the respondent made an application on 17 June 2014 for earlier Tribunal proceedings to be struck out because the claimant had not attended on 10 April 2014. This reflects allegations 12.1, 15.1 and 19.1. The Tribunal heard no evidence whatsoever about an application made on 17 June 2014. The claimant's representative in his written submissions dated this as occurring on 11 April 2014, but that was not explained until the written submission document. In any event and as recorded for allegations 15.1 and 19.1, there was no evidence presented to the Tribunal that the decision-maker in the proceedings knew about the claimant's endometriosis/gynaecological issues. There was no evidence that any such application was related to that disability.

397. Issue 22.2 was of alleged harassment in challenging the claimant from January 2015 onwards about time spent away from her desk to use the toilet and in requiring her to provide evidence about the need for hospital appointments. Similarly, allegation 22.5 alleges that Ms Walsh challenged the claimant about frequent usage of the toilets from June 2015 onwards. These allegations are related to 12.6, 15.2, 15.12, 19.2 and 19.12. There was no dispute in the evidence that the claimant was on occasion challenged by Ms Walsh for being away from her desk for periods of time. There was no evidence this was related to the claimant's use of toilets or her endometriosis/gynaecological issues (see paragraph 83). A manager is entitled to question an employee about being away from their desk. As recorded in the findings of fact above, the Tribunal found Ms Walsh to be someone who tried her best as the claimant's manager and tried to address issues appropriately.

398. Harassment allegation 22.3 was in the content of emails and a PDR meeting with Ms Walsh on 13 May 2015. This relates to allegations 15.8 and 19.8. It is not clear what the emails referred to are, but the personal development review meeting conducted by Laura Walsh on 13 May 2015 is addressed at paragraph 81. The claimant was spoken to about her attire, including wearing a hoodie and what were perceived to be trainers (albeit the claimant's evidence was that they were not). There was not sufficient evidence from the claimant to prove that this was related to

her disability and that the reason for wearing hoodie or flat shoes was because of endometriosis/gynaecological issues (for the shoes as opposed to plantar fasciitis and issues with her feet). The purpose of the conversation was not to violate the claimant's dignity, or create an intimidating, hostile, degrading, humiliating or offensive environment for her. Even if the effect of such a conversation with her manager in a PDR was to do so (and there is no credible evidence that it did), the Tribunal does not find it reasonable for it to do so in the circumstances of a PDR discussion with her manager (which wasn't formally recorded and after which no action was taken).

399. The claimant relied upon inappropriate email comments between colleagues, and a complaint by Mr Smallbone to Human Resources on 14 May 2015, as allegation 22.4, which relates to allegations 12.3, 15.9 and 19.9. This appears to relate to an email from a colleague of the claimant to the various managers in the hub (962), addressed at paragraph 89. This was an email sent about the claimant's own email of the same date and it appears to have been sent in response to the claimant's own email. Mr Smallbone forwarded the email to Ms Gardner on the same day (971). In that email he was seeking advice. Neither email was related to the claimant's disability. The content of neither email had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

400. Allegation 22.6 was the sole harassment allegation which relied upon PTSD as the disability, which was that the conduct of the disciplinary hearing on 19 April 2016 was harassment related to disability. The way in which the disciplinary hearing was conducted had nothing whatsoever to do with the claimant's disability. Mr Skelton did not know that the claimant had PTSD and it was not raised in the disciplinary hearing at all. Insofar as he was able, he conducted a reasonable hearing. There is nothing about the way in which it was conducted which had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

Harassment related to disability – jurisdiction/time issues

401. In the light of the fact that the Tribunal has found that the claimant was not subjected to unlawful harassment by reason of disability as alleged, it is not necessary for the Tribunal to consider the jurisdiction/time issues in relation to those allegations (albeit for all of the allegations except for 22.6, the claims were brought outside the primary time limit for the matters alleged if they were not part of a continuing act).

The duty to make reasonable adjustments

402. Issue 25 asks whether the respondent applied a provision, criterion or practice (applied to the claimant at a PDR meeting on 13 May 2015) of preventing staff from wearing trainers? They did apply such a PCP, albeit that it was not recorded in a document. Evidence of such a PCP was provided in what was said in the meeting of 6 May 2015 and in what Ms Walsh evidenced that she raised with the claimant on (or around) 13 May 2015 in the PDR meeting. This was a policy applied to the hub and not just the claimant personally.

