# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms A M Boyo**

**Respondent:** **Peabody**

**Heard at:** **East London Hearing Centre**

**On:** **Tuesday to Friday 5 to 8 February**
**Tuesday 12 February & Wednesday 13 March 2019 (Tribunal only)**

**Before:** **Employment Judge Prichard**
**Members:** **Ms J Owen**
**Mr G Tomey**

**Representation**

Claimant: Mr C Boyo (claimant's uncle)

Respondent: Mr D Roderick (counsel, instructed by Mr R Vincent, RVA Consultants, Surrey

## RESERVED JUDGMENT

**It is the unanimous judgment of the Employment Tribunal that the claimant's claims of disability discrimination under the Equality Act 2010 all fail and are dismissed.**

## REASONS

1 The claimant, Aniekan Boyo, is 27 years old. She started work for the respondent in October 2014. She is still there today. She is represented here today by her uncle, Christopher Boyo.

2 Mr Boyo has a Law Degree and has personal experience of tribunal litigation. Interestingly the claimant's father is a qualified lawyer also. The claimant is not herself

legally minded. She has a degree in education and child development from the University of Greenwich.

3 The claimant's claim of disability discrimination is based upon her condition of epilepsy as we shall describe throughout the judgment.

4 Originally, the claimant brought a race discrimination claim however, that was dismissed at a hearing on 12 October 2018 before Employment Judge Hyde. It had been withdrawn by an email sent on 27 September 2018, on the claimant's behalf.

5 Originally too, the claimant had included her line manager at the time, Ms Claire Baker, as an individual respondent. Ms Baker was removed as an individual respondent following a hearing before Judge Gilbert on 28 August 2018. There was no suggestion that the respondent would not accept full liability for any of the actions of Ms Baker as the claimant's line manager. Ms Baker has been present throughout the evidence in this hearing. It was clear that the allegations made against her have upset her a great deal.

6 When the claimant initially applied for employment with the respondent's predecessor, Family Mosaic, she did not declare that she had epilepsy but she has had quite a history. However, when she was appointed, she did declare it. The respondent reacted, as we find, and the claimant agrees, reasonably. They questioned over what would be the best placement of her which would minimise risk for customers and the claimant herself.

7 As at the time of this hearing, the claimant states that she has been seizure-free for over 3 years.

8 After she had declared her condition, the claimant filled out a medical questionnaire where she stated:

> "In regards to my epilepsy prior to my black out in June I experienced dizzy spells and auras. The dizzy spells would make me tired and sleepy/light headed. After my blackout in June I was in hospital, I had seizures which made me sleepy and have stiff muscles. Since the right medication has been found and worked for me consistently I have not had a seizure, aura or dizzy spell at all since December 2013. I'm in good health and my view and my doctor's is that my condition will not affect my ability to work. December will make a year of no relapse. The medication I currently take is Carbamazepine and Levetiracetam. I see my consultant every 6 months; my next appointment with them is 4 November. I see my GP to collect my prescription and for him to maintain an overview of my health. I am happy to ask him to supply confirmation of the above if you feel necessary."

And in a later mailing she stated on 8 October that a hitch with DVLA had been sorted out and she was due to get her driving licence back in one month because of the length of time she had been seizure free.

9 The respondent has agreed throughout these proceedings the claimant has a qualifying disability and that they knew about it. However, for the purposes of section 20 reasonable adjustments claim they might not have had requisite knowledge that the claimant would be at a serious disadvantage in all respects. Alleged related cognitive impairments had been an area of controversy, unlike the need for medication, the need

for breaks, and the need to attend medical appointments.

10 Initially, the respondent decided to place the claimant in a residential home for customers with learning and physical disabilities; this was called Avalon. She came under the management of Michelle Sibley. As any new starter, she was in a period of probation. She started work in December 2014. In his closing submission, Mr Boyo, as her representative stated the claimant's placement at Avalon was a reasonable adjustment.

11 The claimant's time at Avalon was not successful initially. Probation was extended from 1 June to 1 September 2015 for the claimant to achieve some assigned objectives. Later, on 8 September, Michelle Sibley confirmed that some objectives were still outstanding and therefore she was recommending that the claimant should not be confirmed in post. A formal decision was made on this by Gill Sherman, the Deputy Operational Manager South, who confirmed that the claimant was dismissed from the service.

12 The key objectives included important matters with this client group such as dysphagia, there were medication questions, questions on the respondent's policies, as well as a failure to offer customers meaningful objectives. Ms Sherman concluded the claimant had not performed well.

13 The claimant was dismissed on 5 October 2015. She appealed by letter of the next day, 16 October and she invoked her epilepsy as mitigation. The claimant's full appeal against dismissal was 15 pages of close type. Basically, she raised a discrimination complaint under the Equality Act 2010. That was heard by Sue Allison who is an Operations Manager and the manager above the line manager for Michelle Sibley.

14 On 6 November, the dismissal decision was overturned, although Ms Allison found:

> "I do not concur with you that the decision was discriminatory as a result of your disability, and up until the point you were due to have your final probation review you had not highlighted any issues in relation to your epilepsy where you had requested reasonable adjustments."

15 Confusingly, the claimant had said that what her uncle now accepts is a reasonable adjustment, was in fact not made. This is the first cited example of glaring inconsistencies that ran throughout the claimant's evidence in this case. Ms Allison stated that the claimant had alleged that placement in the Avalon was not a reasonable adjustment. She states:

> "This was the first time you had raised this and I was able to advise you that the reason your proposed workplace had been changed was to ensure that you were not in the position of lone-working which may have presented risks to both you and the customers. During the hearing both you and your representative acknowledged this and requested that this point be discounted from your appeal."

16 Ms Allison appreciated that one of the effects of the claimant's epilepsy was on her "learning style" and later stated in overturning the claimant's dismissal:

> "As I stated to you today we will offer you support in relation to your preferred learning style. However, the responsibility to highlight any further support you need must lie with you."

17 She also went on to deal with something that has become a time-consuming and very confused issue at this hearing:

> "You did confirm that when you take your medication at 9am it can slow you down for a short period of time and, on that basis, we agreed that you would take a 15 minute break from 9am to 9:15 when you are working an early shift."

18 That came into sharp relief later when the claimant was under the management of Claire Baker at Anne Knight House because 9 o'clock was the start of her day there. Normally an early shift would start at 7 or 8am.

19 After she was reinstated, the claimant came under the management of Linda Street at Gallimore Lodge for 10 months. Next, she started a new job at Anne Knight House which - a young persons' hostel. There she came under the management of Sasha Wallace, a manager with whom she had no issues at all. For what it is worth, Sasha Wallace was a black woman like the claimant. At this time, Anne Knight House was a young persons' hostel only. It later underwent a transformation.

20 The claimant started in August 2016 and Sasha Wallace left in June 2017. Thereafter the claimant and the person she had been working with, Sarah Coppin, transferred to the management of Dan Gent at Bernard Brett and Mersea Road Hostels in Colchester for some 12 weeks.

21 Thereafter, the claimant returned to Anne Knight House (AKH) in September 2017 under the management of Claire Baker, (the previous second respondent in these proceedings).

22 Ms Baker is a busy senior manager. She had been with Family Mosaic (then Peabody) for 17 years, 13 of which were as a manager. At the time she was already overseeing 3 schemes: Digby's Court in Braintree - a direct access homeless hostel, with 21 flats, and 3 staff; Leahurst Hostel, also Braintree, a hostel for homeless young people with 3 staff; Manor Street, a young parents' scheme supported by Leahurst. Then she was asked to oversee Anne Knight House (AKH) as well, which was shortly to re-open as another young persons' homeless hostel. Previously it had not been a homeless hostel under Sasha Wallace. The customer group was to be an older group now.

23 These claims only cover the period September 2017 to December 2017. There is another claim before the Employment Tribunal case number 3202046/2018. The claim is currently stayed, not consolidated, pending judgment being given in the present case.

24 It should also be noted that there are 3 grievances outstanding with the respondent. They have parked them pending the resolution of this case. First is the claimant's appeal against the rejection of her first grievance; second is a new grievance she made against Richard Priest the Regional Director of Essex; third, is a

complaint brought by Claire Baker against the claimant on the grounds that the claimant's complaint against her, Ms Baker, was vexatious.

25 When the claimant first started back at AKH under Ms Baker she was working a normal working 9 to 5 day because the hostel at that stage had not gone live. They were training and preparing for the go-live of that hostel for single homeless people. During this period, the respondent was awaiting word from Chelmsford Council who were the commissioners i.e. those who commissioned the service, and who funded the scheme through referrals of vulnerable single homeless people to whom they owed a statutory duty.

26 Very soon after the start of this arrangement, problems arose between the claimant and Claire Baker. One day, Sarah Coppin, the claimant's colleague, asked to speak with Claire Baker about the problems she was experiencing with the claimant. Ms Coppin stated that the claimant was becoming increasingly hard to work with. She stated that the claimant was always late, sometimes by over an hour, and that also she would disappear from the scheme during the day and go, e.g., to McDonalds, and not come back promptly. She stated that the claimant left tasks unfinished. Ms Coppin felt the claimant was leaving all the work to her.

27 Ms Coppin complained that the previous manager, Dan Gent, had not acted on any of these concerns of hers, and she therefore felt frustrated and unsupported. It will be noted that Dan Gent is a manager with whom the claimant had no adverse issues. Ms Baker had noticed that most of the work was being done by Sarah Coppin. After a further time, Ms Coppin complained again that the claimant was still not pulling her weight, particularly when Ms Baker was not around to see this, because she was away managing one of her other facilities. She also told Ms Baker that other members of the team in Dan Gent's hostels had not wanted to work with the claimant. In Anne Knight House at that stage there was a team of only 2 - Ms Coppin and the claimant.

28 After 2 September when the facility opened, the first referrals could have been any day. Therefore, the team needed to be ready to accept them when they came from Chelmsford Council. However, the claimant had already booked 8 days leave in October which had to be honoured. When one transfers from one scheme to another, existing booked leave must be honoured in the new scheme. In addition to this, the claimant sought a further day's leave for 16 October. This is where the claimant's complaints start.

