THE EMPLOYMENT TRIBUNALS

Claimant: **Mrs J Davison**

Respondent: **Commissioners for Her Majesty's Revenue & Customs**

Heard at: **Newcastle Hearing Centre** **On:** **30th October – 16th November 2020**
23rd November – 25th November 2020

Before: **Employment Judge Johnson**

Members: **Mr S Carter**
Mrs D Winter

Representation:

Claimant: **In Person**
Respondent: **Mr S Lewis of Counsel**

JUDGMENT

The unanimous judgement of the employment tribunal is as follows:-

1. The claimant's complaints of unlawful race discrimination are not well-founded and are dismissed.

2. The claimant's complaints of unlawful disability discrimination are not well-founded and are dismissed.

REASONS

1. The claimant conducted this Hearing herself and gave evidence herself. She did not call any other witnesses to give evidence. The claimant had tendered a statement from her husband, but that statement dealt with Mr Davison's assessment of the impact upon the claimant's health and well-being of the respondent's alleged discriminatory conduct. Because Mr Davison's evidence went solely to that issue and was therefore relevant to remedy rather than liability, it was agreed that Mr Davison would not be required to give evidence at this stage.

2. The claimant cross-examined each of the respondent's witnesses and put to each of those witnesses her own case, insofar as that differed to the case being put forward on behalf of the respondent. The claimant displayed a thorough working knowledge of the contents of the hearing bundles and of the statements prepared by herself and the respondent's witnesses.

3. The respondent was represented by Mr Lewis of Counsel, who called to give evidence a total of 16 witnesses, 3 of whom gave evidence by CVP video link. One of the respondent's witnesses (AB) was unable to attend the hearing due to ill-health and was also unable to give evidence by CVP or to answer in writing, questions which were put in writing by the claimant. The tribunal accepted that there was a genuine medical reason for AB's inability to attend the hearing. After hearing submissions from the claimant and Mr Lewis, the tribunal found that only such weight as was appropriate in all the circumstances should be attached to the witness statement of AB, taking into account that AB was not present to confirm under oath the accuracy of the contents of the statement, nor to answer questions in cross examination or questions from the tribunal. The hearing was originally listed for 12 days from 30th October 2020 to 16th November 2020 inclusive. 2 days were lost when the claimant displayed symptoms of Coronavirus and a further 3 days were added from 23rd to 25th November 2020.

4. The claimant and each of the respondent's witnesses had prepared typed and signed witness statements. There was a substantial bundle of documents comprising 3 x A4 ring-binders containing a total of 1,170 pages of documents. In addition to those, the claimant had prepared a supplemental bundle of documents, comprising an A4 ring-binder containing 265 pages. Further documents were added to the bundles during the course of the hearing. The tribunal wishes to place on record its gratitude to the claimant and Mr Lewis for their co-operation and courtesy towards each other and the tribunal, for their ability to navigate the substantial bundles, to readily and quickly identify relevant documents and for their assistance generally in managing a lengthy and complex hearing in unusual and difficult circumstances.

5. By claim form presented on 15th February 2018, the claimant brought complaints of unlawful race discrimination against the respondent. In January 2019, the claimant applied to the tribunal to grant her permission to amend her claim, so as to include allegations of unlawful disability discrimination. That application was refused and as a result of that refusal, the claimant presented a second set of proceedings on 2nd May 2019, which contained her allegations of unlawful disability discrimination. It was agreed that both sets of proceedings should be combined and heard together.

6. There have been several preliminary hearings, before various employment judges, at which attempts have been made to properly manage the course and conduct of these proceedings. Particular difficulties have been encountered with regard to disclosure of documents and preparation of the hearing bundles. The claimant formed the view that the respondent was unreasonably refusing to disclose certain documents, or to agree to those and other documents being included in the hearing bundle. Only on 12th October 2020, less than 3 weeks before the hearing was due to start, were the contents of the bundle finally

agreed, following a contentious hearing before Employment Judge Johnson. The respondent thereafter proceeded to prepare the hearing bundles, but the claimant still insisted upon disclosing additional documents thereafter, which led to the preparation of the claimant's supplemental bundle. Further documents were then added to the bundle during the course of the hearing.

7. The employment tribunal had ordered the parties to agree a list of issues well in advance of the final hearing and the tribunal ordered that a copy of that list of issues be sent to the tribunal and be included at the front of each copy of the final hearing bundle. As at the date of the final preliminary hearing on 12th October 2020, a list of issues had not been agreed. The respondent's draft list of issues had been sent to the claimant on 15th April 2020, but by 1st June that list had not been agreed by the claimant. On 27th October 2020, the respondent's solicitors wrote to the employment tribunal, explaining that the claimant had yet to agree to the list of issues which had been sent to her. The claimant had in fact prepared her own list of issues and sent it to the respondent on 23rd October 2020. However, that list contained a much larger number of issues than the respondent's list. Of particular concern to the tribunal, was that the claimant was introducing as "issues", matters which appeared to be entirely new allegations. The respondent's list of issues ran to 82 paragraphs, whereas the claimant's ran to 146 paragraphs. On the morning of the first day of the final hearing, it was necessary to go through both lists of issues, to try and identify those which were issues arising from the claims presented by the claimant and to try and sift out those which had never formed part of either sides` pleaded case. It was drawn to the claimant's attention that there had only ever been 4 allegations of unlawful disability discrimination, all of which were allegations of failure to make reasonable adjustments. What the claimant had done in her list of issues, was to duplicate many of the allegations of unlawful race discrimination and categorise them also as unlawful disability discrimination. Furthermore, in her own list of issues, the claimant for the first time described her racial origin as "Sikh/Indian", whereas throughout the proceedings she had relied upon her racial origin as "Indian". It was pointed out to the claimant that it was inappropriate and unacceptable to introduce completely new claims into a list which was intended to identify those questions which the employment tribunal would have to decide from her existing claims. Similarly, it was inappropriate to change at the last minute her description of her racial origin. The claimant was informed by the tribunal that these proposed changes to her case would require an application to amend, which was unlikely to be granted in the absence of a meaningful explanation as to why such numerous and far reaching amendments were being made at the last possible moment. Mr Lewis on behalf of the respondent adopted an extremely pragmatic and helpful approach. Mr Lewis indicated that the respondent's witnesses would probably be able to deal with the change in the claimant's description of her racial origin from Indian to Sikh/Indian without any difficulty. Mr Lewis also indicated that, where the allegations of unlawful disability discrimination which had not been pleaded, were simply duplicates of existing allegations of unlawful race discrimination, then the respondent would probably be able to deal with them. However, Mr Lewis submitted that where the claimant`s "issues" relating to unlawful race discrimination and unlawful disability discrimination included completely new allegations, then it would not be appropriate for the claimant to be permitted to pursue those.

8. The tribunal spent a considerable amount of time in dealing with the problems relating to the bundle of documents and the list of issues. The tribunal had to go through the claimant's list of issues one by one, so that the claimant could indicate which were to be pursued, so that Mr Lewis could indicate those which the respondent could accommodate and those which it could not. Identifying the issues and preparing the final list took up the entirety of the first day of the hearing, so that the claimant's evidence did not start until the morning of the second day.

9. During his closing submissions, Mr Lewis on behalf of the respondent made an application for Anonymity Orders pursuant to Rule 50 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 in respect of several of the respondent's witnesses. In particular, the respondent seeks to protect the identity of a former employee of the respondent, who dealt with the grievance raised against the claimant and who was unable to attend this hearing due to illness. The tribunal accepted that this former employee's right to privacy is such that any details relating to the medical condition which prevented that person attending the hearing, should not be disclosed. The tribunal accepted that the identity of the employee who raised the grievance against the claimant should also be protected as the grounds of that complaint were of such a personal nature that the complainant's identity should not be disclosed in these proceedings. In respect of the other witnesses for the respondent, the tribunal was satisfied that the principle of open justice far outweighs any of their rights to privacy and those other applications were refused. The appropriate Orders will be sent out with the final judgment, in which the former employee will be referred to as "AB" and the employee who raised the grievance as "YZ".

10. The claimant has been employed by the respondent since 2nd April 2002. She began work as a telephone advisor and was promoted in May 2006 to a team leader. In August 2016, she applied for a position as an HO manager. The claimant's application was successful and she began work in her new role on 5th December 2016. The claimant has always worked at the respondent's Longbenton office complex in Newcastle upon Tyne. It is from the date of her promotion on 5th December 2016, that the claimant alleges that she has been subjected to a course of discriminatory conduct by a number of colleagues, which the claimant alleges to be related to her race and/or disability. In her claim form, the claimant describes her racial origin as "Indian" and refers to her comparators as "Caucasian". However, in her "amendment/further particulars" dated 21st November 2018, the claimant refers to herself as a "Sikh, Indian woman" and refers to "other white comparators". In the same document at page 51 of the bundle, the claimant refers to her race as "Indian". In her amended particulars dated 25th January 2019, the claimant refers to "white comparators".

11. Shortly after her promotion to the role of team leader in May 2006, two members of staff raised a grievance against the claimant. The claimant says that "At this point I first started to suffer from depression". In her witness statement, the claimant says she was assessed by Doctor Ghura, a specialist registrar in occupational medicine, on 18th November 2008. Doctor Ghura said in his report dated 19th November 2008, that the claimant's depressive symptoms were at a

"moderate to severe level". Doctor Ghura indicated that in his view, the claimant was suffering from a disability at that time. Following her promotion in 2016 and the subsequent train of events which form the subject matter of these proceedings, the claimant was again diagnosed with depression. The respondent concedes and accepts that the claimant was suffering from a mental impairment which amounted to a disability as defined in Section 6 of the Equality Act 2010, from 25th September 2018, when it received the Occupational Health report of that date. The claimant maintains that her mental impairment amounted to a disability as from 28th March 2018, that being the date of a different Occupational Health report. One of the issues for the tribunal to decide at this hearing, is the date when the claimant became disabled and when the respondent knew or ought reasonably to have known of that disability.

12. The claimant was asked by Mr Lewis about whether she made any of the respondent's witnesses aware of her Sikh/Indian racial origin. The claimant stated that she wore a particular bracelet, which was indicative of her Sikh religion and that her full name is Jasbir Davison, which clearly indicates that she is of Indian decent. It was put to the claimant that she had always used the name "Jasmine" and not "Jasbir". The claimant was invited to identify any of the hundreds of documents and items of correspondence in the hearing bundle, in which she had used the name Jasbir and not Jasmine. The claimant was unable to do so. The claimant's position was that her managers would have access to her HR and personnel records and, had they looked at those properly, they would have realised that her full name was Jasbir and not Jasmine, and that this was indicative of her Sikh/Indian racial origin. Only those of the claimant`s managers who had access at the relevant time to her occupational health reports, were aware that the claimant was off work due to stress, anxiety and depression. The claimant was unable to produce any other evidence to support her contention that any other of the respondent's witnesses knew about her racial origin or her disability.

13. On several occasions whilst being cross examined by Mr Lewis, the claimant was asked to explain the differences between her version of events and that given by the respondent's witnesses. When unable to provide a meaningful explanation, the claimant alleged that the respondent's witnesses were telling lies. When faced with documents which tended to support the respondent's witnesses` versions of events, the claimant alleged that those documents were either fabricated or forged. Those allegations of outright dishonesty and deliberate falsification of evidence could not be substantiated by the claimant and were rejected by the employment tribunal. The claimant's approach to these proceedings was that there had been numerous management decisions over a period of time, with which she disagreed. Her dissatisfaction with those decisions led her to allege that each was an act of race discrimination. That approach to this litigation was further evidenced by the claimant's decision at the last minute to increase the number of allegations of disability discrimination from the 4 which appeared in her pleaded case, to a much greater number, by alleging that the incidents pleaded as race discrimination were also now acts of disability discrimination. As is set out below, the respondent's witnesses were able to provide a logical and meaningful explanation for each of the acts or incidents which the claimant alleges to be discriminatory conduct. In each case, that

explanation was accepted by the employment tribunal as likely to be correct. The findings of fact set out below were made following the tribunal's careful consideration of the evidence of the claimant and the respondent's witnesses, their answers in cross-examination and the tribunal's examination of the documents in the hearing bundle.