403. Issue 26 was whether that provision, criterion or practice placed the claimant at a substantial disadvantage compared to a person without her disability because her disability meant that she needed to wear such footwear to avoid exacerbating her symptoms? The disability being considered for this question is the claimant's endometriosis/gynaecological issues (and not plantar fasciitis or anything to do with her feet – which was not a disability relied upon). There was no evidence provided to the Tribunal that the PCP of preventing staff from wearing trainers did place the claimant at a substantial disadvantage compared to a person without her disability, for the disability relied upon. There was also no evidence that not being able to wear trainers placed the claimant at a disadvantage as opposed to wearing other flat-shoes. Ms Walsh told the claimant to wear flat-shoes which were not trainers. The claimant's evidence was that she wore flat-shoes which were not trainers. The no-trainer policy did not place those with endometriosis/gynaecological issues at a disadvantage with those who did not have that condition.

404. As the Tribunal has found that the substantial disadvantage alleged did not arise from the PCP for those with the claimant's disability, the Tribunal does not need to determine the issue of whether allowing trainers at work would have been a reasonable adjustment for the respondent to have to have made to avoid that disadvantage. It also does not need to decide issue 27 about knowledge, however it would not appear that issue 27 would have been one upon which the respondent would have otherwise been able to rely. The Tribunal has also not needed to decide the issue of time limits/jurisdiction, albeit that as the last date upon which the claimant was in work and the PCP would have been applied to her was 7 July 2015, the claimant would have required the Tribunal to determine that it would have been just and equitable to extend time in order for the Tribunal to have had jurisdiction to consider her claim.

Automatically unfair dismissal – public interest disclosure

405. For the claimant's claim for automatic unfair dismissal to succeed under section 103A of the Employment Rights Act 1996, the Tribunal would need to decide that the principal reason for the dismissal of the claimant was that she made one or more protected disclosures. The reason why Mr Skelton dismissed the claimant was because of what she had posted on her website and her refusal to take down that information after being given instructions by Ms Stewart to do so. It was not any, or all, of: the email to P Friggieri of 13 June 2013 (and there was no evidence that Mr Skelton was even aware of that email); the letter copied to Ms Donnan of 5 January 2015; or the letter to the chief executive of 11 January 2016.

Ordinary unfair dismissal

406. Mr Skelton made the decision to dismiss the claimant and he did so because of the claimant's conduct. His decision (as explained in his decision letter (2487)) was that the claimant should be dismissed for what had been found in the second and third disciplinary allegations regarding the website posts and the failure to follow management instructions, not because of the video. The Tribunal accepts his evidence as to why he dismissed the claimant. He had a genuine belief that the claimant was guilty of misconduct and that belief was based upon reasonable grounds: evidenced by Mr Ashworth's report; and the outcome letter in which Mr Skelton describes the decision he reached and why. The evidence of the appeal, the

well-explained appeal decision letter (2572), and the evidence of Mr Allan, also provided confirmation of the reasonableness of the grounds for Mr Skelton's belief.

407. The Tribunal also finds that the respondent carried out a reasonable investigation in all the circumstances. Mr Ashworth's investigation was a reasonable one. He genuinely considered the matters he was investigating and undertook a well-documented investigation as best as he was able. At the disciplinary hearing, the claimant (and her representative) were able to ask witnesses to attend, and were able to ask questions of a number of witnesses who did attend and from whom the dismissing officer heard in person. The claimant's representative at the Tribunal submitted that the investigation was limited, constrained and inadequate. The Tribunal does not find that to be the case.

408. One issue raised by the claimant's representative and emphasised by him, was the timing of the addition of the allegation that the claimant had failed to comply with the management instruction on 24 August 2015, which was made on 24 August (see paragraph 155). It is certainly the case that the allegation was added prematurely. However, the claimant did not in fact comply with the instruction, so that the timing of the additional allegation of failure to comply with a management instruction, made no material difference to the outcome. The Tribunal finds that Mr Skelton was the decision-maker who reached his findings based solely upon his own view of the hearing he conducted and, as a result, the speed with which the allegation was added did not evidence that his decision (made much later) was premeditated or unfair.