29 Ms Baker had already told the team i.e. Sarah Coppin and the claimant, no leave would immediately be granted going forward until she was satisfied that they were ready to receive the new referrals. Consequently, as the claimant's leave request was a new request, Ms Baker declined it.

30 Leave is requested on a portal on the respondent's intranet. It then has to be approved by a line manager). The leave request had apparently been on 9 September. Ms Baker responded by email on 22 September. She replied as follows:

> "For all the reasons talked about today regarding AKH I have declined 16th October leave request. I am aware that you have already have annual leave booked in October and of course this leave was already authorised so will be honoured but any further request from staff for

> October will be declined due to the opening of the new service."

The response from the claimant was:

> "No problem. Thank you for honouring those dates that I already had booked. That is no problem. I had requested 16th off in time due to a legal matter which prior a date had been set and is unavoidable. I do have a court date on that date which has been unavoidable so I've asked if I could submit that date as annual leave."

31 Ms Baker replied: "Could you provide me with some evidence for your legal matter court date?" This received what the tribunal finds was a wholly unnecessarily inflamed, indignant and aggressive response. We quote it at some length to illustrate this:

> "Thank you for your email requesting details of the court case I have on 16th October 2017. I've followed all relevant leave procedures to obtain your approval to take one day off work. I am not aware there is an emergency on the 16th October that means my taking leave on that day would put the service at risk. At the point in requesting my leave (which I am entitled to) we do not have a confirmed date for reopening of Anne Knight House. I am therefore disappointed you have chosen to make this an issue and question my integrity.
>
> The details of the court case are private and personal to me and I don't wish to share the content of the case with you or Family Mosaic as you appear to think I am being dishonest please note that you are at liberty to contact the High Court in the Strand London to ask if there is a case listed as Lloyds Bank v Boyo. I should confirm to you that I do have a court hearing on that date at which I am a litigant in person supported by my father [sic]".

32 This went on for some time. That was on 25 September. There was then further correspondence about evidence. To explain this, Ms Baker had referred it upwards to her line manager, Sarah Thompson. She was very aware of the need to have some proper reason to justify an extra day off that she could inform her line manager of. She might also have needed to tell Ms Coppin should the latter ask why the claimant was granted extra leave when there had been an embargo on leave for October. All she was asking for was some proof of this commitment.

33 The claimant chose to treat this defensively as an attack on her integrity which struck the tribunal as wholly unreasonable. Ms Baker's was an unexceptional request.

34 The tribunal is constantly asking for evidence when people proffer medical excuses, or booked holiday flights, in support of postponement applications. We need to see authentic documentary evidence, particularly so the other party can see it, and know it is not just a pretext. This is wholly unexceptional general process.

35 What Ms Baker was looking for was some official documentation that was connected to the date, 16 October. On the 9 October the claimant sent an email attachment containing a date which looks as though it was filled out by the claimant herself, as a request for a date. This was not enough for Ms Baker, she needed something more. She said:

> "Thanks for the attachment but this is not what I asked for in our conversation. I stated a date and a court address or/and a court emblem displays a date but does not say where for. Could you resend with the address or the court emblem?

36 Finally, the claimant did that and it had a date stamp from the court – High Court of Justice, Queen's Bench Division. At that stage, Ms Baker stated:

> "Thank you for the attachment. I refer to your comment in your email about this being new and additional information that I have requested. This was not the case and my request was made very clear to you. You have now provided what I originally asked for. Had I received this in the first instance the matter could have been resolved a lot quicker.
>
> I am now happy to authorise the 16th October as annual leave. Please request this on your My View account and I will approve this when I have an available moment."

37 The entire process had taken nearly a month and the claimant was being defensive, suspicious, guarded, uncommunicative, and uncooperative. This correspondence gave rise to a supervision meeting on 4 October where Ms Baker started the meeting saying:

> "I explained to Aniekan I'd called the meeting in response to her email dated 25 September regarding her request for annual leave on 16 October. I provided Aniekan with a copy of the email trail."

38 At that meeting Ms Baker explained her position to the claimant and she further stated:

> "I explained to Aniekan that I felt her email to be confrontational, aggressive and quite unnecessary not to mention unprofessional and disrespectful to me as the recipient. I also felt the email to be accusatory without justification. This email is bordering on a conduct issue…"

She was explaining that the way the claimant was conducting herself was not an acceptable way for an employee to behave.

39 Ms Baker fairly pointed out to the claimant that she was not trying to pry into the content of the case [which, incidentally, was *Boyo v Lloyds Bank,* not *vice-versa*].

40 The claimant eventually conceded that Ms Baker had not actually pried into the substance of her case in any way. The claimant continued to claim that Ms Baker had stated in as many words that she, the claimant, was dishonest. Ms Baker nonetheless left it there and said she would not make a formal issue of this, and hoped they could both move forward and then stated that this would now move to a "Getting to know you meeting".

41 Ms Baker was critical of the claimant apparently doing non-work-related things during work time. There was a very minor issue to do with the claimant apparently looking at a video in the office. The claimant explained it was to do with her BMW which was at the garage being repaired and that the garage had sent her a video of the brake-pads that that they were working on.

42 Ms Baker also tackled the claimant's timekeeping which had been the issue originally brought to her attention by Sarah Coppin. On further investigation, it was corroborated by the claimant's previous managers Sasha Wallace and Dan Gent. The claimant seemed to concede this absolutely, stating, almost flippantly, that she should "leave home earlier". The claimant stated she would try not to be late.

43 During the meeting the claimant started crying but she explained to Ms Baker she had been to the doctors the other day and was undergoing a change in epilepsy medication because of side-effects. The claimant also mentioned a doctor's appointment that she had. It was at 4pm. In order to get there, she would have to leave early. She was minuted as saying that, in order to work this, she could start at 8am and finish at 3:10pm. At this hearing the claimant stated that what she actually said was 3pm, not 3.10pm and that it would take her over 50 minutes to get from work to the doctor in the afternoon school rush. Ms Baker in the meantime made the claimant a cup of coffee to cheer her up.

44 For what it is worth the claimant's account of travel times has varied considerably and appeared to the tribunal to be inconsistent and unreliable. Ms Baker, we accept, typed these notes, as she stated, simultaneously in the supervision meeting. The claimant states she did not, but we found Ms Baker's recollection more reliable.

45 The claimant, much later, at the end of November, agreed to sign the notes but she wrote a counter note of her own. It starts:

> "I write this note to be attached to the minutes of the meeting for the record as I don't think the minutes give a fair representation of the issues from my perspective and gives a one-sided account of the context regarding the issues discussed."

That was hardly informative. We are not sure what we are supposed to make of that generalised complaint. It mentions no detailed material discrepancy.

46 The claimant again mentioned in her note that she had been poor in timekeeping but she was one of the few staff always willing to stay long after the shift had finished to complete work. Ms Baker did not regard that as sufficiently compensating for the fact that she was late arriving. The claimant's notes were very much after the event.

47 The claimant also succeeded in mischaracterising the request for evidence of her court date and misconstruing it as a request to change the date, rather than to provide official confirmation of the reason she needed leave on that date.

48 Later at this tribunal hearing, the claimant relied on her "counter-note" as a general disclaimer, with no further detail of any material discrepancies, between Ms Baker's note and her own recollection.

49 The next supervision meeting was on 30 October. Again, it was fully noted in Ms Baker's typed notes which we accept as accurate and contemporaneous. Ms Baker started again with the claimant's aggressive and a confrontational tone in the emails writing this time an email of 10 October after they had discussed the first 25 September email at the earlier supervision meeting on the 4 October. Without quoting it in full it is discernibly aggressive. The claimant was standing on her rights and her privacy. She said:

> "This issue is now causing me high levels of stress. Unsure as to what else can be done and

> that I do have a case in the court that day and all I have done is to ask you to approve to use annual leave that I am entitled to take after giving sufficient notice."

50 It was a legalistic approach. Ms Baker's notes read:

> "I also explained that I would not be phoning up the court as she suggested nor would I be consulting Family Mosaic's legal team as she had suggested. This conversation was not getting anywhere as Aniekan was fixating on this and would not accept what I was saying."

It stated:

> "If she had followed through with the simple request in the first place this would not have taken many weeks to resolve…"

51 Ms Baker then changed the subject:

> "I then asked Aniekan who is providing the content in the emails".

The claimant replied that she was and Ms Baker then says she stated:

> "…they do not present in the same way that her normal emails do which are generally quite poorly laid out at times and need working on, especially when she will be emailing stakeholders."

52 The criticism the tribunal would make is that this was a surprising and sudden change of topic. It was a fair observation to say it looked like the content of those emails, and possibly also the claimant's counter-notes which were delivered at the end of November, were ghost-written for her, or maybe she had some prompting. The tribunal has precisely the same suspicions. The tribunal agrees it does look the claimant had some help. The emails are legalistic. Ms Baker stated that it would be nice if all the claimant's emails were laid out in the way that the ones that appeared to be written by somebody else were laid out. We mention this now because the claimant is challenging it passionately in these proceedings but at the time she seemed to agree so much about her lateness, about the poor presentation of her emails etc, apparently as a way of warding off further criticism, and cutting the meetings short.

53 Ms Baker also challenged the claimant on the fact that she took time off for a doctor's appointment and had not left at 3:10pm but had left at 3.00pm because Ms Baker had checked the fob records for swiping out. Ms Baker reminded the claimant that she had said she would make the time up but had not in fact done so, to which the claimant said: "I will make the time up, I forgot". That explained to us why the claimant was so intent on making the tribunal believe that she had said 3 o'clock in the meeting. The fob records are an accurate electronic system, and she did not want the tribunal to think she had been caught leaving earlier than agreed. 10 minutes is clearly a very minor point overall, however, it does reflect on the claimant's reliability, and Ms Baker's suspicions about the claimant, and the tribunal's assessment of the parties' evidence.

54 The whole fob record has not been produced at this hearing. We should explain why not. Ultimately, the claimant was suspended. Her fob was therefore deactivated. Afterwards, it was later reactivated when the claimant returned to work. It proved

impossible, even with the help of the suppliers of the system, to read any of the pre-suspension signing in or out records. They were irretrievably lost.