Findings of fact

14. The claimant's first day of work in her new position was on 5th December 2016. The claimant alleges that she was "left at the bottom of the floorplate to complete HMRC generic training. I was given no welcome or introduction. This is the first time I felt the hostility towards me. The other manager who started on the same day as me was given a mentor. This hostility continued for the rest of the week." The respondent's evidence was that a number of new managers had started work that day. Unlike the claimant, some of those had no previous managerial experience. The claimant however did have previous managerial experience. Those with less experience were allocated "buddies" to assist them for the first few days. It was considered that the claimant did not require a "buddy" or mentor. The claimant was given the same welcome or introduction as the other managers. The claimant's line manager was Claire Leggate, who was in fact on annual leave at the time the claimant began her new role. The claimant did not give any evidence as to what was the impact upon her of not having a buddy or mentor. She did not explain what was the impact upon her of not having any welcome or introduction. The tribunal found that there had been no hostility whatsoever towards the claimant. The tribunal accepted the respondent's explanation as to circumstances surrounding the claimant's first day at work and found that whatever did happen, was in so sense whatsoever influenced by the claimant's race.

15. The claimant's next allegation is that on 12th December 2016 she was tasked to put in place a training plan to upskill some of her team, but was told that she could not use experienced staff to assist her. The claimant alleges that she repeatedly asked for a mentor, but those requests were refused and that she was "undermined and set up to fail". The tribunal accepted the evidence of Ms Leggate to the effect that the team was producing a new post-handling system and that the claimant's previous experience was likely to be of assistance in that project. Ms Leggate provided additional help via Mr Thain to assist the claimant. Shortly thereafter, personnel were changed and responsibility for the task was transferred to a different manager. The tribunal found that these were no more than the kind of teething problems which would ordinarily be expected in such a situation. The claimant was not treated less favourably than any other manager; the claimant's race played no part in the way the work was allocated and there was no criticism of anything done by the claimant.

16. The claimant's next complaint is that on 19th December 2016 "I was threatened with conduct and discipline for coming in to the line of business with an alternative working pattern which included term-time." Prior to her promotion, the claimant had been working to an alternative working pattern, where she did not work during the school holidays due to having young school children at home. When applying for the new role, the claimant had not disclosed on her application form or at

interview that she was working to that reduced hours pattern. The application form set out that the role required full-time attendance, but that applicants may subsequently apply for reduced hours, following their appointment. The claimant did not state on her application form that she was working to a term-time only pattern and did not inform her line manager until after she was appointed and began work. The issue arose when management had to consider Christmas holidays at the end of December. Donna Hodgson (the claimant's manager) was concerned that the claimant had not made clear her working pattern at the appropriate time. In discussions with the claimant, Ms Hodgson made it clear that the respondent could not accommodate that working pattern in the new role. Ms Hodgson spoke to the respondent's HR department and was told that the claimant's failure to declare her working pattern could amount to a "conduct and discipline" matter. Ms Hodgson mentioned that to the claimant when discussing the situation with her. Ms Hodgson also mentioned that the claimant could move to a caseworker role if she wished to retain the term-time working pattern. However, the claimant insisted that she wished to retain her management role. Eventually, an agreement was reached about the claimant's working pattern. The tribunal accepted Ms Hodgson's evidence that the claimant was never "threatened" with any kind of disciplinary action. There was no element of less favourable treatment and certainly none that was in any sense whatsoever influenced by the claimant's race. Ms Hodgson`s suggestion of a caseworker role, was no more than that - a proposal that may have assisted the claimant to retain her alternative working pattern of term-time only. It was the claimant's choice to continue in the management role and alter that working pattern. None of this had anything at all to do with the claimant`s race.

17. The claimant's next allegation was that on 9th January 2017 when she returned from Christmas leave, she found that "her team had been taken from her and given to another manager". The claimant alleged that this had been done without her knowledge and this made her feel "embarrassed and belittled". She was told later that day by Donna Hodgson that she would be "floating" for the foreseeable future. The tribunal accepted Ms Hodgson's evidence, which was that the claimant had effectively swapped teams with Mr Sweeney, as the claimant had been struggling to progress the role which had been appointed to her before Christmas. These changes had taken place whilst the claimant was on Christmas leave and that was the reason why she had not been informed of it. The tribunal found that the claimant's team had not been "taken from her", but simply that she had been allocated a different team to manage. The claimant's race played no part in that decision. The change of teams did not amount to less favourable treatment.

18. The claimant's next allegation is that she was not offered a team when one become available and that when a team did become available, its management was allocated to Miss Maria Wetherall, whom the claimant alleged was "not a substantive manager". The tribunal found that the claimant was never without a team to manage and that the allocation of various teams was based upon management's assessment of who was best placed to manage those teams which were undertaking different tasks. There was no less favourable treatment of the claimant and no part of the decision-making process was influenced in any way by the claimant's race.

19. The claimant's next allegation is that she was "forcibly asked to become a caseworker". This relates to the suggestion by Donna Hodgson that if the claimant wished to retain her alternative working pattern of term-time only, then she may wish to consider undertaking a caseworker role. That role would not have involved any loss of salary or benefits. The claimant's choice was that she wished to retain her managerial role, telling Ms Hodgson that she was "a born manager". Ms Hodgson's suggestion was no more than that. The tribunal found that the claimant was not "constantly asked," nor was she pressurised in any way. There was no less favourable treatment, as the caseworker role would not have involved a demotion or reduction in pay in any way. It was an alternative role at the same level. The claimant`s race played no part in Ms Hodgson`s approach to this matter.

20. The claimant's next allegation is that within weeks of starting her new role, she was "left with no team or job role", whilst the other managers who started at the same time were given a team to manage. Ms Hodgson's evidence was that all the managers had teams to manage and had adequate work to undertake. Whilst workflow fluctuated from time to time, there was always some work to be done by the claimant and her team. The tribunal accepted that there were times when the claimant (as with other managers) did not have a specific project to undertake, but that did not mean there was no work to do and no team to be managed by her. The tribunal found that the allocation of work had nothing to do with the claimant's race.

21. On 17th January 2017, Mr Peter Cullen became the claimant's line manager. The claimant states, "In February 2017 I was finally given a team on Peter Cullen's command and a new project to launch. I received no support from both my business unit head (BUH) Mr Peter Cullen and fellow managers. I struggled with setting up the project from scratch as I had no experience of the IT system. I asked for help but got nothing other than generic blanket e-mails or e-mails that were simply forwarded on from other parties." The claimant's allegation is that Mr Cullen failed to give her any support during this period. The claimant did not specify exactly what support she required or expected, or whether any such "support" was given to any of the other managers. Mr Cullen described that the claimant had joined his team when a new project was being launched and the claimant's role was to set up performance tools for that project. Mr Cullen accepted that, as things turned out, the claimant did not have the experience to do that, so Mr Cullen ended up doing it for her. Mr Cullen rejected the allegation that he had not supported the claimant. Mr Cullen formed the view that the claimant was not particularly keen to learn and displayed a reluctance to engage in those new matters. Mr Cullen also drew the tribunal's attention to an e-mail written by the claimant in which she provided a glowing account of the support that Mr Cullen had given her throughout this period. The claimant's explanation for this e-mail was that it was in response to a request from Mr Cullen for feedback that he could use in forthcoming appraisals. The claimant sought to persuade the tribunal that she had been pressurised by Mr Cullen into sending that e-mail. The tribunal rejected the claimant's evidence in that regard. The claimant had been asked to provide feedback and it was she who created the e-mail, setting out words which she had intended to use. What the claimant described as "lack of support" was

nothing more than firm management by Mr Cullen, which was in no sense whatsoever related to the claimant's race.

22. The claimant's next allegation was that she was unfairly challenged about her team's low utilisation figures in February 2017. The claimant says in her statement, "I had concerns over utilisation. I mentioned this at every team/performance meeting and was told that my utilisation figures would be exceptioned, because my project was in team and learn phase. I asked to observe a weekly performance meeting for my own development and was told within this meeting that my team's statistics had brought the whole centre's utilisation figures down and I was challenged over why I had not flexed by staff onto other work." The claimant says that she felt intimidated and degraded by this because if happened in front of the senior management team. The claimant again alleged that she had been set up to fail and was being treated less favourably than the other managers who were fully supported. The respondent's evidence was that there was indeed an issue with the claimant's team's low utilisation figures. This continued for a number of weeks and the claimant was challenged about it by Miss Leggate at the meeting. Miss Leggate explained how that challenge was the same to the claimant as it was, or would have been, to any other manager whose utilisation figures were the same as the claimant's. The fact of the matter was that the claimant's team were not meeting their targets. It was for the claimant to provide an explanation for that. It was Miss Leggate's right to challenge the claimant about it. That challenge was in no sense whatsoever influenced by the claimant's race; it was entirely down to the poor utilisation figures. The tribunal did not accept that the claimant was either intimidated or degraded, nor was she being set up fail.

23. The claimant's next allegation was that Mr Cullen had failed to explain to the claimant the process of forecasting and planning. The tribunal found that this allegation was simply not made out. The responsibility to undertake forecasting and planning was not part of the claimant's role, but that of Mr Cullen. Mr Cullen provided sufficient information and direction to the claimant (and the other managers) about what they were required to do, so as to enable him to manage his overall forecasts. There was no criticism of the claimant at any stage about forecasting or planning. The claimant was not treated any differently to any of the other managers and therefore was not treated less favourably. The claimant was not set up to fail and the issue of planning and forecasting had nothing to do with the claimant's race.

24. The claimant's next allegation is that Mr Cullen failed to take action against one of claimant's colleagues whom she had been told had, "slated me in full earshot of others". The claimant said she found this extremely upsetting, although she did not record anywhere exactly what was supposed to have been said about her. The claimant said she reported it to Peter Cullen, whose response was, "She does this to everyone". The claimant alleged that Mr Cullen failed to take action against the colleague and that this left her feeling vulnerable and threatened. Mr Cullen's evidence was that the claimant had never approached him about this matter. The claimant did not call to give evidence the person whom had reported to her the comments allegedly made by the other colleague. In the absence of any evidence about what exactly had been said, the tribunal found it difficult to

accept the claimant's version that Mr Cullen was expected to do something about it. The claimant has not set out exactly what Mr Cullen ought to have done. She simply says "He did not take this further." The tribunal was satisfied that, even if the matter had been reported to him and he had decided to do nothing, that decision was not anything to do with the claimant's race.

25. The claimant's next allegation is that in March 2017, she learned from a colleague that the project she had been working on was to be decommissioned. The claimant was annoyed that she had learned this from a colleague, rather than from her own manager. The claimant was told that Claire Leggate had announced the decommissioning of the claimant's project in a different team meeting. The claimant's evidence was that she and her team should have been told directly and not learned "in such an insensitive way". In her evidence to the tribunal, Miss Leggate accepted that the claimant and her team should have been informed of the decommissioning of the project and that they should not have learned of it in the way they did. However, the tribunal accepted that this issue could not, and did not, amount to less favourable treatment and was certainly nothing to do with the claimant's race.

26. The claimant's next complaint relates to her end of year appraisal in March 2017. The claimant alleges that Peter Cullen failed as her manager to "accurately and fairly represent her" at that meeting and that as a result, the claimant was appraised as "Needs development". Mr Cullen's evidence to the tribunal was that he had in fact recommended that the claimant be assessed as "achieved", but that other members of the validation group for those appraisals concluded that the claimant remained fairly new in the role and had not yet displayed those qualities which justified an assessment of "achieved". For those reasons, the validation panel allocated the claimant as "needs improvement". The claimant's allegation that it was Mr Cullen personally who gave her the "needs development" assessment. The tribunal found that not to be the case. The decision was made by the validation panel and not by Mr Cullen. The panel's reasons for coming to that conclusion were based upon their assessment of the claimant's performance to date and were in no sense whatsoever influenced by her race.