409. The claimant's representative also submitted that there was no real or proper consideration or investigation of: the source or power of the management instruction; of the right to freedom of expression and to private life; or that it was conduct outside work. In the Tribunal's view these points were not such as to demonstrate that the respondent did not carry out a reasonable investigation. The claimant (and her representative) were able to make these points during the investigation (in the document she prepared), in advance of the hearing (in her statement of case), during the hearing, or indeed during the appeal process. The fact that the claimant placed material on her website outside work, and the issues relating to that, were considered by Mr Skelton (and the appeal panel). The conclusion reached relied upon the Code of Conduct for officers and the clear and appropriate distinction which was drawn in that code (see paragraph 154 and 185). A different employer might have taken a different view of whether or not what the claimant posted and her refusal to take it down (in its entirety) when requested: was misconduct; did bring the respondent into dispute to the extent required to dismiss; or should result in the sanction of dismissal. However, the fact that a different outcome might have been reached, does not mean that the investigation was not reasonable (nor does it mean that the decision was not one which a reasonable employer could reach within the range of reasonable responses).

410. The issue which was most strongly emphasised by the claimant's representative as meaning that the dismissal was unfair, was what he contended in his submissions was: no regard was had or given to the claimant's mental ill health, which was known by Ms Gardner and Ms Steward and recognised by the respondent from mid-2015 but disregarded; such evidence was highly material to the investigation of why the conduct had occurred and significantly explained it; and the

background in which the assertions were made by the claimant, including her mental health, was not considered. The Tribunal has considered carefully whether the fact that the claimant's background ill-health was never addressed as part of the disciplinary hearing, rendered the dismissal unfair. Mr Allan accepted it would have been better if he had known about the claimant's history of PTSD. However, neither the claimant nor her representative raised the issue of her ill-health at any time: to the investigator; during the disciplinary hearing; or during the appeal. If the claimant had wanted to explain the misconduct alleged by reference to her ill-health, there was a full and appropriate opportunity for her to do so. In practice, if that was her explanation for the misconduct or the reason why she wanted to contend she should not be dismissed, there was an onus on her (or her representative) to raise it. In any event, the fact that the claimant's confidential medical history was not identified during the investigation, did not mean that the investigation was not a reasonable one in all the circumstances. The fact that it would, objectively-speaking, have been preferable if that history had been brought to the attention of Mr Skelton and/or the appeal panel, also did not mean that a reasonable investigation was not carried out. Had the claimant raised her health as being an explanation for her actions and had the respondent not looked into it, that would have represented a failure to carry out a reasonable investigation – but that is not what happened in this case.

411. The Tribunal has found that the decision to dismiss for the misconduct found (upon which the decision was reached), does fall within the range of reasonable responses of a reasonable employer. The Tribunal has reminded itself that it must not substitute its own view for that of the employer. On the basis that it must not do so, the Tribunal does find the decision reached to be one within the relevant range taking account of the reasons explained by Mr Skelton (and those subsequently given in the appeal decision). Where a Council employee posted statements such as those posted by the claimant, and refused to follow instructions to take those statements down, dismissal was, in the view of the Tribunal, within the range of sanctions which a reasonable employer could reasonably take, even when the claimant's rights to freedom of expression and to a private life outside work were taken into account.

Breach of contract and notice pay

412. The test in respect of the claim for breach of contract is very different from that which applies to the fairness of the dismissal, albeit that it is based upon the same facts. The List of issues recorded the question as being: can the respondent show that it was entitled to dismiss the claimant without the notice to which she was entitled under her contract because she was guilty of gross misconduct which amounted to a repudiatory breach? As a result of what she posted on her website and what she said about her employer (particularly in the light of what was said in the Code of Conduct), the Tribunal does find that the claimant fundamentally breached her contract of employment. Accordingly, the respondent was entitled to dismiss her without notice. Had the question been whether the claimant fundamentally breached her contract of employment by showing her colleague the video in April 2019, the Tribunal would not have found that what the claimant did would have amounted to a fundamental breach, and in any event would have found that the respondent waived the breach when Ms Walsh addressed it with the claimant and no further action was taken. However, based upon the actions which

actually led to the decision to dismiss, the Tribunal finds that the contract was fundamentally breached by the claimant.