55 Ms Baker made known her continuing concerns about the claimant's timekeeping. She also stated that the previous manager she had been working for had concerns about her timekeeping, and her attitude and response when timekeeping was raised as an issue. Consistently the claimant seemed to be paying lip service and acknowledging her bad timekeeping. She somehow thought that staying late compensated for it. Ultimately could not accept that she had done anything wrong. Ms Baker stated as she had 3 other schemes that she was running, she could not be there to check the claimant personally but that she would be checking the fob system.

56 The Peabody schemes, when live, depend on a shift system. Being late on a shift automatically impacts on other colleagues and customer care. There must be timed handovers. It is not simply a question of working to task and staying late. This is how the entire Peabody organisation runs.

57 Ms Baker stated very clearly:

> "I explained that if she continues to be late for any shift this will also be treated as conduct and the conduct process will be taken forward".

That sounded to the tribunal to be tantamount to a warning.

58 The problem was not just arrival times but there was a problem with the claimant leaving the scheme for lunches or other errands and overstaying her breaks. That was another reason to check the fob system. Apparently both the claimant and Ms Coppin decided that they would prefer the option of eating on the premises and having a shorter unpaid period in the day to do so. Again, the claimant replied, in our view, unnecessarily legalistically:

> "Is there a document policy where it states we can't do that?"

Ms Baker stated:

> "The respondent is within its rights not to pay hours to somebody who is not working the hours."

The claimant then appeared to agree.

59 Two potentially quite serious matters were discussed after that. There was question of additional hours, the claimant had claimed £1,089 as extra hours. It looked like the equivalent of another whole full-time job for the period in question. What happened was that the claimant was working at a different site. Nevertheless, these were core hours which were covered by her salary, allocated to AKH, her principal place of work. Ms Baker was surprised that she had to explain such a simple concept to the claimant. It amounted to claiming a double salary for the same single period, just because the claimant was working at another site. The claimant stated that she was told to do this by Ms Baker's line manager, Sarah Thompson. In reality, that could not possibly have been the advice if the claimant had given the correct information.

60 Subsequently, the claimant raised a mileage claim. She had spent some time at Bramble Court which was another scheme altogether, and not even one of Ms Baker's. It had been agreed that, as it was not her usual place of work, travel will be paid but it was clear that the amount of mileage was excessive. The claimant was asked to amend her mileage claims. Ms Baker said the mileage between Anne Knight House and Bramble Court was 10.2 and that the claimant had claimed 13. As the mileage system rounds up, it should have been 11 miles.

61 The claimant did not amend it properly and had to be told to re-amend the claim. Some of the journeys had not been amended. Then it appeared that there was a claim for 8 journeys from Anne Knight House to Bramble Court, all in the same day, which could not possibly have occurred. Eventually Ms Baker had to go through the whole claim with her. It was time-consuming.

62 There was another issue addressed. On 25 October a task was set to Sarah Coppin and the claimant together to make a presentation to Sarah Thompson at 1pm. The topic was the resources needed to progress a customer referral. On behalf of the claimant it was put by Mr Boyo that this was putting her into a "competition" with Sarah Coppin, which Ms Baker completely denied at this hearing. It was a necessary exercise because neither the claimant nor Ms Coppin had experience of direct-access homeless hostels. There was a difference in referrals and processes. One of the purposes of the exercise was to identify any training needs for them as hostel staff.

63 Each one of them had to pick one of the referrals and present on it. There was due to be a team meeting at 1pm but in fact it was delayed until 2pm, as Ms Thompson was delayed. The 2 support workers therefore had ample time to prepare. It appeared to Ms Baker that Sarah Coppin got straight on with it. The claimant, by contrast, seemed to be finding displacement activities, and was eventually unprepared to make her presentation in the afternoon. Generally, she did not seem to appreciate the importance of deadlines.

64 Another potentially serious incident was that Sarah Coppin had informed Ms Baker that the claimant had made photocopies of highly confidential customer referrals from Chelmsford and had then apparently taken them home. The claimant admitted this at the time, and then totally denied at this tribunal hearing. The records were customer profiles with details of prison sentences, sexual misconduct, and substance abuse. This would have played very badly with Chelmsford had they known that the records were being taken to a worker's private home and the claimant stated in this supervision meeting, according to Ms Baker's minutes, she did take the notes home and:

> "I wanted to work on them".

The claimant's "counter-note" sent at the end of November stated:

> "I did not photocopy any referral forms to take home. I'm not sure who told CB that I did this; though I asked her repeatedly CB did not respond. This has been a misunderstanding of my responses as I would not photocopy these forms. I already have access to them I did not take these forms home."

65 Incidents such as this gave the tribunal serious misgivings about the claimant's credibility. Ms Baker characterised the claimant's stance as:

> "I discussed with Aniekan I feel she is always on the defensive appears not to take responsibility for her actions and does not appear to be concerned about her conduct and cannot see why it is a problem and this was a concern for me."

Having focused on the finer details, this appears to the tribunal to be a fair and justified comment on Ms Baker's part.

66 There was a minor concern about the claimant being soft spoken (which is true), but it meant that over the telephone she did not project authority as would have benefited her in this role as a support worker. It was a minor point. Ms Baker says the point was raised in the spirit of wanting to help the claimant and it appeared to be received in good humour at the time. Not since. The claimant said it was not the first time someone had told her about her soft voice.

67 Vocational training was discussed, there were courses from Capita and Northgate IT-systems.

68 We now move to the matter of the anti-epilepsy medication. This was extremely controversial. Mr Boyo stated he was making a fundamental distinction between a question and a suggestion and that Ms Baker was making suggestions and not asking questions. Ms Baker's evidence was diametrically opposite.

69 At this time, before Anne Knight House went live, the claimant and Ms Coppin were arriving at 9am. Oddly, the claimant's medication, she says, has to be taken twice a day at 9am and 9pm. It sounded as if that had to be 9am on the dot. She says she has tried different 12-hour cycles 7am to 7pm, 8am to 8pm, none of them, she said, worked as well as 9am to 9pm. The problem was that immediately after she has taken the tablets she can get blurry and get headaches. On a bad day, this can last longer.

70 Ms Baker was understandably curious as to why the claimant should have this 15-minute period immediately after the start of her shift and whether the medication could be possibly taken at another time. One can understand her curiosity because, instinctively, you would not think that medication times have to be on the dot. One can understand a curiosity, almost amounting to suspicion. The claimant was so frequently arriving late and then taking the medication, if she had not been given a lift.

71 Ms Baker's curiosity was therefore entirely justified. Again, the claimant took the questioning as a challenge. That was unhelpful. It was later cited as an incident of harassment by reason of her disability. This perception of it as a challenge is why the claimant was so intent on the tribunal finding that it had been a "suggestion" rather than a "question" prompted by Ms Baker trying to understand the facts and finding it hard.

72 The next supervision meeting was on 17 November. Topics were revisited. The tribunal had considerable sympathy with Ms Baker, not least because, as was later concluded, there were institutional failings here. The detailed understanding of the

claimant's medical condition and her medication requirements had not followed the claimant well from one scheme to another, from one manager to another. Ms Baker should have been able to find this out, or to be told it all by HR, because the claimant is someone who worked across several schemes in her employment with several different managers.

73 Nor is it as if the situation was static. The claimant was undergoing the destabilising experience of a medication change. The claimant was due to cease Levetiracetam and thenceforth take Carbamazepine and this was to take place over several months gradually decreasing one and increasing the other.

74 One of the main reasons that the HR record had been disrupted was that the claimant had been dismissed and then reinstated. This broke the continuity of information gathering. The tribunal's conclusion on this was that, despite it being a well-founded criticism of the institution generally, it did not enhance the claimant's tribunal disability discrimination claims or their chances of succeeding against Ms Baker or the respondent.

75 On the 17 November supervision, Ms Baker addressed the precautions the respondent was taking due to her medication. They negotiated that she could take her medication immediately on arrival and not actually start work for 15 minutes after that. This point had never been discussed with HR ever before.

76 Bizarrely the claimant stated that she could probably drive immediately after taking her medication, "on a good day".

77 The claimant was also given a what is called a "Solo Protect". This is an electronic pendant which one wears around the neck which, when pressed, connects to a call centre in an emergency. It was particularly appropriate for her, being known to have epilepsy. But she was by no means unique in being issued with a Solo Protect. Many of those working with a more threatening client group had them. The claimant is actually shown on the database logs as under-utilising it. Ms Baker had to remind the claimant to use it more often. It also needed charging.

78 There was a need for a risk assessment round the claimant's medication. She had been advised by HR at Family Mosaic that they needed to be provided with consultant update letters. There had to be a risk assessment, occupational health assessment, and any driving / DVLA concerns had to be addressed. The claimant stated she was not made aware that she had to provide consultant letters every 6 months (that was the frequency of her visits to her consultant). It sounded like a sensible request from the respondent to be made more aware. However, this information, and the recommendations, seem to have got lost.

79 Ms Baker queried about the claimant's medication because she thought she had seen the claimant coming in at 11am and taking her medication then. The claimant stated that this was not her normal medication, that these were antibiotics.

80 The claimant was put in a difficult position because Ms Baker really was asking for information and needed to know it. It was information she was not getting from HR.

Such was their relationship that the claimant just perceived it as prying, so she became guarded and defensive. This was not helping her manager to do her duty to her as a disabled person. The dynamic became impossible.

81 It is true that Ms Baker asked the claimant if there was one hospital appointment that she was able to change. However, she was led to believe by the claimant herself that she might well be able to change that particular appointment. If it had been a problem, and explained, says Ms Baker, (and we accept this), Ms Baker would never have required her to miss the appointment.

82 The claimant wishes to portray Ms Baker as not acceding to the needs as a disabled person. But in her role as a manager, there was no evidence at all that she had in fact overstepped the line and done that thing.

83 Ms Baker also stated that she was still checking the fob system and the claimant was coming in late.

84 We never really got to the bottom of how the claimant managed her medication regime given that she was frequently arriving after 9.