27. The claimant made a second allegation about this meeting, namely that Mr Cullen had failed to fairly and accurately represent her at that moderation meeting. The tribunal accepted Mr Cullen's explanation that his role was to fairly and reasonably present in good faith his view and assessment of the claimant's performance and behaviour over the relevant period of time. That is what Mr Cullen did. The generally held view amongst the panel was that it had taken the claimant a while to settle into her new role, there had been concerns about utilisation and productivity and also about the claimant's behaviour in failing to disclose at the application stage, her term-time working pattern. The tribunal accepted that Mr Cullen's and the panel's assessment of the claimant fairly and reasonably considered those matters. The panel's deliberations and decision were in no sense whatsoever influenced by the claimant's race.

28. The claimant's next complaint was that in August 2017, her team was transferred to a different floorplate and she was "ostracised from the rest of my command with no support". By this time the claimant was managed by Mr Stephen Robson. The

claimant's team was transferred to an area known as the BOF, which was a recently renovated area of the Longbenton complex. The claimant`s was not the only, or indeed the first, team to be transferred there. The respondent operated what is now commonly called a "hot-desk" arrangement, where employees utilised whatever furniture was available, in whatever part of the relevant floor area. Mr Robson's evidence to the tribunal was that staff were free to sit wherever they wished. Mr Robson was based on one floor below that where the claimant worked and held regular, daily meetings with his managers, including the claimant. Again, the claimant gave no specifics about what kind of "support" she expected or required, nor particularly whether any such support was given to any of the other managers. Mr Robson's evidence to the tribunal was very similar to that given by the other witnesses for the respondent, namely that the claimant regarded herself as "the finished article" and "a born manager". The claimant was unable to provide any examples of being "ostracised" or of any requests for help, guidance or other support being made or refused. The tribunal found that this allegation was not made out. The claimant was neither ostracised or excluded from support and was not less favourably treated because of her race.

29. The next allegation against Mr Robson is that he constantly asked the claimant about her husband and her children. The claimant's husband is white and previously worked with Mr Stephen Robson. The claimant alleges that Mr Robson made comments to her such as, "Simon is great – what happened to you?" The claimant says in her statement, "I felt uncomfortable with this, as I knew he was referring to my race. I was offended." Mr Robson's evidence was that Mr Davison was always particularly well prepared and well organised, whereas the claimant had on occasions displayed both a lack of organisation and a lack of preparation. The claimant herself accepted that her husband was well organised. The tribunal found it unlikely that Mr Robson would have made such a comment to the claimant. Even if such a comment had been made, it was in no sense whatsoever related to the claimant's race.

30. The claimant went on to allege that Mr Robson had said to her "Who do your kids look like – you or Simon? The claimant said that this comment must have been made because her children are of mixed race and that the comment made her feel "very uncomfortable". The claimant described Mr Robson's tone as "offensive". When challenged about what exactly had been said to her, the claimant said in cross-examination that she could not remember the exact words which had been used. In her evidence to the tribunal, Miss Ovens for the respondent described how the claimant had always been positive in her description of her working relationship with Mr Robson. No mention is made in the statement from Mr Davison (the claimant's husband) about the claimant ever mentioning to him either of these comments allegedly made by Mr Robson. The tribunal found it unlikely that Mr Robson had made this comment about the claimant's children.

31. The claimant's next complaint was that in or about August 2017, she had reason to challenge a member of her team (James Robinson) about his work pattern and not fulfilling his contractual obligations. The claimant's evidence to the tribunal was that when she challenged Mr Robinson, she was subsequently "Angrily questioned" by Mr Robson about why she had done so. Mr Robson's evidence

was that he had agreed to the claimant challenging Mr Robinson about his work pattern and that he had not reacted angrily, or questioned the claimant about those matters. The claimant's evidence in her statement was that "Mr Stephen Robson's behaviour became exceptionally hostile towards me". However, the claimant provided no further detail about Mr Robson's behaviour, how it affected her or how it could be properly described as hostile. The tribunal found it unlikely that Mr Robson had reacted in the way the claimant suggested. The tribunal found that, whatever had happened, it had nothing to do with the claimant's race.

32. The claimant then raised a similar allegation, stating that Mr Robson had undermined her after she had challenged Miss Halliday about her working pattern and her contractual hours. The claimant's evidence was that she had spoken to Miss Halliday after she had first clarified the situation with Mr Robson. Mr Robson's clear instruction to the claimant was that everyone, including Miss Halliday, had to work their share of weekends and late shifts, regardless of their individual circumstances. The claimant then spoke to Miss Halliday, who became upset and ran out of the building, crying. Mr Robson insisted that the claimant should follow Miss Halliday to make sure that she was alright. The claimant alleged that this made her feel extremely uncomfortable and threatened, as she did not know how Miss Halliday would react. Another team member followed Miss Halliday, who returned to her desk. Mr Robson then personally spoke to Miss Halliday and clarified that her working pattern had already been agreed. Mr Robson confirmed that Miss Halliday could retain that shift pattern. The claimant said that she then felt "degraded and undermined", after Mr Robson had spoken to Miss Halliday. The tribunal found that Miss Halliday had become upset at the manner in which she was spoken to by the claimant. Mr Robson had investigated the working pattern, clarified the situation and confirmed to Miss Halliday that she could retain that working pattern. The tribunal found that this was no more than good management by Mr Robson and that he had not deliberately set up the claimant to fail, or to undermine her. The manner in which Mr Robson dealt with the situation was in no way whatsoever influenced by the claimant's race.

33. The claimant's next allegation is that Mr Robson arranged to have Mr Robinson "spy" on her, on behalf of Mr Robson and that Mr Robson had specifically told the claimant that Mr Robinson was doing so. The claimant's evidence to the tribunal was no more than "Mr Stephen Robson made constant reference to his "spy" Mr Robinson. This made me feel extremely uncomfortable as I knew everything I was doing was being misconstrued and reported back to him." This allegation was denied by Mr Robson, who also denied being as close to Mr Robinson as the claimant's suggested. Mr Robson's evidence was that he had only met Mr Robinson for the first time on 31st July 2017. The tribunal found the claimant's allegation that Mr Robson had arranged to have Mr Robinson spy on her was fanciful in the extreme. There was no evidence to support it. There were no facts or evidence to suggest that Mr Robson had arranged to have Mr Robinson spy on the claimant, or that he had done so because of her race.

34. The claimant's next allegation related to Mr Robson's influence on her mid-year performance management record discussion on 10th October 2017. Mr Robson had told the claimant prior to the meeting that he intended to mark her as "achieved". However, the claimant went on to allege that he explained that he

expected to be challenged by members of the senior management team and that this was because, "I was not in favour because of who I am and that no other business unit head would ever want me on their command. I believe he was referring to my race." Mr Robson accepted that he had told the claimant that he intended to recommend that she be marked as "achieved". However, he explained to the tribunal that having reflected upon his assessment after discussing it with the claimant, he "changed his mind – simple as that." Mr Robson then recommended to the panel that the claimant be marked as "needs development". Mr Robson informed the claimant after the meeting and recalled to the tribunal her angry reaction, where she had called him "disgusting" and went on to state that she intended to raise a formal grievance against him. Mr Robson explained to the tribunal that he had taken into account when changing his mind, the matters relating to the claimant's performance, including her turning up to staff meetings with only her mobile phone and nothing else and her open criticism of members of staff within her team. The tribunal accepted Mr Robson's evidence that he had not deliberately attempted to sway the validation panel, but had simply given his honest appraisal of the claimant's performance to that date. The tribunal found that Mr Robson's actions had nothing to do with the claimant's race.

35. The claimant's next allegation was that, following a day's leave, she returned to work on 12th October to find that "The team were hostile towards me. Mr Stephen Robson had held a meeting with my staff behind my back. Mr Stephen Robson was doing all in his power to turn the whole team against me. Mr Stephen Robson made no attempt to tell me about the meeting, or to find out my version of events. Instead, he sided with the team and his close friend Mr Robinson. Mr Stephen Robson completely undermined my position. When it became apparent that Mr Stephen Robson was not going to discuss the meeting with me I went and asked him about it. He became angry, he did not want me to know about it. He deliberately went out of his way to damage the relationship I had with my team." The tribunal found that the claimant's version of this incident was completely inaccurate. In the claimant's absence, her team members had approached Mr Robson and asked to have a meeting with him to express their concerns about the way in which the claimant was managing them. It was the team members who requested the meeting, not Mr Robson. That was confirmed by Miss Halliday in her evidence when she stated, "We instigated the meeting as a team and decided as a team that we should all go (to see Mr Robson). People were complaining about a lot of things, for example the way she made them feel, the fact that she treated all staff differently to new members of staff, knowledge of the work and her absences at team meetings." The claimant did not challenge that when cross-examining Miss Halliday. The tribunal found that it was entirely reasonable for Mr Robson to hold a meeting with the team members and to listen to what they had to say. Mr Robson accepted that the claimant had approached him about the meeting before he had the opportunity of discussing it with her. He confirmed that the meeting had taken place and that he intended to speak to her later to discuss it. When he did discuss the matter with the claimant, that discussion lasted for some three hours, during which Mr Robson explained that he wanted to try and support the claimant and was prepared to "draw a line under it". The tribunal accepted Mr Robson`s and Miss Halliday's version of what happened surrounding this meeting. There was no less favourable treatment of the claimant and certainly nothing was influenced by her race.

36. The claimant's next allegation was that her team was taken from her by Mr Robson without reason or notice. What actually happened, was that Mr Robson decided that the claimant should "swap" teams with Mr Peter Cullen. Mr Robson's reason for that, was that there had been a clear and obvious breakdown in the working relationship between the claimant and her team members and that it would be in the best interests of everyone if the claimant was allocated to a new team. That is what happened. The tribunal accepted Mr Robson's explanation and found that his was a reasonable management decision in all the circumstances. It was not less favourable treatment of the claimant and was certainly not influenced by her race. The tribunal further accepted Mr Robson's explanation as to the claimant's reaction when she learned that she was to be allocated to a different team. Mr Robson described how the claimant had shouted at him and was "absolutely seething" and that this made him feel "The most uncomfortable he had felt in thirty years working for the respondent."

37. The claimant's next allegation was that Mr Robson had failed to introduce her to her new team and that she had to text him to find out where that new team was located. The claimant's evidence to the tribunal was that, "I was left to first find and then introduce myself to the team. I did not know what they had been told. I felt embarrassed and humiliated. I was the talk of the Centre. I was again given a team ostracised away from the Command and I noticed a definite pattern of less favourable behaviour occurring." The claimant alleged that Mr Robson had failed to tell her why her team had been changed, where they were located, or to introduce her to the new team. Mr Robson's evidence to the tribunal was that he had arranged for Mr Cullen to affect a handover to the claimant and left it to Mr Cullen to take care of that. The claimant accepted that she had received a text message from Mr Robson explaining where her new team was located. The tribunal found that there was nothing unreasonable in the way Mr Robson had conducted this change of team. The claimant had not been treated less favourably than any other person who was changing teams in those circumstances. Mr Robson's treatment of the claimant was in no sense whatsoever influenced by her race.

38. The next allegation by the claimant refers back to the claimant's mid-year assessment in October 2017. The claimant alleged that Mr Robson "biased the moderation panel against the claimant with lies about the claimant so that she would receive a "needs development" marking. The claimant in her evidence to the tribunal failed to establish exactly what "lies" had been told by Mr Robson to the panel. Mr Robson's evidence was that he had fairly and reasonably set out his personal assessment of the claimant's performance and behaviour and that none of that was influenced by the claimant's race. The tribunal accepted Mr Robson's explanation in that regard. No lies were told by Mr Robson and he had not attempted to bias the panel against the claimant.