Conclusions

413. As outlined above and for the reasons given, the claimant succeeds in the following claims (but does not succeed in the other claims brought):

- The respondent did treat her less favourably because of race (direct discrimination) in: Mr Smallbone's conduct of the suspension of the claimant on 7 July 2015; the decision to make a referral to the Channel Panel communicated on 17 and 24 July 2015; the terms of a letter stated to be from Ms Stewart of 24 July 2015; an email from Mr Reynolds of 29 July 2015; and in an email from Mr Reynolds on 30 July 2015;

- The respondent did subject the claimant to detriments because of one or more protected acts (victimisation) by: a letter stated to be from Ms Stewart of 24 July 2015; and in correspondence with the claimant of 7 September 2015; and

- The respondent did treat the claimant unfavourably because of something arising in consequence of her disability (PTSD) in correspondence with the claimant on 24 July 2015.

414. The remedy or remedies to be awarded to the claimant as a result, will be determined at a future hearing.

Employment Judge Phil Allen

Date: 22 March 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

24 March 2021

FOR THE TRIBUNAL OFFICE

ANNEX
List of Issues

Part 1: Protected disclosure detriment – section 47B Employment Rights Act 1996

Disclosures

1. Did the claimant make a protected disclosure on any of the following occasions in that:

(a) She disclosed information,

(b) Which she reasonably believed tended to show that a person has failed, was failing or was likely to fail to comply with any legal obligation to which he was subject, or that the health and safety of any individual has been, was being or was likely to be endangered; and

(c) Which she reasonably believed was disclosed in the public interest, and

(d) Which was disclosed to her employer or another person falling within sections 43C-43G:

1.1 In email correspondence of 13 June 2013;

1.2 In an email to Mr Soren of 19 December 2014;

1.3 In a letter to the Deputy Chief Executive of the respondent on 5 January 2015;

1.4 During the disciplinary hearing on 14 May 2015;

1.5 In an email to the Care Quality Commission on 5 August 2015;

1.6 In postings made on her website as referred to in a letter from the respondent of 14 August 2015;

1.7 In an email to the Care Quality Commission on 27 August 2015;

1.8 In a letter to the Chief Executive of 11 January 2016?

Detriments

2. If the claimant made one or more protected disclosures, was she subjected to a detriment by any act of her employer in any of the following alleged respects:

2.1 In the decision to suspend her on 7 July 2015 and subsequent reviews maintaining that suspension; and/or

2.2 In the decision of 24 February 2016 to bring disciplinary charges against the claimant?

Causation

3. If so, bearing in mind the obligation on the respondent to show the ground on which any act was done, was any such act done on the ground that the claimant had made a protected disclosure?

Time Limits

4. Insofar as any of the matters for which the claimant seeks a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), can the claimant show that the act or failure to act was part of a series of similar such acts or failures to act, of which the last occurred on or after that date?

Part 2: Harassment related to sex – section 26 Equality Act 2010

5. Are the facts such that the Tribunal could conclude that on any of the following occasions the claimant was subjected to unwanted treatment related to her sex which had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her:

5.1 In requests made by Anwar Majothi on four different occasions between February and May 2015 to meet the claimant outside work to discuss how he could help her with work related problems;

5.2 In Anwar Majothi accusing the claimant on 15 or 17 April 2015 of bullying Rob Dudley;

5.3 In Anwar Majothi sending the claimant a meeting request to take place on 19 May 2015 and then holding the meeting in the claimant's absence to discuss how unacceptable her behaviour had been?

6. If so, can the respondent nevertheless show that it did not contravene section 26?

7. Insofar as any of the matters for which the claimant seeks a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), can the claimant show that:

(a) They formed part of conduct extending over a period which ended within three months of presentation; or

(b) That it would be just and equitable for the Tribunal to allow a longer period for bringing her claim?

Part 3: Direct discrimination because of race and/or because of religious belief – section 13 Equality Act 2010

8. Are the facts such that the Tribunal could conclude that in relation to any or all of the following allegations the claimant was treated less favourably because of race

or because of religious belief as per the details set out in her further particulars of 23 August 2016:

8.1 In Mr Smallbone's conduct of her suspension on 7 July 2015;

8.2 In the decision to make a referral to the Counter Terrorism Unit communicated on 8 July 2015 (*race only: religious belief complaint struck out by EJ Feeney*);