85 At one time the claimant stated that she might be given a lift to work, that she would be able to take the medication in someone else's car. It was not so easy if she was on her own trying to take it at traffic lights. None of this was a convincing account.

86 At this stage, 17 November, the claimant had still not signed the earlier supervision notes for 4th and 30th October.

87 The other topic was that Sarah Coppin had reported concerns to Ms Baker that the claimant was telephoning her on her (Ms Coppin's) day off to ask how to do things and that this was an imposition, and was taking up a lot of her time.

88 The claimant cited only one incident in response. There was one time there was with a cabinet in the office which was being picked up.

89 Ms Baker confirmed that Ms Coppin's report was the claimant had done this far more frequently about work-related matters that she could, and in Ms Baker's view, should, have addressed her, Ms Baker, as the claimant's manager. It was part of the bad dynamic between her and the claimant that the claimant initiated the least possible contact with Ms Baker as her manager.

90 The claimant stated that there were times when she might try to telephone Ms Baker and she would be unobtainable. One of these turned out to be on Ms Baker's day off. The tribunal accept that there is a "On-call manager" system in place at Family Mosaic. This system operates if an individual's superior manager should happen to be off duty or in a meeting or otherwise unobtainable.

91 Ms Baker sought the advice of HR who advised her that the stage had been reached where a conduct meeting should be arranged.

92 The tribunal accepts Ms Baker's evidence that she deferred to the guidance of HR, and had no particular desired outcome, and was not steering the process in any particular direction on her own initiative.

93 So, the next step was a "report of concerns". That was simply a list of concerns about the claimant's conduct. It started where Ms Baker's concern started, the report by Sarah Coppin of her concerns about having to work with the claimant including her late arrival on shift - early or lates - and leaving the scheme for long periods - and the sheer number of doctor's appointments during work time - and the length of time taken to attend these appointments.

94 This report included citing her previous manager, Dan Gent at Bernard Brett House. Part of the dynamic was that Ms Coppin said that Dan Gent, to whom she had reported her concerns, had really taken no action and she wanted Ms Baker to get a grip on it. Dan Gent, we note is a manager whom the claimant liked. On one occasion the claimant had been 45 minutes late when he was her manager. He seems to have taken no action. Hence the claimant's good relationship with him, (probably).

95 She also quoted Sasha Wallace to whom she had spoken who had addressed problems with the claimant's timekeeping which were even worse. The claimant had also liked Sasha Wallace who was a black woman, like the claimant. She quoted that the claimant almost seemed flippant about she would have to leave home earlier.

96 She itemised the incident about the claimant "forgetting" to make up the time that she promised to make up. Another time the claimant said: "I just need to get up on time", and many of the incidents from the supervisions that we have quoted above.

97 Importantly, Ms Baker stated that she had explained to the claimant that enough was enough and that she now felt that it would probably be taken further as the issue was not resolving.

98 She mentioned the removal of the referral photocopies and taking them home and bringing them into work the next day.

99 As an appendix to this report Ms Coppin made her own independent statement confirming this. Of the reports, she confirmed she had seen them being removed from the claimant's bag when she came to work the next day. She had noted that they had been photocopied. She had not actually seen them leave the building, but saw the copies come back in the next day.

100 What is remarkable was that Ms Baker did not refer the matter of the claiming of double pay whilst at Bramble Court or the exaggeration of the mileage expenses which she had had to rectify herself because the claimant was so slow to admit or apparently recognise error.

101 There were various appendices. One was a printout of lateness which Mr Boyo focused on because, of course, there were very few reported incidents because of the later loss of the fob log, explained above.

102 Ms Baker reported:

> "The issues are not improving despite me spending a lot of time with Aniekan trying to resolve the issues. I also feel that Aniekan does not listen to any explanations around our discussions and fails to take this seriously nor does she appear to take any responsibility for her actions, she does not consider the effect her timekeeping impacts on the scheme, her colleagues and her employment conditions with Family Mosaic. Neither does she appear to have concerns that we also have a contract with Chelmsford City Council to adhere to."

103 Following that, the claimant was suspended from duty on 1 December 2017.

104 A new allegation had emerged at this stage. The claimant sent email correspondence to a personal email address, her own, which contained sensitive personal customer information. This was an email, far earlier, of 28 November 2016.

105 The tribunal rejects the claimant's allegation that Ms Baker put pressure on the claimant to reveal the password of her work email account. Ms Baker had no need to do that. There is a set way to access an employee's email account to check it. After the claimant was suspended Ms Baker could obtain authorisation for the claimant's email account to be inspected and this could easily be done through the respondent's IT. It needed authorisation from Richard Priest the Regional Director for Essex. She obtained that.

106 The email in question that came up on the search was 28 November 2016 sent from the claimant's work to her at home: juniorboyo@hotmail.com. The claimant had been forwarded some documents, an Excel spreadsheet, and a Word copy of minutes from 15 November.

107 The next meeting of the Joint Referral Panel (JRP) was to be the following day, 29 November 2016. Ms Wallace was not going to attend that meeting but Sarah Coppin and the claimant were. It was to be a morning meeting. There were 3 more attachments to it.

108 For some bewildering reason the claimant says that another attachment was somehow inserted deliberately. We found this allegation to be utterly incomprehensible. Circumstantially, we cannot see why she would even make it up. It does not make her case stronger or the respondent's case weaker. It is a nonsensical detail.

109 The investigation into these concerns was undertaken by Helen Watson, the Business Support Project Manager. She undertook several interviews: Claire Baker, Sarah Coppin, Dan Gent, Ms Wallace (who had since left), and the claimant. During the claimant's interview Mr Chris Boyo (who represents her here), her uncle, was present. He said that he was a union representative for the GMB which Ms Watson appeared to accept. The claimant confirmed she was a member of the GMB.

110 Later on, this was challenged by Elaine Germaine, who asked him at another hearing if he was an accredited GMB representative. He said he did not have his card on him. She said that did not matter as she knew the GMB and would telephone them to see if he was an accredited representative. Mr Boyo then said it would not be

necessary because he was not in fact an accredited representative, he was simply a member, but in fact he was the claimant's "disability support worker". He was then allowed to continue attending in that latter capacity.

111 The respondent took advice on the breach of data security over the email to a private address and the removal of photocopies of client referrals. This went up to Mr Nicholls Head of Information Security and Governance for Family Mosaic/Peabody.

112 By an email dated 15 January 2018, he stated that the policy had changed. It was a complicated arrangement here. There was a merger between Peabody and Family Mosaic. Basically, there had to be a period of almost a year while policies were aligned. The merger was June/July 2017. What has been called the "go-live" date was 5 April 2018. In the meantime, policies had to be aligned, rewritten and replaced. The policy surrounding the security control had only been in place since November 2017. It will be recalled that the email in question was on 28 November 2016, one year previously. Mr Nicholls' conclusion was: "With the above in mind it will be hard to penalise an individual for something they did prior to the policies which they are breaching being in place."

113 He also mentioned something that has become a topic which Mr Boyo has made much of, and which the tribunal considers a red herring. It concerns the use of Citrix. Citrix is a system whereby support workers can access the main database and all the confidential information on it remotely from home. It is a secure portal provided for people who need to work at home.

114 In the respondent's clear view there was never any need for the claimant, as a Support Worker, to work from home. This was later requested as an alleged reasonable adjustment. It was declined on the basis that if she could not finish her work within the time allocated in the workplace then she would have to be given less work and more support to do it. It would be undesirable that she should be taking work home, for her own sake. That view, in itself, was a reasonable adjustment.

115 The claimant has been saying that her epileptic condition includes a cognitive impairment to the extent that her learning style is slow, she needed to have things explained carefully to her. It is not clear how this works. The claimant in fact, had to be told during this tribunal hearing what the word "cognitive" meant. So, it seemed, did Mr Boyo. We would have expected, if he truly was her "Specialist disability support worker", he might have known that. It is a very commonly used word when discussing disability through mental issues, and discrimination.

116 Mr Nicholls did not know the claimant's situation in any way. He was completely removed from the situation. He was the Head of Security. Nor did Mr Nicholls have any say in who did or who did not have the use of Citrix. That would be a matter for Operational Managers.

117 We later heard that the claimant had actually made a direct request from IT for Citrix. They had told her there were 2 ways of doing it and she never followed it up either way, so the claimant's entire request never started.

118 The Boyos were delighted with the email from Mark Nicholls. Mr C Boyo drew it to the attention of the tribunal at the start, and then several times later.

119 Ms Baker had obtained permission to search the claimant's email account because the apparent copying and removal of sensitive client referrals from the office on paper revealed the claimant had a lax attitude to confidential client information and there might be examples of this on the email because there are so many electronic documents going between Chelmsford and Family Mosaic.

120 Helen Watson produced a preliminary investigation report which was undated. At the time Mr Nicholls' email was not until 15 January 2018. At the time of the disciplinary report Ms Watson found the breach of data protection in respect of the email and the photocopying of referral should merit a hearing. Ms Watson noted that there was no evidence of improvement notices ever being drawn up in respect of the timekeeping.

121 She recommended that if the claimant came back after the outcome of a hearing in respect of the data protection that she should be issued with a stage 1 improvement notice. We consider what was lacking in Ms Baker's warnings to the claimant was a formal timeframe for improvement to be seen. That would be an essential part of an improvement notice under the disciplinary procedure and that it should include other aspects of the claimant's work practices.

122 Presumably she was referring to the tone of some of the claimant's emails and she made a formal recommendation that fob records be printed out before disabling a staff member on the system so that evidence can be referred to and preserved.

123 The disciplinary hearing was conducted by Moirah Griffiths who is a Group Care and Support Director. At the actual disciplinary hearing the claimant had been accompanied by an external companion, Sean Martin. They made an exception to their own policy because Sean Martin himself was not an accredited representative. Elaine Germaine was present at that meeting. A letter was sent on 18 July, the day after the hearing on 17 July 2018.

124 On the allegation of timekeeping, notwithstanding that the full fob records could not be obtained, Ms Griffiths imposed a final written warning for a period of 18 months, including the emailing confidential information, the removing of hard copy confidential information, and the timekeeping.