39. The claimant's next complaint is that in October 2017 during a Command's moderation meeting, Mr Robson asked the claimant to introduce her team "Knowing that she wasn't able to do so as the claimant had not yet met them." The claimant's evidence to the tribunal was that, on the day she first began to work with the new team, she was approached by Peter Cullen, telling her that the

staff moderation meeting had been brought forward and was to be held immediately. This meant that the claimant had no time to prepare and that this had been done deliberately by Mr Robson "in another attempt to degrade and humiliate me in front of the other managers." Mr Robson's evidence was that he asked the claimant to introduce herself, along with everybody else in her team, in the same way that he did or would do with everybody else. The claimant was therefore not treated any differently to that other managers. When asking the claimant to introduce herself and her team, Mr Robson was not influenced by the claimant's race. There was no evidence to support the claimant's contention that the meeting was deliberately brought forward so as to embarrass her because of her race.

40. The claimant's next allegation was that, towards the end of this meeting, Mr Robson had asked all the managers present to discuss the forthcoming Christmas leave period. The claimant alleged that Mr Robson deliberately raised this because he knew that the claimant had a "term-time only" work pattern, which would mean that there was less scope for other managers to take time off over Christmas. The claimant alleged that Mr Robson deliberately raised the matter, "knowing that it would create hostility between me and the other managers." Mr Robson's explanation was that it was an obvious and timely opportunity to deal with arrangements surrounding Christmas leave. All the managers were present and it was a sensible opportunity to discuss the matter. The tribunal found that this was an entirely reasonable management decision. It was in no sense whatsoever influenced by the claimant's race.

41. The claimant was on annual leave the following week, during which she described how she suffered a series of panic attacks "due to the way I had been treated at work." The claimant sent an e-mail to Ms Michelle Warbey, an assistant director in the C&P section, asking for a move from Mr Robson's team to an area outside of C&P. The claimant's evidence was that Ms Warbey agreed to try and arrange a move for the claimant. The claimant's evidence to the tribunal was that, during her discussions with Ms Warbey, the claimant mentioned that she (the claimant) would be unwilling to work for Ms Thain, Mrs Donna Hunter or Mr Martin Peart, "because of what she had been told by Stephen Robson". With regard to Mrs Donna Hunter, the claimant's evidence was that she was told by Mr Robson that Donna Hunter, "will have your life". The claimant learned on her return to work after her week's leave, that she had been allocated to Donna Hunter's command. The claimant alleges that this was done deliberately and was an act of race discrimination. That allegation was rejected by the tribunal. Ms Warbey gave clear and persuasive evidence to the tribunal, which was supported by detailed notes and records taken at the time. The tribunal accepted Ms Warbey's explanation that there was no good reason why the claimant should resist a transfer to Donna Hunter's command. The claimant had never worked with Donna Hunter and Donna Hunter had no recollection of ever having met or spoken to the claimant before then. The tribunal found that there was no good reason why the claimant should have been reluctant to work with Donna Hunter. The tribunal found that Ms Warbey's decision to allocate the claimant to work with Donna Hunter was in no sense whatsoever influenced by the claimant's race. The claimant had asked for a move and Ms Warbey was simply agreeing to the claimant's request and arranging for the move as soon as possible to a team

which she considered suitable to the claimant's skillset and where there was space available.

42. The claimant's next allegation is that, following her transfer to Donna Hunter's command, she was not given a project to lead or any meaningful work to undertake. The claimant's evidence was that she was more qualified and experienced than those for whom particular projects were allocated, which meant that she was the only manager, "left with nothing to do except one to one's and general checks on flexi and leave." The claimant's evidence in that regard was directly contradicted by Mrs Hunter. The claimant was responsible for managing her own team. There are documents in the bundle to which Mrs Hunter referred showing that there were regular meetings with the claimant at which work matters in general were discussed. Some of those documents were created by the claimant herself. Nowhere does the claimant raise with Mrs Hunter or anyone else, that she felt that she was under-utilised, nor that she did not have enough meaningful work to undertake. Mrs Hunter's evidence was that during the first few weeks, she agreed with the claimant that she should focus on getting to know her team and her new environment and learning about the new areas in which she was now operating. Mrs Hunter's evidence was that the claimant was jointly leading the technical areas in which she was operating. It was put to the claimant in cross examination that her allegations were inconsistent with the documents she had prepared at the time, which indicated that she had plenty of work to do. The claimant could not give any meaningful explanation. The tribunal found that the claimant had been allocated meaningful work and that there was no obligation on Mrs Hunter or the respondent to provide her with a specific project until satisfied that she was ready to lead such a project. Those were reasonable management decisions made by Mrs Hunter which were in no sense whatsoever influenced by the claimant's race.

43. By letter dated 22nd November 2017 and sent to Michelle Warbey at 19:23pm, the claimant raised a formal grievance. The grievance itself is dated 21st November and is an eight-page document at pages 297 – 304 in the bundle. That grievance recites a number of those matters referred to above and mentions specifically Donna Hodgson, Peter Cullen, Stephen Robson, Claire Leggate and Michelle Warbey. The claimant had asked to see Ms Warbey privately by e-mail dated 13th October. Their meeting took place on 19th October. The main thrust of the meeting was the claimant's request to be moved to work under a different business unit head (BUH) because her relationship with her current BUH, Stephen Robson, had broken down. The claimant suggested that she be moved back to her old team and that Stephen Robson be "moved out of his post". Following that meeting, the claimant sent a further e-mail to Ms Warbey on 26th October stating that she decided she wanted "a fresh start outside C&P". Ms Warbey replied on 27th, suggesting that the claimant reconsider, as those moves may take some time to arrange. The claimant requested another meeting, which took place on 1st November. It was on 3rd November that Ms Warbey wrote to the claimant, telling her that she was to be transferred to Donna Hunter's business unit. The claimant's grievance letter was sent to Ms Warbey. In that covering letter the claimant's said, "In the first instance I would like my grievance to be sent to the HRT business partner for an immediate move outside of ISBC/C&P for the reasons that are outlined." In the grievance document itself, (page 303) the

claimant refers to her meetings with Ms Warbey, during which she had told Ms Warbey she was unwilling to work in Donna Hunter's command. The claimant sets out that she felt "intimated and vulnerable" when she learned that she would be working on Donna Hunter's command.

44. Upon receipt of the claimant's grievance letter, Ms Warbey acknowledged the letter on 23rd November. Ms Warbey then spoke to the respondent's HR department and provided a summary of events since her meeting with the claimant. Ms Warbey completed a "managers checklist" and provided a summary of the advice she had taken from HR on that form. It was decided that an investigation manager at HO level would be appointed and a decision maker at SO level. Ms Warbey's evidence was that she had no personal involvement in appointing the investigation manager or the decision maker. Hillary Rhymer was appointed as investigation manager and Kate Griffiths was appointed as decision maker. Neither of those worked in Newcastle centre. Kate Griffiths was eventually replaced by Tracy Quinn.

45. The claimant alleges that the entire investigation and decision-making process relating to her grievance were tainted by bias and unlawful race discrimination. The claimant insisted that her first meeting with Hilary Rhymer in January 2018 was "to establish the grades of those involved in the grievance". The claimant remained of the view that an officer at Grade 7, making a decision on a colleague at Grade 7, was neither fair or impartial. The claimant's evidence was that "I knew all senior managers and leaders all worked closely together and were very well connected, regardless of their geographical location within C&P/ISBC – this is due to the line of businesses make up and ways of working." The claimant complained that she had not had a formal fact-finding meeting with the investigating manager, as her meeting with Ms Rhymer could not properly be described as a fact finding meeting. The claimant says that she was never given the opportunity to fully explain and elaborate on her grievance submission and that in the absence of an investigation meeting, "the entire grievance process was flawed."

46. Ms Rhymer produced her investigation report on 27th March 2018 (page 570 – 571). The relevant extracts from that report may be summarised as follows:-

> "Following interviews with both the subjects of the complaint and the witnesses, there are a number of inconsistencies between Jasmine Davison's allegations and statements made by the subjects of the complaint. There is evidence of firm management styles and expectations e.g questioning on performance and planning/preparing. This expectation applied to all managers and I can see no evidence that Jasmine Davison has been treated differently from her colleagues/piers. Although Jasmine Davison moved around commands/locations within Newcastle, there is no evidence of the moves/reorganisation being as a result of harassment or racial discrimination. The moves affected all members on the command. No witnesses have corroborated Jasmine Davison's complaints and after due consideration of the balance of probability, I find there is no evidence she was being treated less favourably or that anyone else is being treated at her expense. I cannot

> find any tangible evidence provided by Jasmine Davison to show that she is being harassed or less favourably treated because of her race, colour or ethnic origin. I believe Jasmine Davison may perceive this not to be the case, but given the absence of proof I have based by decision on the findings of my investigation. On balance there is no evidence to support the probability of Jasmine Davison's claim in contrast of the credibility of the statements made from the subjects of the complaint and the action taken by management to support Jasmine Davison. The burden of proof to support the allegations made by Jasmine Davison is simply not there. As no witnesses have been able to corroborate Jasmine Davison's complaint and there is no clear and convincing evidence I feel there is no case to answer on harassment or racial discrimination."

47. The claimant's meeting with the decision maker, Tracy Quinn, took place on 12th June 2018. The claimant complained that there had been no fact-finding meeting, whereas Ms Quinn was of the opinion that the claimant's meeting with Hilary Rhymer on 24th January 2018 had included the fact finding. Because of the disagreement between them, Ms Quinn decided that she would incorporate the fact-finding element in her meeting with the claimant. Ms Quinn noted that the claimant had asked Hilary Rhymer to interview a number of witnesses. The claimant also provided the names of further witnesses to Ms Quinn. Those witnesses were interviewed. A further meeting took place between the claimant and Ms Quinn on 31st July 2018, at which the claimant complained about the way in which Ms Rhymer had conducted interviews with witnesses, alleging that "leading questions had been asked" of those witnesses.

48. Having considered all the evidence put before her, Ms Quinn concluded that the claimant's grievance should not be upheld, as she did not consider there was any evidence of bullying, racial harassment or racial discrimination. The claimant was notified of Ms Quinn's decision in a letter sent on 6th August 2018. The claimant appealed against that decision and the appeal was heard by Ed Jones on 13th November 2018. The meeting lasted over two and a half hours. At the end of the meeting, Mr Jones concluded that the appeal would not be upheld, because in his view, the evidence did not point sufficiently strongly to any of the actions or behaviours complained of by the claimant, amounting to bullying. Mr Jones rejected the allegations of collusion and race discrimination.

49. The claimant's allegation with regard to this grievance, is that it was not fairly or independently investigated and that the reason why it was not fairly or independently investigated was because of the claimant's race. The tribunal found that the allegations made by the claimant were reasonably and fairly investigated. The persons against whom the allegations were made were all interviewed. The persons whom the claimant asked to be interviewed, were also interviewed. What the claimant alleged to have been "leading questions" were little more than questions couched in the broadest terms, asking witnesses about the nature of their relationship with the claimant and their knowledge of her general behaviour. The tribunal found that none of those questions were prejudicial to the claimant in any way and certainly not related to her race. The tribunal found that the investigating manager and the decision maker both dealt

with their respective roles in an impartial, fair and balanced manner and that the conclusions they reached were reasonable in all the circumstances. Those conclusions were based upon a fair and reasonable examination and assessment of the evidence put before them. The tribunal found that the investigation, decision and dismissal of the appeal were all reasonable decisions in all the circumstances of the case. None of those were tainted by bias and none were tainted by race discrimination. The tribunal was satisfied that someone who was not of Indian Sikh race, who had presented a similar grievance, would also have had the grievance and appeal dismissed.

50. The claimant further alleged that the respondent's failure to progress her grievance "without unreasonable delay", itself amounted to an act of direct race discrimination. The tribunal accepted the evidence of the respondent's witnesses as to the reasons for the delay. Those to a large extent included the claimant's insistence upon being consulted about who would conduct the investigation, make the decision and conduct the appeal. The delays included the availability of the claimant and her trade union representative. To a large extent, the delays were caused by the claimant's absence from work due to illness. The tribunal found that it had indeed taken a long time for the entire process to be concluded. However, those delays weren't in any way whatsoever influenced by the claimant's race.