8.3 In the discussion held by the respondent with Sean Reynolds on 9 July 2015;

8.4 In the pre-judgment of the claimant's case evidenced by a note of 9 July 2015;

8.5 In an email from Sean Reynolds of 17 July 2015;

8.6 In the terms of a letter from Andrea Stewart of 24 July 2015;

8.7 In an email from Sean Reynolds of 29 July 2015;

8.8 In the questioning of the claimant's state of mind by Sean Reynolds on 30 July 2015;

8.9 In the disclosure of concerns under section 26 of the Counter Terrorism and Security Act 20105 sent via Detective Constable Darren Howarth on 10 August 2015 (*race only: religious belief complaint struck out by EJ Feeney*);

8.10 In correspondence from Andrea Stewart of 7 September 2015 about the purpose of a channel panel referral;

8.11 In a suspension review of 8 December 2015;

8.12 In the contents of a provisional disciplinary investigation report of 8 December 2015?

9. If so, can the respondent nevertheless show that it did not contravene section 13?

10. Insofar as any of the matters for which the claimant seeks a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), can the claimant show that:

(a) They formed part of conduct extending over a period which ended within three months of presentation; or

(b) That it would be just and equitable for the Tribunal to allow a longer period for bringing her claim?

Part 4: Victimisation – section 27 Equality Act 2010

11. Can the claimant establish that she did a "protected act" in any or all of the following alleged respects:

(a) In bringing Employment proceedings under the Equality Act 2010 under case number 2414468/2012 (*conceded by the respondent)*;

(b) In refusing to accept the removal of Individual Solutions SK as a named respondent in those proceedings; and

(c) In pursuing an appeal to the Court of Appeal against the decision of the Employment Tribunal in those proceedings?

12. If so, are the facts such that the Tribunal could conclude that the respondent subjected the claimant to a detriment because of a protected act in any or all of the following alleged respects:

12.1 In making an application on 17 June 2014 for earlier Tribunal proceedings to be struck out because the claimant had not attended on 10 April 2014;

12.2 Requiring the claimant to continue to work in the Business Hub after the Judgments of the Tribunal and the Employment Appeal Tribunal in case number 2414468/2012;

12.3 In inappropriate email comments between colleagues, and a complaint by Mr Smallbone to Human Resources on 14 May 2015;

12.4 In the conduct of a Business Hub management meeting on 18 May 2015 at which the claimant was criticised;

12.5 In the failure to make an Occupational Health referral and in inappropriate email comments by Mr Smallbone on 10 June 2015;

12.6 In Laura Walsh challenging the claimant about frequent usage of the toilets from June 2015 onwards;

12.7 In the decision to suspend the claimant made on 7 July 2015;

12.8 In the letter from Sean Reynolds dated 15 July 2015;

12.9 In Sean Reynolds "advising managers" about the claimant;

12.10 In Sean Reynolds contacting the claimant using her private email address;

12.11 In the letter from Rob Smallbone of 16 July 2015;

12.12 In the letter from Andrea Stewart of 24 July 2015;

12.13 In the Channel Panel referral to Greater Manchester Police of 10 August 2015;

12.14 In correspondence with the claimant following her suspension on 24 July 2015, 30 July 2015, 7 September 2015 and continuing up to 29 June 2016;

12.15 In the contents of a provisional disciplinary report of 8 December 2015;

12.16 In the decision of Clare Grindlay in a letter of 16 December 2015 to reject the grievance lodged by the claimant on 24 July 2015;

12.17 In allegations by Mr Smallbone about the claimant and in Laura Walsh's reaction to a complaint from a colleague about the claimant on 23 December 2015;

12.18 Raising the possibility of a costs warning with the claimant in January 2016;

12.19 In the disciplinary investigation report of Peter Ashworth dated 24 February 2016 recommending disciplinary proceedings;

12.20 In the letter from the Deputy Chief Executive, Ms Donnan, dated 4 March 2016 rejecting the claimant's challenge to the accuracy of the minutes of a team meeting on 6 May 2015;

12.21 In the failure to consider properly the claimant's defence to the disciplinary allegations;

12.22 In the conduct of a disciplinary hearing on 19 April 2016?

12.23 In the respondent's legal adviser shouting the claimant down in the disciplinary hearing, saying "ignore her, we don't where she got that document from"; and

12.24 In dismissing the claimant;

13. If so, can the respondent nevertheless show that it did not contravene section 27?

14. Insofar as any of the matters for which the claimant seeks a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), can the claimant show that:

(a) They formed part of conduct extending over a period which ended within three months of presentation; or

(b) That it would be just and equitable for the Tribunal to allow a longer period for bringing her claim?