125 The claimant appealed the outcome and that appeal was heard by Steven Burns who varied the sanction from a final written warning to a first written warning. He, like Helen Watson, confirmed that the respondent had missed out a step on the timekeeping that was the informal improvement notice.

126 This led to him entirely dismissing the timekeeping concerns which, in our view, was an over-technical disservice to Claire Baker who really tried to tackle this chronic and serious problem on the best evidence she had, albeit hearsay.

127 Nobody in Peabody/Family Mosaic realised that if you disabled a fob that all the information for that fob was irretrievably lost forever, despite the all the assistance which was available from IT, or even the suppliers of the system.

128 As we suggested above, Mr Burn stated the use of Citrix would not be a reasonable adjustment.

129 On the matter of the breach of security, he noted that Mark Nicholls had said that the claimant had not necessarily breached the Data Protection Act 1998 because she was an approved data-handler herself even though she had not passed it on. However, it was a breach of company policy. There it stood.

130 In the meantime, by letter of 15 February 2018, the claimant initiated a grievance. This was investigated, but not until July 2018. Why not? Because we were in the period of limbo when the Family Mosaic policy would not have permitted the separate parallel progress of a grievance process and a disciplinary process at the same time. The Peabody policy permits the 2 to be progressed in parallel as from the "go-live" date. It was in fact parked until that date, and then started. Mr Boyo did not see this as a benefit to the claimant. His arguments on this topic were illogical and, honestly, incomprehensible.

131 The claimant's grievance was given an extraordinarily thorough review by Bridget Cooper who was an ex-employee of Peabody acting in her capacity as a consultant. She accepted the appointment to hear the claimant's grievance.

132 Elaine Germaine, Business Partner Care and Support, contacted her and liaised. Her outcome letter was dated 24 October 2018. It ran to 41 pages. The grievance outcome letter was carefully laid out, citing *verbatim* the claimant's written grievance, and then responding.

133 It is remarkable how inflamed and legalistic the claimant and/or her advisors had become. We have described the whole incident in some detail. The claimant characterised the annual leave for court appearance incident as: "Management of annual leave – using annual leave as a tool of oppression. The grievance was not upheld.

134 Allegation 2 was dubious accusations of bad general behaviour. This simply refers to the claimant looking at the video of her BMW at the garage. This allegation is a grandiloquent title for the non-work video she was watching in work time. Ms Cooper could find no hint of discrimination on the grounds of race or disability or any harassment. Nor does the tribunal (see below).

135 Timekeeping: part of this complaint of the claimant was that Ms Baker contacted the claimant's first ever manager at Avalon. The claimant went further in this hearing and stated she had heard Ms Baker on the telephone to Michelle Sibley saying: "Hi Michelle, how are things at Avalon?"

136 Michelle Sibley was a witness before us. She passionately denies knowing Ms Baker, just as Ms Baker denies it. Mr Christopher Boyo is arguing strenuously in front of us that they were lying, that they knew each other, that they attended the same team meetings. We have no hesitation rejecting Mr Boyo's invitation to us to find so. There is no reason why 2 managers would have to lie about a thing like that. He argued based on the organisation chart at page 187d as they were both part of the same organisation that sat underneath Richard Priest. Therefore, they must have attended

the same meetings. It simply does not follow. It is a very large organisation.

137 Michelle Sibley is in Care and Support, a different division from Young People (YP). Avalon is a very different discipline comprising a residential home with learning and physically disabled people. It is different from managing a young homeless persons' hostel.

138 The point about this is that the claimant sought to make was that both of them somehow colluded to portray the claimant as a bad timekeeper. The tribunal absolutely rejects any such suggestion. We accept the evidence to us from Claire Baker and from Michelle Sibley. The allegation to the opposite effect is unfounded and extravagant. We remind ourselves that the claimant was actually dismissed at the end of her time in Avalon before she was reinstated to a different part of the service.

139 The claimant's fourth grievance related to the second supervision of 20 October and the later email correspondence about needing an attachment which had some emblem of the court and the date to show that it was a court appointment, not just an application for a hearing, an unheaded slip. Ms Cooper's conclusion was:

> "It is disappointing to see a straightforward request for annual leave and the relevant documentation required to prove took such a long time to resolve and caused upset and bad feelings between two people. In my conclusion I do not agree CB caused a violation of your privacy and an abuse of power in her response to you in asking for documentation to approve your leave request.

140 Point 5 of the grievance was "a false allegation that the claimant was disrespectful to Claire Baker. The claimant has said: "CB made further false allegations that my email of 10 October 2017 is disrespectful and further threaten to discipline me".

141 There was a linked issue with Michelle Sibley. The claimant had raised a race, and disability, discrimination grievance against Michelle Sibley. Like this tribunal, Ms Cooper found that there was no friendship or contact between Michelle Sibley and Ms Baker. The only criticism she had of Ms Baker, as we did, in a way, was Ms Baker seemed to fuse the querying of who had written the emails about the court date and digressed into the separate topic of the claimant's emails not being not well laid out. The 2 points were unrelated and should have been kept apart.

142 Ms Cooper also rejected an allegation levelled at Michelle Sibley that she had said to the claimant that she did not know how the claimant got through probation. (That is ironic because the claimant did not get through probation! However, that decision was reversed on appeal). On the allegation Ms Cooper considered that any manager is extraordinarily unlikely to make any such comment. She rejected the complaint.

143 The claimant also complained about having to be on probation when she was re-engaged. However, she had been re-engaged into an entirely different discipline. Therefore, it seemed renewed probation would be necessary.

144 Ms Cooper too rejected the claimant's allegation that Claire Baker asked the claimant for her email password. It is well known in all such organisations that

passwords are personal to all employees. There is a legitimate way of inspecting an individual's email account if there is legitimate suspicion. It can be done by the back door with the help of IT. It must be approved at high management level. Ms Cooper could not accept that there was a legitimate victimisation complaint here.

145 Ms Cooper dealt with point number 6 of the appeal which was the "restriction on medical appointments". It is true that Claire Baker had stated on 5 October that the team would not be allowed to attend medical appointments during office hours when the team member was on duty. The claimant states that this was targeted directly at her, which this tribunal and Ms Cooper rejected. Ms Cooper's point about this was to conclude:

> "I do believe the confirmation of medical appointments process was confirmed at the team meeting on 25 October 2017 having been discussed, and agreed by ST and CB prior to this date, was to clarify that to all staff what was required ensuring services were covered especially in small teams ... I could not see CB had threatened you with disciplinary action when you disagreed with the medical appointment rule. In addition, Sarah Thompson could not confirm this was the case either from the discussions she had had with Ms Baker."

146 Point 7 of the grievance was the accusations of leaving the scheme without authority. The claimant made a play here on the absence of the fob records. Their loss was unfortunate, as Ms Cooper agreed. Nonetheless, Ms Cooper concluded that there was evidence of the claimant leaving the scheme and says:

> "CB confirmed how she established you were leaving the scheme without permission confirming it was initially through staff telling her and that it also happened when Sasha Wallace managed you."

Ms Cooper went into some detail on the fob records:

> "Efforts have been made to retrieve the information via Silt and McCamon who installed the system. It was expected by reinstating your fob the information could be retrieved but to no avail. In addition, I understand you may also use your fob for people such as the postman and others so it is not clear that the fob system would clearly reflect your activities.

She did not uphold this point of the grievance.

147 Mr Boyo used the concept of "no evidence" wrongly. That is disappointing in an LLB graduate. There can be oral evidence, written evidence, hearsay evidence, circumstantial evidence etc. "Evidence" is not limited to computer generated records.

148 Surprisingly, the claimant made point 8 of her grievance about accusations around her claims saying that Ms Baker had not referred her case for disciplinary consideration. Ms Cooper found that Ms Baker had been following the correct process. She also noted that this had not been put forward for disciplinary consideration. It was never mentioned. In the tribunal's view, the claimant was quite lucky over this. That is why it is surprising to see it as a complaint.

149 Point number 9 was reference to what Mr Boyo called the "competition" on 5 October and the claimant's failure to make the 1pm, and then 2pm, deadline to finish her presentation to Sarah Thompson that afternoon.

150 The claimant and Sarah Coppin were asked to carry out a desk-top review of the referred cases to see what additional information they might need to go through them, the findings. She describes with some good insight the bad dynamics between the claimant and Claire Baker, that Ms Baker felt the claimant was on the defensive and appeared not to take responsibility for her own actions. She refused to acknowledge that her conduct could be legitimately seen as cause for concern. Further:

> "It is clear your relationship with CB had broken down to the point that any management actions that were being taken were considered by you to be a direct act on you as a person … I appreciate you didn't like CB style of management but at the time CB had a responsibility to make you aware of areas that needed improvement, this being part of CB's role as a manager."

151 Also dealt under this heading was the making photocopies of referral documents and taking them home. Ms Cooper refers to the notes of the meeting where the claimant initially admitted taking them home saying that she wanted to work on them. When Claire Baker told her it was potentially a serious breach of data protection that no such document should be taken home under any circumstances, then the claimant denied she had done it, reversing her previous detailed admission.

152 The conversation on 17 November 2017 supervisory meeting that the claimant's 9am medication becomes a damning accusation of "Medication, and attacking my life support mechanism". Although Sasha Wallace had left, Ms Cooper managed to contact her and asked her about her awareness of the claimant's medication regime. Ms Wallace said there were no special allowances she had to make.

153 Mr Boyo seized upon one passage of the outcome letter as follows:

> "CB did make a suggestion you could take your medication when you get up in the morning giving you 15 minutes to recover from headaches at home and then come to work so it did not affect your start time."

He seizes, of course, on the word "suggestion".

154 There is such an extraordinarily fine line between a suggestion and question. It is impossible to make the distinction that Mr Boyo urges on us and he has freighted the word "suggestion" in order to merge it with "order" or "command", other than a request for information. We have already commented that we can understand why Ms Baker may well have had curiosity, verging on suspicion about this regime. I did not add up.