51. Each of the above allegations raised by the claimant was of direct race discrimination contrary to Section 13 of the Equality Act 2010. The claimant alleged that she had been treated less favourably than a white or none Indian/Sikh comparator. In respect of each of those allegations, the tribunal found that, where there was a difference between the claimant's version of events and that of the respondent's witnesses, the version of the respondent's witnesses was to be preferred. In none of those situations is there any evidence of less favourable treatment. There is no evidence that the treatment of the claimant was in any sense whatsoever influenced by her race.

52. The next allegations brought by the claimant were of harassment, contrary to Section 26 of the Equality Act 2010.

53. The first allegation of harassment was that on 11th January 2018 Mr Stephen Robson, "shouted at the claimant from across the cabinets". On this occasion, a number of staff in Mr Robson's team were working late. As 6.00pm approached, Mr Robson shouted from the floor above, "Everybody out!". Mr Robson explained how this was a jocular means of reminding his staff that it was time to go home. The comment was directed towards all the staff who remained at work at that time. Mr Robson recalled that there were several members of staff present. The claimant accepted that she was not the only person working at the time, but insisted that Mr Robson's comment was "directed towards her personally" and was so directed because of her race. The tribunal found this allegation to be totally without foundation. The comment was not solely directed at the claimant and it was totally unreasonable for the claimant to allege that it had been. The comment was certainly not related to the claimant's race.

54. The claimant alleged that she was "constantly watched", following her move onto Donna Hunter's command. The claimant did not provide any specific examples as to how she had been "watched", or by whom. In her pleaded case, the claimant simply states, "My staff began to notice that I was being constantly watched. Michael Park had witnessed this as he frequently commented on it. It got to the point that I had to ask a member of staff, Stephen Johnstone, to set up a folder in his Outlook e-mail so that I could send him e-mails to prove my leaving time. I knew flexi-times were being scrutinised." No-one was called by the claimant to give evidence to support this allegation. The tribunal found that the claimant was not being "watched" in the way being suggested by the claimant. Her leaving times and flexi hours were no more scrutinised than those of any other member of staff and were not related to the claimant's race.

55. The claimant alleged that on 24th November 2017, Ms Warbey had completed the grievance manager`s checklist "so as to decide who was going to investigate the claimant's grievance". The tribunal found that it was reasonable for Ms Warbey to have completed that checklist, as the claimant had chosen to submit her grievance to Ms Warbey personally. That was that reason why Ms Warbey completed the checklist and it was in no sense whatsoever related to the claimant's race.

56. The claimant alleges that the grievance outcome was pre-determined "due to the investigatory personnel" and that this was an act of harassment. The tribunal found that the investigation into and conduct of the claimant's grievance was not pre-determined and that there was no element of bias in that process. None of the actions taken throughout that process were related to the claimant's race.

57. The claimant alleged that allocating a Grade 7 decision maker to her grievance (as she was a Grade 7 herself), was an act of harassment. The tribunal found that there was nothing unreasonable in the way the allocation of the decision maker was made and that no part of that process was in any sense whatsoever related to the claimant's race.

58. The claimant alleges that the respondent's "failure to hold a grievance meeting", with her amounted to an act of harassment. The claimant accepted that she did have a meeting with Hilary Rhymer. The claimant did not consider that to be a fact-finding meeting. Due to the claimant`s concerns, Ms Quinn decided to use her own meeting with the claimant as the fact-finding meeting. At worst, the difference of opinion as to whether there had or had not been a fact-finding meeting was no more than a misunderstanding. The tribunal found that it was in no sense whatsoever related to the claimant's race.

59. The claimant alleged that, in the course of the investigation into her grievance, witnesses were asked "leading questions which were not in the claimant's favour to discredit the claimant and bias the outcome of the investigation." The tribunal found that what the claimant described as "leading questions" were no more than general questions put to the witnesses to try and establish their general knowledge and understanding of the claimant. None were designed or intended to produce a response adverse to the claimant's position. None of those

questions, in the way they were phrased or put, was in any way related to the claimant's race.

60. Finally, the claimant alleged that the delayed outcome of her grievance amounted to an act of harassment. The reasons for the delay have been set out above. Whilst the tribunal accepted that the grievance investigation, outcome, appeal and appeal outcome did take a long time, much of the delay was out of the control of the respondent. None of the delay was in any whatsoever related to the claimant's race.

61. The remaining allegations of unlawful race discrimination were of victimisation, contrary to Section 27 of the Equality Act 2010. The claimant relied upon her grievance as a protected act and also the institution of proceedings in the Employment Tribunal in case number 2500254/2018 on 15th February 2018. The Tribunal accepted that the grievance and the institution of proceedings both amounted to protected acts, as defined in Section 27.

62. The allegations of victimisation relate mainly to a grievance raised against the claimant by one of her colleagues (YZ) on 13th October 2017. A copy of that grievance letter appears at page 249 – 250 in the bundle. The relevant extracts state as follows:-

> "I wish to raise a formal grievance against Jasmine Davison for incidents commencing from 2nd August 2017, not long after I joined her team to the current date. Jasmine openly discussed my sexuality and directed question after question aloud in front of colleagues which was unprofessional and it made me feel uncomfortable. She was saying things like, "gay people fascinate me – how can one sex be attracted to another? When did you know you were gay? Do your parents know?" She would also ask, "how is your gay-dar, who is gay up here, do you know, do you not have a gay-dar, surely if you are gay you will know". All of which I found offensive and rude from someone who I barely knew and the way she said it smirking as she spoke. Her attitude towards me in an open forum I found intrusive and bordering on harassment."

63. The grievance was sent to Mr Stephen Robson. By then, Mr Robson was aware that his working relationship with the claimant had become strained and he therefore passed the grievance on to Michelle Warbey. Ms Warbey arranged for an investigation to be carried out by Claire Jackman. During her investigation, Ms Jackman interviewed 12 witnesses, including the complainant and the claimant herself. Ms Jackman produced an investigation report (page 432 – 441). She lists each of the witnesses interviewed. Ms Jackman's summary contains the following:-

> "Witness SH backed YZ's version of events and confirms that JD inappropriately questioned byY Z about his sexuality asking him if he was when he came out, what his parents thought and reference that being gay was different. SH recalled in her interview that she felt very uncomfortable and knew this was inappropriate and unprofessional and even tried to move the conversation on. SH also recalls YZ appearing

> uncomfortable and explained that in her opinion he felt under pressure to answer the questions due to Jasmine's authority and older age. This event is only backed up by this single witness, but it is likely there were fewer people there as the incident has been confirmed by both SH and YZ as taking place later on when there were less people in the office. JD outright denied the allegation saying she did not believe that it had taken place. On the balance of probability, I believe the allegation did take place. There's no obvious reason for YZ to say it took place when it didn't. The way SH recalled the incident was genuine in that the complete and exact words couldn't be fully remembered almost four months on, but there is no doubt in my mind that she spoke openly about what she could remember and certainly highlighted that it was uncomfortable to witness."

64. The claimant flatly denied making any of these comments and stated that both YZ and Ms Halliday were lying. The claimant further alleged that the entire grievance was fabricated by YZ and had been fabricated at the request of Stephen Robson as part of a conspiracy against the claimant, because of her race. The claimant insisted that Mr Robson must have learned that the claimant had been to see Michelle Warbey and had indicated to Ms Warbey that she intended to raise a grievance against Mr Robson. Having learned of that, the claimant believed that Mr Robson conspired with his "spy" (YZ) to concoct a grievance against the claimant. The claimant drew the tribunal's attention to what she considered to be inconsistent dates on the various documents relating to the progress of the grievance. Mr Robson's evidence, which was accepted by the tribunal, was that as soon as he received the grievance he passed it on to Ms Warbey. Mr Robson could not comment on the dates on the documents referred to by the claimant. The document appears at page 192 in the bundle. It refers to the "manager" and author of the document as YZ and refers to its last modification by Claire Louise Jackman. The document shows a date for it being "created" on 23rd October 2017 at 9.35 and being last modified on 14th November 2017 at 17.10. The tribunal found the evidence in respect of this document to be confusing. The claimant insisted that because the document bears a date "created 23rd October 2017", then this must mean that was the date when YZ's grievance was presented. All the respondent's witnesses confirmed that the grievance had in fact been presented on the date that it bears, namely 13th October 2017. The tribunal accepted Mr Robson's evidence that he passed it onto Ms Warbey as soon as he received it. The tribunal found the claimant's allegation of collusion, conspiracy and fraudulent alteration of documents to be highly implausible to the extent that it should be rejected. The tribunal was satisfied that YZ's grievance was presented on 13th October 2017 and immediately passed on to Ms Warbey by Mr Robson. The tribunal found that the respondent's investigation into this grievance was reasonable in all the circumstances.

65. The decision maker in this grievance was witness AB who, although having made a statement for these proceedings, was unable to attend the hearing for the reasons described in paragraph 3 above. The claimant alleged that AB was in collusion with Stephen Robson, Donna Hunter and Michelle Warbey and that they all came from the Department of Work and Pensions prior to joining the C&P Department. The claimant alleged that AB had upheld YZ's grievance "because I

had raised a claim against HMRC on 16th February 2018". The claimant alleged that AB had recommended the imposition of certain restrictions upon the claimant's employment as a result of her investigations and that these restrictions were recommended by AB to the claimant's line manager, Donna Hunter. Those recommendations were that the claimant retake some mandatory e-learning, that the claimant be removed from the management chain and move to a role that did not involve any management responsibilities. The claimant again alleged that AB had been influenced by other members of management and had been involved in the falsification of documents as part of a conspiracy to subject the claimant to detriment because she had submitted a grievance and commenced employment tribunal proceedings. The Tribunal found the recommendations made by AB to be entirely reasonable in all the circumstances, bearing in mind the outcome of the investigation into the grievance raised against the claimant which had found that she had committed the acts of bullying and harassment alleged by YZ. Having rejected the claimant's allegations with regard to conspiracy involving the other managers, the Tribunal found it highly unlikely that AB was involved in any such conspiracy. The Tribunal found that the recommendations made were based upon the outcome of the investigation report and were not influenced by the claimant raising a grievance or commencing employment tribunal proceedings.

66. The claimant alleged that the placing upon her of these restrictions did not form part of the respondent's policy and procedure and that because there was no time limit imposed upon them or indication when they may expire, it would effectively prevent the claimant from applying for promotion or advancement within the respondent's organisation. Again, the claimant alleged that this was done by way of retaliation because she had raised a grievance and issued employment tribunal proceedings. It was put to the claimant that the initial recommendations were made by Ms Jackman and had been made on 23rd January 2018, whereas the claimant's employment tribunal proceedings were not presented until 16th March 2018 and therefore the recommendations could not have been because the claimant had issued those proceedings. The claimant accepted that the recommendations could not have been because she had commenced proceedings but, when invited to do so, she refused to withdraw that allegation.

67. The tribunal found the restrictions recommended by Ms Jackman and implemented by Ms Campbell were reasonable in all the circumstances. They were recommended and implemented as a result of the outcome of the grievance raised by YZ. Their recommendation and implementation was not influenced in any way by the raising of the claimant's own grievance or her presentation of proceedings to the employment tribunal.

68. The claimant raised another allegation, namely that AB had "falsified grievance paperwork". This allegation related to paperwork completed by AB to record her deliberations and decisions. In very similar terms to her earlier allegation about Mr Robson, the claimant alleged that this paperwork had been backdated so that it appeared that the decision had been made before the claimant presented her claim to the employment tribunal. The claimant again referred to dates on the face of the respondent's documents, which the claimant interpreted to mean that the document had first been created after the date when the decision had allegedly been made. Again, the tribunal was not persuaded by the claimant's

assertions in this regard. All AB did was accept the recommendations made weeks earlier by Ms Jackman. The tribunal found that the date on AB's decision document, namely 20th February 2018, was likely to be correct.