Part 5: Direct disability discrimination – section 13 Equality Act 2010

15. In relation to any of the following allegations contained in the further particulars from the claimant of 23 August 2016, are the facts such that the Tribunal

could conclude that because of her disability the respondent treated the claimant less favourably than it treated or would have treated the comparators identified in the further particulars:

15.1 The respondent made an application on 17 June 2014 for earlier Tribunal proceedings to be struck out because the claimant had not attended on 10 April 2014;

15.2 The respondent challenged the claimant from January 2015 onwards about time spent away from her desk to use the toilet and in requiring her to provide evidence about the need for hospital appointments;

15.3 On 3 March 2015 Mr Smallbone formed an unfavourable view that the claimant was going to other departments to talk when that was not correct;

15.4 The contents of an email sent by Mr Smallbone about the claimant on 4 March 2015;

15.5 The conduct of a Business Hub meeting on 17 March 2015;

15.6 The conduct of Moving and Handling Evacuation training on 15 April 2015 where the claimant was challenged for wearing trainers;

15.7 The complaint made by Anwar Majothi on 21 April 2015 because the claimant refused to meet him outside work;

15.8 The content of emails and a PDR meeting by Laura Walsh on 13 May 2015;

15.9 Inappropriate email comments between colleagues and a complaint by Mr Smallbone to Human Resources on 14 May 2015;

15.10 The conduct of a Business Hub management meeting on 18 May 2015 at which the claimant was criticised;

15.11 The reaction of Laura Walsh when the claimant explained on 19 May 2015 she was unable to attend work;

15.12 Laura Walsh challenged the claimant about frequent usage of the toilets from June 2015 onwards;

15.13 The failure to make an Occupational Health referral and in inappropriate email comments by Mr Smallbone on 10 June 2015;

15.14 The correspondence with the claimant following her suspension on 24 July 2015, 30 July 2015, 7 September 2015 and continuing up to 29 June 2016;

15.15 The contents of a provisional disciplinary report of 8 December 2015;

15.16 The allegations by Mr Smallbone about the claimant and in Laura Walsh's reaction to a complaint from a colleague about the claimant on 23 December 2015;

15.17 In the conduct of a disciplinary hearing on 19 April 2016?

16. If so, can the respondent nevertheless show there was no contravention of section 13?

17. Insofar as any of the matters for which the claimant seeks a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), can the claimant show that:

(a) They formed part of conduct extending over a period which ended within three months of presentation; or

(b) That it would be just and equitable for the Tribunal to allow a longer period for bringing her claim?

Part 6: Discrimination arising from disability – section 15 Equality Act 2010

18. Can the respondent show that at the material time it did not know and could not reasonably have been expected to have known that the claimant had a disability?

19. If not, are the facts such that the Tribunal could conclude that in relation to any of the following allegations the respondent treated the claimant unfavourably because of something arising in consequence of her disability:

19.1 The application on 17 June 2014 for earlier Tribunal proceedings to be struck out because the claimant had not attended on 10 April 2014;

19.2 Challenging the claimant from January 2015 onwards about time spent away from her desk to use the toilet and in requiring her to provide evidence about the need for hospital appointments;

19.3 On 3 March 2015 Mr Smallbone formed an unfavourable view that the claimant was going to other departments to talk when that was not correct;

19.4 In the contents of an email sent by Mr Smallbone about the claimant on 4 March 2015;

19.5 In the conduct of a Business Hub meeting on 17 March 2015;

19.6 In the conduct of Moving and Handling Evacuation training on 15 April 2015 where the claimant was challenged for wearing trainers;

19.7 In the complaint made by Anwar Majothi on 21 April 2015 because the claimant refused to meet him outside work;

19.8 In the content of emails and a PDR meeting by Laura Walsh on 13 May 2015;

19.9 In inappropriate email comments between colleagues, a complaint by Mr Smallbone to Human Resources on 14 May 2015;

19.10 In the conduct of a Business Hub management meeting on 18 May 2015 at which the claimant was criticised;

19.11 In the reaction of Laura Walsh when the claimant explained on 19 May 2015 she was unable to attend work;

19.12 In Laura Walsh challenging the claimant about frequent usage of the toilets from June 2015 onwards;

19.13 In the failure to make an Occupational Health referral and in inappropriate email comments by Mr Smallbone on 10 June 2015;