155 It seems to be a rather unlikely medication regime that required the claimant to take medication on the dot of 9 o'clock, particularly given the claimant's poor timekeeping. It is clear that Sarah Coppin spoke to Helen Watson. She had stated that the claimant would not only come in late but would also make coffee and engage in other displacement activities before actually getting down to work. She concluded:

> "It is clear CB was aware you had epilepsy and that you have been given your own Solo Protect device to safeguard your wellbeing at work as a lone-worker in the event you had a seizure. I also believe CB was trying to understand your medication regime and the impact this had on you after taking it and the suggestions accepted without a level of medical knowledge we are trying

> to support your medication regime and not impact on service delivery. From 30th October (supervision) this being when you first made CB aware about your medication arrangements CB did make representations to her line manager, HR and health and safety to see what had been agreed in the past to which CB could not establish anything being in place about medication. I believe at this point reasonable adjustments were fully discussed and put in place with immediate effect to ensure such needs are met pending further advice and information. Therefore, I partially uphold this part of your grievance complaint your medication was not managed to meet your needs at work".

However, she did not find this was an incident of discrimination. Nor does the tribunal.

156 Point number 11 referred to accessing the claimant's email account in November 2017. It is true as Ms Cooper states that nowhere in the supervision records is there a note of Ms Baker asking the claimant for her password. We accept that she never did; we accept that she never needed. The claimant would have been wrong to give the password and Ms Baker would have been wrong to request it. Ms Baker knew that.

157 The claimant in her grievance complaint had said that the actual email which we have seen too, 28 November, was a "fabrication" and this is where the allegation about the number of attachments also stems from. It appears to us to be complete nonsense. The email had 3 attachments and was forwarded. It always did have 3 attachments. All the attachments were confidential. We cannot find that this was in any way "fabricated" by the respondent or anybody else. The complaint is incomprehensible.

158 Point number 12 of the grievance was "Arrangements for working while taking medication". This raised the subject of Citrix which was completely unrelated to medication. Ms Cooper confirmed that the claimant had not made a proper formal application for Citrix. That is regardless of the fact that it ultimately would have been refused anyway as Citrix was not given to Support Workers who work face to face with customers, and never need to work from home.

159 Also under this heading is the allegation that Claire Baker did speak to the claimant about ringing Sarah Coppin when she was off duty. The claimant said it only concerned a cabinet for facilities. Ms Cooper understandably found: "I cannot substantiate CB was trying to break up your relationship with your team colleague".

160 The numbering of the claimant's grievance goes awry but she appears to make a complaint number 14, (I cannot see a number 13). She complains about Ms Baker victimising her because she made complaint about disability race discrimination against her friend Michelle Sibley. She suggested that Claire Baker behaved in a certain manner:

> "CB has behaved in a manner that warrants suspension of disciplinary investigation for gross misconduct".

161 Of grievance number 15 she says:

> "I also believe that Michelle Sibley should be investigated as she breached the code of confidence and confidentiality. In my experience Family Mosaic has a history of containing

> abuses and discrimination. It has a history of shoring up perpetrators and this is to a large extent makes these people have no restraint in their actions [sic]. I will hold you accountable if no action is taken against these perpetrators, and the matter is simply swept under the carpet."

162 That is the last of the evidence that we need to take into consideration in considering the 3-month period of September to 1 December 2017 and all the internal processes both disciplinary and the grievance process that arose from that period. In the course of narrating it we have stated our views on the evidence and most of our findings.

Submissions and summary

163 The case was particularly well summed up in the respondent's barrister's submission. The respondent helpfully introduced his submission by relying on some broad themes. First, was the discrepancy between perception and reality and this was well exemplified by his citing Mr Boyo's fixated submission on the profound distinction between a suggestion and a question particularly arising from the question of medication times and possibly also of medical appointments.

164 If someone is enquiring to find information, they need to test that information to make sure that they make the correct management plans to fit round that information to accept without any question that medication has to be taken at 9am and 9pm on the dot. It would be a totally artificial demand of any manage to do other than enquire, particularly given that the claimant's timekeeping was so erratic.

165 The second theme was the number of incredible assertions that have been made by and on behalf of the claimant. The 1st was that Ms Baker would interfere with an email chain to insert a spreadsheet about the email that the claimant had sent to her home address containing customer referrals which were to be reviewed at the Joint Referral Panel meeting. The email was dated 28 November 2016, 9:24am. It was in preparation for the JRP panel on Tuesday 29 November.

166 The assertion really did not seem to advance the claimant's case in any way, and, even if it had been true, it was completely senseless.

167 The 2nd incredible assertion which he identified was the assertion that Claire Baker was somehow lying through her supervision notes, notes that we have already found to have been simultaneous/contemporaneous in the meetings which they recorded.

168 The claimant's "counter notes" did nothing to engage with the specifics of Claire Baker's notes. They were just a general traverse, devoid of any real significance for our purposes. They were legalistic procedural positioning devoid of evidential substance. It seemed Claire Baker had evolved her approach as she apprehended difficulties with the claimant agreeing to sign her notes.

169 The word "lying" is typical of many hyperboles used on the claimant's behalf by Mr Boyo. We suspect it does not seem the claimant's natural language. Such hyperboles are of a piece with "using annual leave as a tool of oppression"

170 The 3rd incredible assertion which calls for special mention is the claimant's open admission to making photocopies of referrals "to work on them". At this tribunal hearing she is completely denying that she had ever taken such photocopy referrals home.

171 The tribunal could add some assertions our own too. Although 10 minutes in itself does not amount to much, it was clear that the claimant had altered her evidence to match the signing in logs she knew that had been printed off.

172 The 3rd theme counsel raised is the broad tolerance and fair mindedness of the respondent in patiently correcting the claimant's mileage claims were patently wrong. That was particularly so in the case of 8 instances of the same journey in one day. The respondent was conspicuously reluctant to accuse the claimant of dishonesty, despite the fact that the claimant persistent belief that she was being accused of dishonesty over e.g. the matter of the court date.

173 No further action was taken either on the fact that the claimant had claimed a full extra day's pay for hours worked during her core hours which were covered by her salary because she was working at a different scheme.

174 The fourth theme was the timing of complaints. The claimant never made complaints about Michelle Sibley until she had failed her probation. Sasha Wallace had complained about the claimant's timekeeping. We saw supervision notes 28 October, 17 November and 5 December 2016. However, the claimant never made any complaint of discrimination against her, a black woman, and yet when Claire Baker tackled timekeeping she had a race discrimination complaint against her.

175 As Ms Cooper's grievance findings confirmed, the claimant herself had initiated the process with the IT helpdesk in order for her to get Citrix. She herself had discontinued the application, and never followed it through. This is a separate issue from the fact the claimant would not have had her manager's authority to have Citrix as it would have eroded boundaries between work and leisure for the claimant and exacerbated existing problems.

176 After this the respondent's counsel stuck closely to the agreed list of issues. This was formulated by Employment Judge Burgher on 14 December 2018 at a case management preliminary hearing. In fact, he took the list in a more logical order than it had originally been laid out. It is safer and avoids the risk of missing an issue, with so many discrimination species invoked across the same alleged incidents. We start with the harassment-only claims.

177 Issue 6.1 referred to the video about the car brake pads as an instance of harassment. However, this incident was never escalated by Ms Baker; presumably because she accepted the claimant's explanation that it was not simply leisure-time watching of a video. We reject this disability discrimination complaint.

178 The next harassment-only claim relates to issue 6.6, a general issue about training and refresher courses. The training needs were identified around Capita and Northgate IT systems. The claimant never denied this in her "counter note" of the

meeting on 30 October. We see no clear evidence that the claimant was denied this training. It is utterly fanciful to say that she would have been sent on refresher training in order to undermine her rather than in order to train her to make her more able to do her job. This is illogical and cannot possibly be upheld.

179 The next allegations of harassment-only at 6.12 and 6.19, consists of simply accusing the claimant of coming to work late.

180 It is a fact as we remember, that Sasha Wallace was complaining about the claimant's timekeeping and it had high prominence in the claimant's 6-monthly appraisal in November 2016. We can see no hint whatsoever that this could have been harassment on the grounds of the claimant's disability. We remind ourselves that the claimant was warned for her lateness, the fact that Mr Burn subsequently removed the timekeeping charges totally, as we stated above, was a major disservice to Claire Baker but to go that extra step to find that this was harassment on the grounds of the claimant's disability of all things, is incomprehensible. We reject any such suggestion.

181 The next issue identified as harassment-only, at 6.18, is an allegation of accusing the claimant of being lazy. Apparently, Claire Baker accused her of this on 17 November 2017. This is apparently referring to the calls (allegedly) about the cabinet, to Sarah Coppin, when Sarah was off duty, (if it really was about that and not as Sarah Coppin had said about some procedure). Bridget Cooper, who looked into this thoroughly, said that actually that cabinet had been discussed at team meetings and the claimant knew perfectly well what she had to do about it. So, it was more likely to be as Ms Coppin had reported.

182 There was a major difference between the two accounts here. Sarah Coppin said that the claimant's calling was frequent and that was why, if it had been a one-off exception, it is very doubtful she would have ever complained in the first place. The claimant's calls had become time-consuming, and thus annoying. The claimant's evidence on this is non-existent. We are surprised we are seriously being asked to come to a decision on this issue. There is not a hint of this allegation of the claimant bothering Sarah Coppin being in any way related to the claimant's epilepsy. It is incomprehensible.

183 Issue 6.13.4 is so general as to be virtually meaningless. The claimant apparently relates this to the taking medication at work and the pressure to take it when not at work. We have gone over this enough. We cannot find it has anything whatever to do with disability discrimination, and certainly not harassment.

184 Harassment is defined in section 26 of the Equality Act 2010. It involves unwanted conduct related to a protected relevant characteristic which has the purpose or effect of (1) violating the claimant's dignity or (2) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Under subsection (4) the tribunal has to take into account (a) the perception of the claimant, (b) other circumstances of the case and (c) whether it is reasonable for the conduct to have that effect, (the hostile, degrading etc. environment).