69. The claimant complained that the imposition of those sanctions was outside the respondent's "policy and procedure". The claimant did not specifically refer to a particular policy and procedure. The claimant's argument was that in the absence of any specific authority to impose such restrictions, no-one within the respondent's organisation had the power or authority to do so. The tribunal was not persuaded by this argument. Nothing was produced to the tribunal to support the claimant's assertion that no such sanctions could be recommended or implemented against someone against whom a grievance had been upheld. Bearing in mind the nature of the grievance raised and the nature of the findings, the tribunal was satisfied that it was reasonable in all the circumstances to recommend that the claimant be removed from people management duties, not be placed in any other position of authority, be moved to a case worker role in a project not directly linked to their current project and be required to take or retake the respondent's learning and relearning on diversity and LGBT. None of those were implemented because the claimant had made a protected act.

70. The claimant alleged that there was no time limit on any of these restrictions and that the effect of this was that she could never apply for promotion within the respondent's organisation as the restrictions meant that she could never be placed in a position of authority or managerial role. The claimant alleged that this too was an act of victimisation, because she had raised a grievance herself and presented a claim to the employment tribunal. Again, the employment tribunal rejected that allegation. The tribunal found that Ms Jackman and AB were not influenced by the claimant's grievance and their decisions were made before the claimant presented her complaint to the employment tribunal. The claimant was subsequently subjected to formal disciplinary proceedings with regard to the subject matter of YZ's grievance and after investigation, was given a first written warning. The claimant's appeal against that warning was not upheld. During the period of time following the imposition of the sanctions, the claimant was absent from work for a lengthy period of time and then transferred to other duties in another building whilst the respondent attempted to find a new position or role for her. The tribunal found it likely that, once the claimant had completed the necessary retraining and had been found a new position, then consideration would have been given to the removal of those sanctions.

71. The claimant's remaining allegations of victimisation relate to the period of time following her return to work after a four-month absence due to illness. In her own grievance, the claimant had requested a move to a different command. Following her return to work, the claimant again requested a move to a different command in a different building. The claimant's requests were supported by her GP and also by the respondent's occupational health specialist. The claimant alleges that she was not given a specific role or any meaningful work following her return from illness and that the respondent failed to consider her requests to be transferred without unreasonable delay. Again, the claimant alleges that this was done as an act of victimisation because the claimant had raised a grievance of her own and presented a claim to the employment tribunal. The tribunal was satisfied that

during the period of time in question, the respondent did all that could reasonably have been expected of it to try and locate for the claimant a new role, in a new command, in a new building. There was no obligation on the respondent to create a new role specifically for the claimant. The respondent could only invite the claimant to apply for positions as and when they became available. The suitability of those roles was limited by the restrictions imposed upon the claimant because of the outcome of AB's grievance. The claimant also had lengthy periods of sickness absence during this period. Roles which were offered by the respondent were rejected by the claimant. The tribunal found that none of this amounted to detrimental treatment, nor was any of that treatment in any way whatsoever influenced by the raising of the claimant's grievance or her presentation of a claim to the employment tribunal.

Disability discrimination

72. The claimant alleges that she suffers from a mental impairment, namely depression, which amounts to a disability as defined in Section 6 of the Equality Act 2010. The claimant alleges that she first started to suffer from depression in late 2006, as a result of what she describes as "stress at work". The claimant alleges that she first sought medical attention on 31st July 2008 and was diagnosed with work stress by her GP on 17th October 2008. She subsequently received counselling, following a referral to occupational health. The claimant relies upon a report by Doctor Parminder Ghura, a specialist registrar in occupational medicine, dated 19th November 2008. Doctor Ghura described the claimant's depressive symptoms as " moderate to severe level". Between 2008 and 2017, the claimant did not suffer from any symptoms of depression, nor did she receive any further treatment. However, she alleges that during the course of 2017 – 2018, she started to experience the same depressive symptoms which she had suffered in 2008 and 2009. The claimant again attributed those symptoms to stress at work, following her promotion in December 2016. The claimant attributes the stress to "Being treated differently to other members of staff. I was feeling particularly upset as I was being bullied and harassed at work. I felt I was being discriminated against both because of my race and because I suffer from depression."

73. The respondent accepts and concedes that the claimant is suffering from depression and that her depression amounts to a disability as defined in Section 6 of the Equality Act 2010. The respondent concedes that the claimant's depression amounted to a disability and further that the respondent knew of that disability, from 25th September 2018, when it received the occupational health report of that date. The claimant alleges that her depression amounted to a disability and the respondent either knew or ought reasonably to have been aware that it amounted to a disability, as from 28th March 2018, that being the date of an earlier occupational health report.

74. The tribunal was required to decide between those two dates as to when the claimant was disabled and if so, when the respondent knew or ought to have known that she was disabled. The tribunal notes that in her grievance letter dated 22nd November 2017, the claimant makes no mention whatsoever of being depressed or indeed of being disabled. In her claim form presented on 16th March

2018, in answer to the question on page 9 of that form (page 11 in the bundle), "Do you have a disability?" – the question answers "No". On page 6 of the form, (page 8 in the bundle) the claimant ticks the box next to race discrimination but does not tick the box next to disability discrimination. At page 523 in the bundle is the occupational health report dated 12th February 2018, in which the occupational health physician records how the claimant "told me that she has felt bullied and racially discriminated". No mention is made of disability discrimination. At page 572 in the bundle is the occupational health report dated 28th March 2018. At page 573, Doctor Hardman states as follows:-

> "I confirmed with her again that prior to her promotional move at the end of 2016 she had not encountered any work related issues and stated that she had never experienced anything she would call work related stress. Further to this, I confirm that she had no pre-existing mental health history. I did not feel she was suffering from mental health problems prior to her promotion. She stated that she had no sources of significant stresses within her personal life. On this basis I am not able to offer you any alternative explanation of the development of her current symptomology other than to suggest it would fit her GP's description of prolonged perception work related stress developing into mental illness – in this case severe anxiety and panic disorder. Her symptoms on a daily basis have worsened to the extent that she is now suffering panic attacks while she is at home. More worryingly she explains she has now begun to have suicidal thoughts and ideation on a frequent basis. In my opinion the issues that are being raised in relation to this case were not medical in origin. That she has now developed a medical or rather a mental health condition is a recognised factor for those exposed to the prolonged perception of work related stress. The applicability of the Equality Act 2010 is something which is only determined by an employment tribunal. I would advise you that currently symptoms are both substantial and adverse in my understanding of the definitions of the act. Furthermore a tribunal may take the view that the symptoms have their aetiology in May 2016 and therefore would meet the definition of long term. I would suggest on balance therefore that I would advise you in my opinion the Equality Act would be likely to apply. The only adjustment that I can suggest at the moment is that you seek to resolve the underlying issues but in terms of returning her to the workplace in the short-term redeployment as I previously suggested."

75. In the occupational health report of Doctor Cowlard dated 25th September 2018, it records as follows:-

> "As reported previously, Jasmine declares that she has not suffered mental health problems prior to 2016 and is otherwise in good physical health on no medication other than that described. I understand that Jasmine has made a return to work in a new building with a new manager, but feels that she does not have a substantive role and therefore engagement with colleagues and new teams is difficult. As clearly stated in the two previous OH reports, return to the previous

> team and line management is not realistic due to the unresolved difficulty. Symptoms are such that resolution of grievances and redeployment away from that department and building is the most likely way for Jasmine to be able to reduce her symptoms of anxiety with depression, regain confidence and psychological resilience in the workplace and offer regular service in a substantive role. The condition of anxiety with depression has been enduring for more than one year and has a significant impact on day to day and working life and therefore is likely to be covered by the Equality Act."

76. The tribunal found that as at 28th March 2018, the claimant continued to deny that she had suffered from any depressive condition at any time prior to her promotion in December 2016. However, in her witness statement at paragraphs 1 – 18 the claimant goes to considerable length to describe her mental health problems up to and including January 2009 and states:-

> "This was the history of my past depression. During the course of the next few years, I manage my symptoms with support of my family and my mental health is on an even keel. During this period HMRC were kept fully informed about my mental health condition and have records of this as per their retention policy."

That evidence from the claimant is directly contradicted by the documents referred to above. The tribunal found that the respondent was not aware of any mental health problems encountered by the claimant until the first occupational health report dated 12th February 2018, which for the first time refers to "symptoms that she ascribes to work related stress." The first indication as to how serious those symptoms may be was not received by the respondent until the second OH report dated 23rd March 2018.

77. The respondent does not challenge the claimant's description of her symptoms, their impact on her day to day activities and her performance at work, and also her description of suicidal thoughts. The respondent's position is that those symptoms did not amount to a disability until September 2018. The tribunal found that the claimant's symptoms and her description of them was no different in September 2018 than it was in March 2018. The claimant's evidence was that she began to suffer from those symptoms shortly after her promotion in December 2016. If that were correct, then those symptoms had lasted for more than 12 months by March 2018. Even if those symptoms had not existed for 12 months by March 2018, the tribunal would have to consider whether it was likely (ie that it could well happen) that the symptoms displayed in March 2018 would last for more than 12 months. The tribunal found that by March 2018 it was likely, in the sense that it could well happen, that the symptoms would last for a total of more than 12 months. Accordingly, the tribunal found that the claimant was disabled as from 28th March 2018. The tribunal also found that the respondent knew, or ought reasonably to have known, from that date that the claimant was suffering from a mental impairment which amounted to a disability.

78. As is set out in paragraph 5 above, the claim form was presented on 15th February 2018 and in January 2019 the claimant applied for permission to amend

her claim to include allegations of unlawful disability discrimination for the first time. That application was refused, so the claimant presented a new claim on 2nd May 2019 alleging unlawful disability discrimination. At that stage, the claimant was represented by solicitors, who drafted the claim form in respect of those new proceedings. The "grounds of complaint" contained 4 specific allegations of direct discrimination contrary to Section 13 of the Equality Act 2010, namely:-

a) the respondent failed to provide the respondent with adequate support from January 2018 and this is continuing;

b) the respondent ignored the advice of the claimant's GP suggesting that the claimant be moved away from the department in which she was subjected to bullying, harassment and discrimination because of her race;

c) the respondent ignored occupational health advice and/or failed to implement occupational health recommendations;

c) the respondent unfairly subjected the claimant to an incomplete investigation into a vexatious grievance, placed severe disciplinary sanctions and/or restrictions on the claimant, removed key responsibilities for the claimant and effectively making it impossible for the claimant to be redeployed.

There is further allegation of discrimination arising from disability, contrary to Section 15 of the Equality Act 2010 (unfavourable treatment because of something arising in consequence of the claimant's disability). The pleaded case is that "the claimant avers that the abovementioned less favourable treatment (the format is referred to above) constituted unfavourable treatment pursuant to Section 15 of the Equality Act 2010."

Nowhere in the pleaded case does the claimant refer to what was the "something", or how that is said to have arisen in consequence of her disability.

The pleaded case then alleges the respondent failed to make reasonable adjustments contrary to Section 20 and 21 of the Equality Act 2010, in the following terms:-

> "a) The respondent operated a provision, criterion or practice of subjecting employees to disciplinary sanctions and restrictions following the raising of the grievance. This put the claimant at a substantial disadvantage in that it was more likely her health would have suffered as a result. A reasonable adjustment would have been not to subject the claimant to such severe and unnecessary sanctions and restriction.
>
> b) The respondent operated a provision, criterion or practice of not redeploying employees pending grievance investigations. This put the claimant at a substantial disadvantage in that this resulted in the failure by the respondent to redeploy the claimant and to move her away from the department where she contends

she was bullied, harassed and discriminated against because of her race. A reasonable adjustment would have been to move the claimant in accordance with the recommendations of her GP and occupational health.

c) Contrary to the recommendations of occupational health and the claimant's GP, the respondent failed to find an alternative role for the claimant and instead totally isolated the claimant and failed to provide her with a role. This has put the claimant to a substantial disadvantage in that this resulted in the claimant's mental health significantly deteriorating.

d) The respondent has failed to offer the claimant any mentorship, supervision and support at all."