19.14 In correspondence with the claimant following her suspension on 24 July 2015, 30 July 2015, 7 September 2015 and continuing up to 29 June 2016;

19.15 In the contents of a provisional disciplinary report of 8 December 2015;

19.16 In allegations by Mr Smallbone about the claimant and in Laura Walsh's reaction to a complaint from a colleague about the claimant on 23 December 2015;

19.17 In the conduct of a disciplinary hearing on 19 April 2016?

20. If so, can the respondent nevertheless show that it did not contravene section 15, whether because the unfavourable treatment was a proportionate means of achieving a legitimate aim, or otherwise?

21. Insofar as any of the matters for which the claimant seeks a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), can the claimant show that:

(a) They formed part of conduct extending over a period which ended within three months of presentation; or

(b) That it would be just and equitable for the Tribunal to allow a longer period for bringing her claim?

Part 7: Harassment related to disability – section 26 Equality Act 2010

22. Are the facts such that the Tribunal could conclude that in relation to any of the following allegations the respondent subjected the claimant to unwanted conduct related to her disability which had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

22.1 In making an application on 17 June 2014 for earlier Tribunal proceedings to be struck out because the claimant had not attended on 10 April 2014;

22.2 In challenging the claimant from January 2015 onwards about time spent away from her desk to use the toilet and in requiring her to provide evidence about the need for hospital appointments;

22.3 In the content of emails and a PDR meeting by Laura Walsh on 13 May 2015;

22.4 In inappropriate email comments between colleagues, a complaint by Mr Smallbone to Human Resources on 14 May 2015;

22.5 In Laura Walsh challenging the claimant about frequent usage of the toilets from June 2015 onwards;

22.6 In the conduct of a disciplinary hearing on 19 April 2016?

23. If so, can the respondent nevertheless show that it did not contravene section 26?

24. Insofar as any of the matters for which the claimant seeks a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), can the claimant show that:

(a) They formed part of conduct extending over a period which ended within three months of presentation; or

(b) That it would be just and equitable for the Tribunal to allow a longer period for bringing her claim?

Part 8: Breach of duty to make reasonable adjustments – sections 20 and 21 Equality Act 2010

25. Did the respondent apply a provision, criterion or practice (applied to the claimant at a PDR meeting on 13 May 2015) of preventing staff from wearing trainers?

26. If so, did that provision, criterion or practice place the claimant at a substantial disadvantage compared to a person without her disability because her disability meant that she needed to wear such footwear to avoid exacerbating her symptoms?

27. If so, can the respondent show that it did not know and could not reasonably have been expected to have known:

(a) That the claimant was a disabled person; and

(b) That she was likely to be placed at that disadvantage?

28. If not, did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage? The adjustment for which the claimant contends was to have allowed her to wear trainers at work.

29. Insofar as any of the matters for which the claimant seeks a remedy occurred prior to 5 November 2015 (more than three months prior to the presentation of her claim, allowing for the effect of early conciliation which began on 4 February 2016), can the claimant show that:

(a) They formed part of conduct extending over a period which ended within three months of presentation; or

(b) That it would be just and equitable for the Tribunal to allow a longer period for bringing her claim?

Part 9: Unfair dismissal – Part X Employment Rights Act 1996

30. What was the reason or principal reason for the dismissal of the claimant? Was it:

(a) If the claimant made one or more protected disclosures, a protected disclosure, meaning dismissal is automatically unfair under section 103A;

(b) A potentially fair reason relating to the claimant's conduct, in which case the question of fairness arises under section 98; or

(c) Neither of the above, in which case the dismissal is unfair under section 98?

31. If the respondent shows that it dismissed the claimant for a potentially fair reason relating to her conduct, was the dismissal fair or unfair under section 98(4)?

Part 10: Breach of Contract – Notice Pay

32. Can the respondent show that it was entitled to dismiss the claimant without the notice to which she was entitled under her contract because she was guilty of gross misconduct which amounted to a repudiatory breach?

Part 11: Remedy

33. If any of the above complaints succeed, what is the appropriate remedy?