185 We were specifically referred to the authority of *Grant v Land Registry* [2011]

IRLR 748 (CA), to the effect that the tribunal must not "cheapen" these words. To characterise Ms Baker's reasonable medication enquiries as hostile, degrading etc. under section 26 would be to completely cheapen those words. If that was the claimant's perception of it, it was far from reasonable under s 26(4)(c).

186 The next heading is harassment and victimisation, sections 26 and 27 of the Equality Act 2010. In support of the victimisation claim, the claimant is relying, as the antecedent protected act, her complaint of disability discrimination made in respect of her failing her probation. But we have already quoted above paragraph 13 of this judgment that Ms Allison had already rejected the claimant's argument that the probationary termination amounted to disability discrimination.

187 Part of the claimant's victimisation complaint is based on the insistence by and on behalf of the claimant, that Michelle Sibley and Claire Baker were friends. That allegation has been universally denied by Bridget Cooper, Claire Baker, and Michelle Sibley. Ms Sibley was a live witness here for the sole purpose of denying any friendship, on oath. The tribunal has absolutely no hesitation in finding that they did not know each other. We cannot conceive why they would have covered up such an acquaintance. Even circumstantial evidence is totally lacking. Claire Baker indeed told the tribunal that, to the extent that it was known that the claimant's appeal against termination had been allowed, this was entirely due to the claimant herself having advertised the fact, for what purpose we can only imagine.

188 The acts which are said to be harassment and victimisation, under 6.4, are leaving the premises, and the accusation of doing so. To say that there is "no evidence" of this is quite wrong. Of course, there was the evidence of Sarah Coppin. It does not have to be computer generated documentary evidence. As observed above, it seems to be a misconception that Mr Boyo suffers from, despite the fact that he has a law degree.

189 This was arranged as part of the 30 October 2017 supervision meeting. The claimant at the time apparently said: "no comment". She apparently accepted that she could not be paid for time out of the office, but that she could bring lunch into the office. To characterise this as any sort of disability discrimination is fanciful and ill conceived. We are surprised we have been asked to give a judgment on an issue like this.

190 The respondent did not "refuse" to provide evidence. They were unable to provide evidence of the fob records. We have explained this enough already and do not want to repeat ourselves.

191 The claimant in her "counter note" said she was worn down by questioning by Claire Baker as if Ms Baker was giving her the third degree. We have noted this dynamic. The claimant hated being criticised for her performance and often gave apparently consenting answers to ward off further criticism and stop the conversation, only to go back on these apparent concessions after the event as we have seen several times. It was a pattern. The tribunal considered Ms Baker only did what she had to do as a responsible manager. There was nothing remotely oppressive or beyond the call of duty in it.

192 It is further significant that allegations of leaving the scheme did not find their way to Ms Baker's all-important initial "Report of concerns".

193 The next broad heading is harassment and section 15 discrimination because of something arising from disability, and also victimisation. These relate to issues 6.2, 12.2, 18.3 and 18.16.

194 First was the email chain about the court date on 16 October 2017, which we have cited and rehearsed above in detail from paragraphs 27 onwards.

195 We have virtually stated our conclusions already. This is to do with a court date about the bank case, the claimant taking Lloyds Bank to the High Court Queens Bench Division (with the help of her father and, maybe, uncle too). This seems to have absolutely nothing whatsoever to do with epilepsy or any of its effects.

196 The tribunal has said, and repeating ourselves, it is absolutely reasonable management practice to ask for some documentary proof of the need to take a day off, particularly, but not only, at a time when there is a management embargo on leave and as many staff as possible are required to be at work.

197 The claimant really made this very difficult, did not comply with a reasonable initial request from Ms Baker, and decided instead to take offence, and to somehow perceive that she was being accused of dishonesty. As stated, there is no logical connection to the claimant's epilepsy of any of its effects

198 The next head under the heading of discrimination is under 6.3.1, 6.3.3, 6.3.4, 6.3.5, 12.5,18.3, 18.4 and 18.7. This was the rather confused passage about querying the authorship of the claimant's emails, confused with criticism of the claimant's email style, developing into the claimant's over-soft telephone voice not projecting sufficient authority. The tribunal will roll these allegations up in this judgment.

199 It was not good that the topic took a separate turn. We have already expressed criticism against Ms Baker for this logical diversion. But we share her suspicions. As stated above, the perception that the claimant had had help with the emails, particularly about the court date. That was an eminently reasonable suspicion. Indeed, this tribunal suspect that either her uncle and / or her father may have had a hand in those emails. They show all the hallmarks of legalese. So far as we can judge from our assessment of the claimant personally as a witness giving evidence, they were not her style at all.

200 We are content to find that the advice on the claimant's voice was simply the heading of "phone etiquette" was helpful advice. It was unfortunate that its context in a supervision meeting that contained so much criticism of the claimant about alleged wrongdoing contains something that really was not meant to come over as criticism; that was an error on Ms Baker's part. Nonetheless, we could not begin to find that is related to epilepsy. We could not find that it is related to anything arising from epilepsy.

201 The case for cognitive impairments arising from epilepsy has not been made out

in evidence by the claimant, even though higher management may have wished to make allowances for the claimant's "learning style". It was referenced in Ms Allison's outcome letter, when she allowed the appeal against termination.

202 We need to make a firm assessment under section 15. S 15 discrimination is "unfavourable treatment" because of something arising in consequence of the claimant's disability and the "respondent cannot show that the treatment is a proportionate means of achieving a legitimate aim".

203 The claimant has managed to completely mischaracterise the soft speaking as "threatening the claimant with disciplinary [sic] because her voice is soft or low". The evidence comes not within 100 miles of that. Ms Baker did not come near either to questioning the claimant's fitness for work. In fact, the entire thing seems to be an extrapolation of the claimant's over-vivid and over-defensive perception, or perhaps her uncle's construct on her behalf. Whether this was prompted by family or not, it comes across as a retrospective trawl though the supervision notes looking for hints of Equality Act 2010 unfavourable treatment.

204 The next under this heading of harassment, section 15 and victimisation s.27, is ringing other staff for help. This is a reference to Sarah Coppin's original complaint that the claimant was taking her time up when she was off duty at home, 6.7, 12.8 and 18.12. There is a slight extra dimension from this point discussed above.

205 The point was that Ms Baker had told the claimant that rather than call a colleague who was off duty, she should call her, the manager. The claimant then made a complaint that when she did call the manager, the manager did not pick up. True, that might happen. In fact, the reality recorded in the supervision notes started with a complaint by the claimant that her colleagues did not help her enough and Ms Baker said that she should be asking her, the manager.

206 The respondent runs a system of "On call manager" precisely for this situation. We cannot find that there was unfavourable or less favourable treatment here in any sense or that it was an act of harassment, the evidence is exiguous. In addition, when this was examined thoroughly, Bridget Cooper in the course of investigating the grievance had discovered that at the times identified by the claimant that Ms Baker had not responded, Ms Baker had not been on duty. That was a convincing refutation of the complaint. It is a half-baked, ill-researched, and over-general assertion.

207 The 5th point under this heading relates to the mileage. It is worth quoting from the list of issues which Judge Burgher made, and the claimant's claim:

> "12.9 Confusing the claimant regarding the mileage claim and accusing and suggesting she was trying to defraud.
>
> 12.10 Asking the claimant to choose between either that she was confused or she had committed fraud resulting in the claimant admitting that she was confused."

Quite how we are supposed to make a judgment on that issue is hard to tell. At issue 6.5 the claimant was recorded as claiming:

> "requiring the claimant to enter incorrect and shorter mileage for work journeys, causing her to be confused and submit inaccurate mileage and thereafter accusing her of fraud."

208 We remind ourselves that Ms Baker went through the whole mileage claim at some length with the claimant, correcting the mileages. Further this never materialised in her "Report of concerns" which started the disciplinary process. The tribunal considered the claimant was not unfavourably treated; in fact, that she was favourably treated. Most managers would not have accepted that these could possibly have been innocent errors. They were basic.

209 The ET1 claim form at 19(c) stated wrongly: "the claimant complied". The claimant did not comply. The claims had to be worked through yet again, together with Ms Baker. We remind ourselves too that one of the errors on the mileage claim was that the claimant had claimed 8 journeys from AKH to Bramble Court, (a round trip of 22 miles), in one day. The 160 miles there cannot have left any time for work. It was an obvious error. Ms Baker decided not to treat it as deliberate

210 The structure of the respondent's closing submission was helpful because it helped to focus our decision. It saved a huge amount of repetition.

211 The sixth item under this triple heading was the claimant's being accused of taking referral documents home, and also Claire Baker demanding to know the claimant's password for her email account. We have dealt with the password issue above. We accept that Claire Baker did not and never would have asked for the claimant's password. If she had cause to access the claimant's emails she knew how to do it and did it through IT, with the necessary formal consent of senior management.

212 The issue of taking documents home is at is at issue 6.3.2, 6.8, 6.8.1, 6.8.2, 12.3, 12.12, 12.13, 12.14, 18.9, 18.10 and 18.15. The original information came from Sarah Coppin and was attached to Ms Baker's report of concerns and appendix. She stated:

> "The previous day I noted that Aniekan had photocopied the referrals that we had received. I didn't see her put these in her bag, but the following morning I saw her take these out of her bag she uses for work."

213 Finally, on disciplinary appeal, the claimant was given a first written warning on this mishandling of confidential information. We cannot see that there is anything excessive in that sanction. We remind ourselves that it was in fact downgraded by Mr Burn from Moya Griffiths' outcome from a final written warning to a first written warning. The claimant seems to have been very favourably treated on appeal, and not unreasonably treated at the disciplinary. She was lucky.

214 The respondent, as is well known, takes its duties regarding this documentation extremely seriously. They are compelled to because of their accountability to the commissioners/funders referring the customers to them - Chelmsford. The information includes criminal records, intimate family details, intimate details of past and present drug use, and mental health problems. It is obvious that they handle extremely sensitive personal information.

215 At the risk of getting bogged down in a welter of detail, there were 2 separate issues. One was taking paper documents home. The other was sending an email home.