79. Finally, the claimant alleges victimisation contrary to Section 27 of the Equality Act 2010 in the following terms:-

> Further or in the alternative the claimant avers that the abovementioned events constitute victimisation contrary to Section 27 of the act. The claimant relies upon her grievance dated 21st November 2017 and the fact that she issued a claim in respect of race discrimination in the employment tribunal (case number 2500254/2018) as a protected act.

80. Those are the allegations which constitute the claimant's pleaded case. It is those allegations which the respondent defended and in respect of which disclosure took place and witness statements were prepared. Those amount in total to 4 allegations of direct discrimination, 4 allegations of unfavourable treatment because of something arising in consequence of disability, 4 allegations of failure to make reasonable adjustments and 4 allegations of victimisation. There is of course an element of duplication, in that the factual allegations of direct discrimination are the same as those of unfavourable treatment because of something arising in consequence of disability, followed by 4 separate allegations of failure to make reasonable adjustments, followed by a "sweep-up" allegation of victimisation relating to all 8 of those factual allegations.

81. As is referred to in paragraph 7 above, the claimant prepared a list of issues for this Hearing which included 21 allegations of direct disability discrimination, 4 allegations of discrimination arising from disability and 14 allegations of victimisation. Mr Lewis for the respondent indicated that the respondent was willing to deal with such of those factual allegations as had already been pleaded as acts of race discrimination, but could not and would not do so in respect of entirely new allegations. The tribunal explained the position to the claimant and was satisfied that the claimant understood that she would not be permitted to introduce entirely fresh allegations at this late stage. If she genuinely wished to pursue those allegations, then she would have to make a formal application to amend her claim so as to include those new allegations. The tribunal indicated that, on the basis of the Selkent principles, such an application was unlikely to be granted and even if it was granted, it would inevitably lead to an adjournment to these proceedings. It was agreed that the claimant would proceed on the basis of

those claims which had originally been pleaded by her, together with those factual allegations which had already been pleaded as acts of unlawful race discrimination.

82. In respect of those allegations which related to incidents which had occurred before March 2018, the claimant accepted that these could not amount to disability discrimination as, on her own best case, it was not until March 2018 that the respondent became aware that she was disabled. In respect of those factual allegations which had been pleaded by the claimant as acts of direct race discrimination, harassment on the grounds of race or victimisation because of race, the respondent's reasons or explanations for its actions or inactions were exactly the same. Those reasons and/or explanations were again accepted by the employment tribunal. In respect of the allegations of discrimination because of something arising in consequence of disability, the claimant did not at any stage indicate or describe what was the "something", nor how that something arose in consequence of her disability. In her own list of issues the claimant simply states at 123;

> "What is the something arising in consequence of disability upon which the claimant relies?
>
> 124 Insofar as the respondent is found to have carried out any of the acts above, did the respondent treat the claimant unfavourably by carrying out any of the aforesaid acts because of the something arising in consequence of the claimant's disability?"

83. The claimant's first pleaded allegation of direct disability discrimination is that the respondent treated her less favourably because of her disability by placing her in another building on her own, isolated and ignored, with no job role (but still part of the same line of business ISBC/C&P), during which time other staff were made aware by the respondent of the claimant's circumstances. In paragraphs 208, 209 and 231 of her statement, the claimant says that she returned to work on 16th June 2018 after a lengthy period of sickness absence where, "I was seated away from building 3, where I felt discriminated against, harassed and victimised. I was left sat ostracised with no role. I began to do generic training to fill my day. The training only lasted so long as I couldn't consolidate any of my learning. This ostracisation eventually went on for over a year in which time my mental health deteriorated." The claimant compares herself to Anthony Robson, Kay Suddick and Eleanor Duggan, whom she describes as "managers in the same business unit as the claimant and who, like the claimant, were given responsibility for leading projects. None of these managers were subjected to the disciplinary sanctions and restrictions which are imposed on the claimant or the removal of duties and responsibilities and isolation to which the claimant was subjected." That comparison clearly indicates a fundamental misunderstanding by the claimant, as the circumstances of the named comparators are clearly different of those of the claimant. None of those comparators had restrictions imposed upon them which limited their management duties. The tribunal found that the restrictions imposed upon the claimant were reasonable in the circumstances. The claimant demanded a move from building 3 where she had previously been located. The roles to which the claimant could be appointed were limited because

of the restrictions imposed upon her. The claimant herself imposed additional restrictions, by refusing to consider any roles in Individuals and Small Business Compliance (ISBC) or Customer Compliance Group (CCG). The tribunal accepted the evidence of Nina Finley, Maria Warren and Fiona Lowes as to the efforts they had made to accommodate the claimant's requests for a move to a different role, with a different team, in a different building. That evidence showed how many roles had been offered to the claimant between July 2018 and October 2019. Roles were offered on 9 occasions and included a total of 68 different vacancies. When the claimant finally agreed to accept one of those roles, she was not working on her own, she was not isolated and she was not ignored. She was given meaningful work to undertake, commensurate with restrictions which had been imposed upon her. The role had been accepted by the claimant when offered to her. It was not something imposed upon her and the circumstances surrounding the role were in no sense whatsoever influenced by her disability.

84. The claimant's next two allegations of direct disability discrimination, were that the respondent treated her less favourably by dismissing her grievance dated November 2017 and thereafter failing to accede to the claimant's request to move her. Those allegations were withdrawn by the claimant. The claimant alleged that the respondent treated her less favourably because of her disability "by continuing to bully, harass and racially discriminate against her after the claimant repeatedly highlighted to her managers that her mental health was being adversely affected". Again, that allegation was withdrawn by the claimant.

85. The next allegation was that the respondent treated the claimant less favourably by failing to provide her with adequate support from January 2018. That allegation was never particularised. It was no more than a generic allegation, encompassing all the other matters about which the claimant has complained. Similarly, her next complaint that the respondent treated her less favourably because of her disability "by allowing the claimant's mental health to deteriorate" was accepted by the claimant as something which was the effect of any such treatment and that her disability was not the cause of the treatment. That allegation was withdrawn.

86. The claimant's next allegation of direct disability discrimination was that the respondent treated her less favourably by failing to act on the claimant's GP recommendation made in January 2018, advising a move out of the department. The letter dated 22nd January 2018 (page 425) states, "her mental and physical health would benefit from moving permanently to another department where she can get away from the people who she feels very intimidated by." The claimant accepted that this "recommendation" was based upon what the doctor had been told by the claimant as to what she actually wanted. The claimant accepted that she was in fact moved to another department in a different building. What the claimant complained about, was the length of time it took to find her another role in a different department in a different building. The tribunal has set out above why it accepted the respondent's evidence about how long it took to find the claimant a different role. A different role was found for the claimant. The length of time taken to do so was not because of the claimant's disability.

87. The next allegation is that the respondent treated the claimant less favourably by "not taking steps to find a role for the claimant notwithstanding the fact that the respondent was fully aware of how the respondent's delay in finding the claimant a role was affecting the claimant's mental health." Again, that is a repetition of the allegations set out in the paragraphs above. Steps were taken to find a role for the claimant. The delay in finding a role was primarily caused by the restrictions imposed following the grievance which was upheld against the claimant and the additional restrictions imposed by the claimant herself. The respondent did its best in all the circumstances to find an alternative role for the claimant. There was no less favourable treatment because of the claimant's disability.

88. The next allegation is that the respondent treated the claimant less favourably because of her disability by not regarding her as a "priority mover" and ignoring the attempts the claimant made to argue this point. The categorisation of a "priority mover" is one which is allocated to an employee so as to enable the employee to obtain a different role without the need for a competitive interview. The tribunal accepted the respondent's explanation that the claimant's circumstances at the outset did not justify her being categorised as a "priority mover." Eventually, the claimant was categorised as a priority mover, although this made no difference to the process by which the claimant was eventually found a different role. The reason why the claimant was not initially categorised as a priority mover was nothing to do with her disability.

89. The next allegation was that the respondent treated the claimant less favourably because of her disability, "by upholding a vexatious grievance against the claimant without carrying out a full investigation, failing to provide any evidence and failing to fully conclude the process." Again, this is a repetition of the allegation of unlawful race discrimination. The tribunal found that this was not a vexatious grievance, that the investigation was reasonable in the circumstances and that the process was properly concluded. There was no less favourable treatment because of the claimant's disability.

90. The next allegation is that the respondent treated the claimant less favourably by placing severe disciplinary restrictions on her, making it impossible for her to be deployed elsewhere within the respondent. The tribunal has already found that the restrictions imposed upon the claimant were reasonable in the circumstances, bearing in mind the outcome of the grievance raised against her. None of those restrictions were imposed because of the claimant's disability. The restrictions made it more difficult to find an alternative role, but her disability did not.

91. The claimant's next complaint of direct disability discrimination is that her manager Nina Finley asked the claimant to keep in touch with her twice weekly to be told "that there was no job for her". The tribunal found that this was not less favourable treatment. Anybody who was absent and looking for an alternative role would be expected to keep in regular contact with his or her manager. All Nina Finley was doing was keeping the claimant informed of the efforts being made to try and find another role in a different team in a different building. The claimant was treated no differently to anyone else in those circumstances. That treatment was in no sense whatsoever because of the claimant's disability.

92. The next allegation of direct disability discrimination is that the respondent treated the claimant less favourably because of her disability by "making it clear to the claimant that the respondent was not taking her situation seriously by confirming that the respondent had no intention of moving the claimant until the grievance which she had raised against the five managers had been concluded." The tribunal found that the fact that the process of that grievance had no impact whatsoever on the respondent's attempts to find the claimant a different role with a different team in a different building. That was abundantly clear from the evidence of the respondent's witnesses.

93. The next allegation of direct disability discrimination is that the respondent's employee assistance programme provider "Workplace Wellness" did not take any further action to support the claimant by giving her "specialist psychological treatment". That allegation was withdrawn by the claimant.

94. The next allegation of direct disability discrimination is that the respondent treated the claimant less favourably because of her disability by sending her "a threatening e-mail with regard to potential disciplinary action against her when she returned back to work". This complaint relates to an e-mail sent to the claimant by Nina Finley on 21st May 2018 in response to a request from the claimant that she be given a copy of the file relating to the grievance raised against her. The letter states:-

> "I'm sorry but it is not possible to send you the grievance file you have requested. As the grievance was raised by someone other than yourself the guidance states that this information will only be disclosed to the subject of the complaint at the point disciplinary action is taken. As there has been no formal action taken because you are currently not at work I cannot release any information to you at this time."

The tribunal found that this was not a "threatening" e-mail. There is no threat of disciplinary action contained in the message. It is certainly not related to the claimant's disability.

95. The next allegation is that the respondent treated the claimant less favourably because of her disability by "ignoring occupational health advice and/or failing to implement health recommendations as contained in the report dated 12th February sent to Donna Hunter." That letter states as follows:-

> "It may well be that redeploying her to another department ideally at another site would be the easiest solution, so that the potential for contact between Mrs Davison and those she has complained about is minimised. This would be likely to resolve her symptoms as described and improve her sense of personal well-being. There would not seem to any adjustment or restriction to her current position that would allow the complete resolution of this matter.

Again, the tribunal found on the facts that the claimant was moved to a different role in a different team in a different building. Accordingly, the "less favourable treatment" alleged by the claimant did not take place. The length of time taken to

implement those recommendations was in no sense whatsoever influenced by the claimant's disability.

96. The next allegation was that the claimant was treated less favourably because of her disability by "ignoring occupational health advice/and/or failing to implement health recommendations in the report dated 28th March 2018. The only recommendation contained in that OH letter states, "the only adjustment that I can suggest at the moment is that you seek to resolve the underlying issues but in terms of returning her to the workplace in the short term, redeployment as I've previously suggested." Again, there was no less favourable treatment as the respondent did transfer the claimant to a different role in a different team in a different building. Any delay was not because of the claimant's disability.