216 Mark Nicholls is the respondent's Head of Information Security and Governance. He is the best authority on breaches of data protection. There was conflict between certain Peabody codes and certain Family Mosaic code, as discussed already. It appears that what the claimant was finally given a first written warning for was taking documents home. The email was more questionable according to Mr Nicholls, whilst the email to a private email address may now be contrary to the respondent's code it was not then. The respondent carefully analysed the old and the new policies to clarify this. The claimant could not be found guilty of something which was not contrary to the policy at the time it happened.

217 Taking the paper documents home remained a major problem for the respondent .

218 The next heading under number 7 underneath this is "disrupting of medication" which was another of the claimant's hyperboles: "seeking to dismantle the previous reasonable adjustments put in place - denying that the claimant's medical condition is on record, asking the claimant to take her medication at home before coming to work". This was a big topic mentioned at 6.9, 6.10, 6.13.1, 6.13.2, 6.14, 6.15, 6.16, 6.17, 6.17.1, 12.1, 12.6,12.7, 12.11, 18.5 and 18.6.

219 There were 2 issues here. The first we have dealt with above and this was in the context of the suggestion/question argument made by Mr Boyo. The other one is apparent loss of institutional memory over the claimant's epilepsy, and the existing reasonable adjustments which were required. The respondent has acknowledged that there was some failure in this regard. They explained that it may well be attributable to the fact that the claimant had been dismissed and then re-engaged and the information which had been studied very carefully when they considered where to place her originally had not followed the claimant to her next placement after re-engagement.

220 She went to subsequent schemes and it did not follow there either. Ms Cooper analysed it very thoroughly. We cannot see the ghost of an argument for saying it was an act of harassment, or for stating that it was discrimination because of something arising in consequence of disability.

221 Even if this, broadly speaking, arose from disability, then section 15 EQA has two causatives. The discrimination must be <u>because</u> of something <u>arising</u> from disability. See *Charlesworth v Dransfields Engineering Svcs Ltd* UKEAT/0197/16. We are looking for the cause and not the context. The "something arising" was in no way the cause. The evidence is all the other way.

222 We note that while the claimant may have suffered a detriment to be asked about her medication regime, and the precise times of medication, and what she needed the respondent to do to facilitate her medication regime, it was certainly a proportionate means of achieving an eminently legitimate aim. An accidental loss of institutional memory itself, whilst it could be criticised, does not really lead to a discrimination claim. It certainly was not deliberate. As stated above, we had every

sympathy with Claire Baker wanting to get to the bottom of it, and why we seem to be in the situation of the claimant arriving at work at 9 o'clock (if she actually did), and then immediately taking a 15-minute paid break.

223 The headings in this list of issues of "dismantling the medication regime" are far from the actuality. They are hyperbole.

224 The next issue is that Claire Baker tried to prevent the claimant going to a doctor's appointment. Again, we cannot accept that. Ms Baker had stated that employees should be taking their medical appointments when they are not rostered to work. If any particular person had come to her and said that they were unable to reschedule a certain appointment, she would certainly have allowed them to go, notwithstanding her preference for them to do it on non-rostered time. That is our finding.

225 It was in the 4 October supervision after the claimant had been crying and Ms Baker went back in with a cup of coffee. There was this issue about leaving at 3:10 when in fact the claimant left at 3:00 and again on 30 October when it transpired the claimant had not made up her time to compensate for the time off for the doctor's appointment. The claimant said she forgot. The doctor's appointment was to be on 9 October, the claimant was to make up the time the very next day, 10 October, but when challenged about the fact she had not, she said she had forgotten i.e. by the next day. Small wonder that Ms Baker might have had suspicions about the claimant, though she did her utmost not to voice them.

226 Mr Roderick described questioning of the claimant about her medication regime as the high-water mark of the claimant's claim, which it may well be. It could be seen as a detriment, or less favourable treatment, even though it was eminently justified under s 15.

227 We then get to the question of reasonable adjustments which again Mr Roderick in a realistic estimate says is a stronger potential claim, even though the respondent is confident that they can resist the claims in their entirety. It is under paragraph 19 in the list of issues. There is a list of initial provisions, criteria, or practices – PCP's - relied on by the claimant from 1 to 9:

(1) arrive 15 minutes before start time;
(2) work full time at the office;
(3) complete all tasks within set deadlines;
(4) not take doctor's appointments for times when on duty, if it clashes with the rota;
(5) not to take medication while in the office, time not given for rest or adjustment when medication taken;
(6) not permitting use of Citrix;
(7) not allowing staff to work together as a team - queries must be referred to a manager;
(8) not explain things properly, and expecting staff to get on with it;
(9) lone-working.

228 We consider that, in the light of the evidence we have heard at this long hearing, that those are all unfair characterisations of what the respondent did. They are an apparently wilful misinterpretation of what the respondent was doing.

229 It is here that allegation 8 over cognitive impairments arises. The respondent does not accept that the respondent had any knowledge, for the purpose of section 20(3), that the claimant was at a substantial disadvantage by reason of her poor cognition which allegedly arose from epilepsy.

230 It is not clear at all that these were PCPs imposed on the claimant. In particular, the claimant was never told not to take medication while in the office, nor was she told that she would not be allowed 15 minutes to recover from the effects of taking that medication. The respondent allowed staff to work together as a team but put some limit the claimant disrupting other colleagues' work as there had been a complaint to that effect by Sarah Coppin that the claimant was not only causing extra work for her but then she was taking time from her, in asking guidance from her too often when she was off-duty.

231 With regard to issue 19.4, there was no blanket ban on someone taking a medical appointment when rostered. Staff knew that if it was possible to avoid doing so, they should do so, but in the last resort if the medical appointment could not be rescheduled, staff would be allowed to go. We accept the respondent's evidence on that and reject the claimant's.

232 Issue 19.2 - working full time in the office - was a criterion, as the claimant was a full-time worker and homeworking was not possible as a support worker in this role. Support Workers must be physically present with customers at the scheme.

233 Similarly, as discussed above by us, Citrix was not suitable for support workers. No support workers had use of Citrix. We remind ourselves that Mr Burn, who was so favourable to the claimant in so many ways on the disciplinary appeal, stated that it would not be a reasonable adjustment for the claimant to have been given Citrix. He stated in his appeal outcome letter:

> "Indeed, I would suggest that your doing work at home over and above your paid hours is not reasonable. A more reasonable adjustment would be to allow additional time at work to complete paperwork."

234 It appeared that the only reason the claimant advocated the lack of Citrix was an attempt to exculpate herself from the charge of having sent confidential documents home. We agree with the respondent's submission that Citrix is a complete non-issue.

235 One of the reasons the respondent takes a knowledge point on "substantial disadvantage" is that in the early days, soon after she started, on 6 October 2014: "I am in good health and my view and doctor's is that my condition will not affect my ability to work". The claimant never stated when she was managed by Sasha Wallace or Dan Gent that she needed more time to understand instructions, as is revealed in the documentary evidence of their appraisals and supervisions. Sasha Wallace explicitly had not authorised use of Citrix.

236 All the claimant's managers, and disciplinary decision makers seemed to make common cause on this score. Citrix would have been a clear breaking down of the boundaries surrounding the claimant's working time.

237 Neither the respondent nor the tribunal has evidence that the claimant had specific cognitive difficulties arising from epilepsy. She did say in support of her appeal against the probation failure dismissal: "I am not brain of Britain". We reject that the contention that the respondent had knowledge of this, despite the finding of Ms Allison about the claimant's learning style.

238 Analysing it as well as we can under this helpful structure suggested by counsel, covers all the points amply with overlap. The tribunal can find no *prima facie* case disability discrimination. The burden has not legally shifted to the respondent under s 136 of the Equality Act 2010.

239 We consider the respondent went to great pains to accommodate the claimant and her known disability issue, the epilepsy. They knew she needed medical appointments, and they needed to accommodate her complex medication regime, through a change of medication as we have described above. There was a good deal of understanding of that.

240 This is a professional organisation, they are actually a professional caring organisation and at times the tribunal considered that the claimant was given the sort of care that they extended to their customers.

241 The claimant's credibility faired very poorly through this hearing. She has not come over to the tribunal as a reliable witness. We are still left with the impression, having seen her give evidence, and having seen Mr Boyo's approach in conducting much of the written case which we suspect is his. We have generally been impressed with Ms Baker as a manager even if she might have got too involved.

242 Despite some of the claimant's words to her, she, and all other managers and decision makers, have behaved not only professionally but with forbearance, sometimes so much forbearance it was almost letting the other managers down, as we remarked of Mr Burn's dismissing all the timekeeping allegations.

243 Mr Boyo on behalf of the claimant did not deliver long oral submission but had prepared. Mr Roderick's submission was entirely oral. Mr Boyo gave an accurate account of the medication, dosages from Levetiracetam 2.5mg and Carbamazepine.

244 Mr Boyo returned to a favourite theme of his. Mr Boyo seized on page 309 of the bundle which is the investigation interview of Claire Baker by Helen Watson. She stated it had been imputed to her, but that she had never commented: "does she have a learning issue?". We accept Ms Baker's denial of that. Unlike the supervision notes with the claimant, Ms Baker was never given this investigatory interview record to approve. She never saw it before it was in this tribunal bundle.

245 Of Citrix and absorbing and processing information, Mr Boyo was also particularly keen to inform us that he had had a meeting with Mr Richard Priest when

they met in reception, in fact, on the “go live date”. On that day he was there because he attended in the hope of representing the claimant but was not allowed to and had to sit outside in reception. That is where he met Mr Priest.

246 Essentially, Mr Boyo, rather than commenting on the evidence, was repeating contentions that were unsuccessfully before the tribunal in the hope that they would be accepted second time around. Mr Boyo said that the claimant was not a perfect employee. He cited past regimes that had been more benign than Claire Baker’s but, as we find, the claimant had never spent very long with any individual manager and the others had all been on a relatively temporary basis. Human nature being what it is, these managers (with the exception of Sasha Wallace) had not wanted to tackle the sort of issues that Claire Baker found were extremely difficult to address. They had apparently ducked them. The claimant was extraordinarily reluctant to accept any criticism at all.

247 For these reasons the claims are all dismissed.

Employment Judge Prichard
1 July 2019