97. The next allegation is that the respondent treated the claimant less favourably because of her disability by ignoring her request for a meeting with Marion Wilson. No evidence was given to the tribunal about this allegation. All the claimant says at paragraph 194 of her statement is that the occupational health report of 28th March 2018 was sent to Ms Wilson. The allegation states that the claimant was denied the opportunity of discussing matters with Ms Wilson. The claimant does not say what was the likely outcome of those discussions and how the lack of those discussions prejudiced her in any way. There are simply no facts from which the tribunal could conclude that this matter was in any way whatsoever related to her disability.

98. The next allegation is that the respondent treated the claimant less favourably because of her disability by ignoring the occupational health advice contained in the report of 30th October 2018. That is no different to the earlier allegations set out above relating to the earlier occupational health report. That in fact is an addendum to the report of 25th September, and sets out matters which Doctor Cowlard was asked by the claimant to mention. It refers to redeployment away from building 3 and the alleged lack of a substantive role. Again, those repeat earlier allegations set out above. The recommendations made by occupational health were as far as possible implemented by the respondent as soon as possible. There was no less favourable treatment and certainly none that was in any sense whatsoever related to the claimant's disability.

99. The next allegation is that the respondent treated the claimant less favourably because of her disability by ignoring occupational health advice contained in the report of 9th May 2019. That report from Doctor Wendy Brian advises that the claimant complete a stress reduction plan to identify any work related stress factors. It recommends "a combination of personal support, self-health, and occupational interventions to achieve a successful return to work". It again recommends that the claimant "be redeployed to a position out of the business area she currently works in stock".

    The tribunal found that the respondent did not ignore that occupational health advice. The respondent undertook a stress risk assessment and made arrangements to find a new role with a different team in a different building. There

was no less favourable treatment and no such treatment was in any sense whatsoever related to the claimant's disability.

100. The next allegation is that the respondent treated the claimant less favourably because of her disability by "unfairly subjecting the claimant to an incomplete investigation into a vexatious grievance, placing severe permanent disciplinary sanctions and/or restrictions on the claimant, removed key responsibilities from the claimant and made it impossible for the claimant to be redeployed." That again is a repetition of earlier allegations. The tribunal found that none of those allegations were true. The investigation was not incomplete. The grievance was not vexatious. The disciplinary sanctions and/or restrictions were not unreasonable in the circumstances. None of that was in any sense whatsoever influenced by the claimant's disability.

101. The next allegation is that the respondent treated the claimant less favourably because of her disability "by failing to act upon all attempts the claimant made to inform the respondent that her health was deteriorating due to the on-going situation at work." This again was a generic allegation which the tribunal found to be wholly unsubstantiated. The respondent was aware from what the claimant told them and from the occupational health reports that her health was deteriorating. The respondent did all that it could reasonably be expected to do in all the circumstances. The respondent did not "fail to act". None of the respondent's actions or inactions were in any sense whatsoever influenced by the claimant's disability.

102. The above allegations of direct disability discrimination cover everything in the 4 specific allegations pleaded by the claimant in her claim form. The tribunal found that there was no less favourable treatment of the claimant when compared to persons in similar circumstances (hypothetical or otherwise) but who did not have the claimant's disability.

103. The next allegations were of unfavourable treatment because of something arising in consequence of the claimant's disability. Nowhere in her pleaded case, her witness statement or her list of issues, does the claimant attempt to identify what is the "something" or how that is said to arise as a consequence of her disability. In her list of issues, the claimant refers to allegations 57, 59, 61 and 63 in that list. All of those incidents took place before March 2018 in any event. The allegations are totally without merit.

104. The next allegations raised by the claimant are of failure to make reasonable adjustments. The first pleaded allegation is that the respondent operated a provision, criterion or practice (PCP) or "subjecting employees to disciplinary sanctions and restrictions following the raising of the grievance" without following a disciplinary process. The claimant alleges that this PCP put her as a disabled person at a substantial disadvantage in comparison to non-disabled persons in that it was more likely that her health would suffer as a result. The claimant alleges that it would have been a reasonable adjustment not to subject her to such "severe and unnecessary sanctions and restrictions which do not form any part of the respondent's policy and procedures." The sanctions were recommended by Claire Louise Jackman in her report dated 23rd January 2018,

which is before the claimant (on her best case) alleges that she was disabled. Accordingly, the claimant could not have been put at a substantial disadvantage when compared to people who were not disabled.

105. The next allegation was that the respondent operated a PCP of not redeploying employees pending a grievance investigation. The tribunal found that the respondent did not apply any such provision, criterion or practice. The claimant personally was eventually redeployed, as she had requested. The ongoing grievance raised by the claimant had no influence whatsoever on the length of time taken to redeploy the claimant. The PCP alleged by the claimant did not exist.

106. The next allegation is that the respondent operated a PCP in its priority mover policy, which the claimant says put her at a substantial disadvantage in compared to non-disabled persons in that her mental health "significantly deteriorated as a result of her being left totally isolated and without a role." The tribunal has already found that the claimant was not left isolated and without a role and therefore she was not placed at any disadvantage by the implementation of the priority mover policy. In any event, it could not have been a reasonable adjustment to remove the sanctions imposed following the grievance outcome. The claimant's evidence and that of the occupational health specialist was that the deterioration in the claimant's mental health was caused by having to work with those colleagues whom the claimant alleged had committed acts of unlawful race discrimination. The claimant asked for a move to a different role with a different team in a different building. The claimant's case here was that the disciplinary restrictions were "wrongly imposed" – the tribunal found that not to be the case. The respondent was not in breach of any obligation to make reasonable adjustments.

107. Finally, the claimant alleged that the respondent was in breach of duty to make reasonable adjustments by failing to carry out the following adjustments:-

(i) moving the claimant to a different line of business in accordance with the recommendations of her GP and occupational health without unreasonable delay;

(ii) to offer the claimant mentorship, supervision and support;

(iii) to offer the claimant training;

(iv) to offer the claimant a role;

(v) to offer the claimant meaningful work;

(vi) to pay costs towards counselling.

In none of these did the claimant set out what was the provision, criterion or practice and how that was said to place disabled persons at a disadvantage, or how it placed her personally at any disadvantage. The tribunal found this simply to be a list of those matters about which the claimant was dissatisfied. There could be no obligation to make reasonable adjustments unless the claimant could

show there was a provision, criterion or practice which placed her at a substantial disadvantage when compared to non-disabled persons. Accordingly, those claims are not made out.

108. Finally, the claimant raised allegations of victimisation contrary to Section 27 of the act. The claimant again relies upon her grievance dated 21st November 2017 and the commencement of employment tribunal proceedings as protected acts. The tribunal has already found that those amount to protected acts. The claimant then lists, word for word, the alleged acts of victimisation which she earlier alleged to be acts of victimisation on the grounds of her race. Those are set out in paragraph (61-71) above. The tribunal does not set out those allegations individually. The tribunal's findings of fact in respect of those allegations apply equally to the allegations of victimisation on the grounds of disability as they did to the allegations of victimisation on the grounds of race. The claimant has not proved facts from which the tribunal could infer that any of those actions or inactions were related to the claimant's disability and/or the raising of the grievance or commencement of the employment tribunal proceedings.

The law

109. The claims brought by the claimant all allege various breaches of the Equality Act 2010. The relevant statutory provisions are as follows:

Section 4 The protected characteristics

The following characteristics are protected characteristics –

Age;
Disability;
Gender reassignment;
Marriage and civil partnership;
Pregnancy and maternity;
Race;
Religion or belief;
Sex;
Sexual orientation.

Section 6 Disability

(1) A person (P) has a disability if--

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

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

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability--

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)--

(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

Section 9 Race

(1) Race includes--

(a) colour;
(b) nationality;
(c) ethnic or national origins.

(2) In relation to the protected characteristic of race--

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.

(3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.

(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

(5) A Minister of the Crown may by order--

(a) amend this section so as to provide for caste to be an aspect of race;

(b) amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.

(6) The power under section 207(4)(b), in its application to subsection (5), includes power to amend this Act.

Section 13 Direct discrimination

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

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex--

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).

(8) This section is subject to sections 17(6) and 18(7).

Section 15 Discrimination arising from disability

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

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

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

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

Section 20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to--

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to--

(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

Part of this Act	**Applicable Schedule**
Part 3 (services and public functions)	Schedule 2
Part 4 (premises)	Schedule 4
Part 5 (work)	Schedule 8
Part 6 (education)	Schedule 13
Part 7 (associations)	Schedule 15
Each of the Parts mentioned above	Schedule 21

Section 21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Section 26 Harassment

(1) A person (A) harasses another (B) if--

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of--

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if--

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

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

(3) A also harasses B if--

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

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

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

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are--

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

Section 27 Victimisation

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

Section 39 Employees and applicants

(1) An employer (A) must not discriminate against a person (B)--

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

(c) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)--

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

(3) An employer (A) must not victimise a person (B)--

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

(c) by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)--

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

(5) A duty to make reasonable adjustments applies to an employer.

Section 123 Time limits

(1) [Subject to section 140A] Proceedings on a complaint within section 120 may not be brought after the end of--

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

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

(2) Proceedings may not be brought in reliance on section 121(1) after the end of--

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

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

(3) For the purposes of this section--

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

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something--

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Section 136 Burden of proof

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

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

1. Impairment

Regulations may make provision for a condition of a prescribed description to be, or not to be, an impairment.

2. Long-term effects

(1) The effect of an impairment is long-term if--

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or

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

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

(3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

(4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

3. Severe disfigurement

(1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.

(2) Regulations may provide that in prescribed circumstances a severe disfigurement is not to be treated as having that effect.

(3) The regulations may, in particular, make provision in relation to deliberately acquired disfigurement.

4. Substantial adverse effects

Regulations may make provision for an effect of a prescribed description on the ability of a person to carry out normal day-to-day activities to be treated as being, or as not being, a substantial adverse effect.

5. Effect of medical treatment

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if--

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

(3) Sub-paragraph (1) does not apply--

(a) in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;

(b) in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.

6. Certain medical conditions

(1) Cancer, HIV infection and multiple sclerosis are each a disability.

(2) HIV infection is infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.

7. Deemed disability

(1) Regulations may provide for persons of prescribed descriptions to be treated as having disabilities.

(2) The regulations may prescribe circumstances in which a person who has a disability is to be treated as no longer having the disability.

(3) This paragraph does not affect the other provisions of this Schedule.

8. Progressive conditions

(1) This paragraph applies to a person (P) if--

(a) P has a progressive condition,

(b) as a result of that condition P has an impairment which has (or had) an effect on P's ability to carry out normal day-to-day activities, but

(c) the effect is not (or was not) a substantial adverse effect.

(2) P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment.

(3) Regulations may make provision for a condition of a prescribed description to be treated as being, or as not being, progressive.

9. Past disabilities

(1) A question as to whether a person had a disability at a particular time ("the relevant time") is to be determined, for the purposes of section 6, as if the provisions of, or made under, this Act were in force when the act complained of was done had been in force at the relevant time.

(2) The relevant time may be a time before the coming into force of the provision of this Act to which the question relates.

Direct discrimination

110. To succeed in a complaint of direct discrimination on the grounds of race or disability, the claimant must first of all show that she has been treated "less favourably" than a named comparator or a hypothetical comparator. "Unfavourable" treatment, or simply treatment which the employee does not like, is insufficient. The Court of Appeal said in **Bahl v Law Society [2004] EWCA 1070** that unreasonable behaviour itself cannot found an inference of discrimination. Section 23 (1) of the Equality Act 2010 requires that the circumstances of any comparator should not be materially different to those of the claimant employee. Section 23 (1) states:-

> "On a comparison of cases for the purposes of Section 13 (direct discrimination)....there must be no material difference between the circumstances relating to each case."

The question whether a comparator is appropriate is one of fact and degree. The circumstances of the complaint and comparator need not be identical, but choosing an incorrect comparator will be an error of law.

111. Once it has been established that the claimant has been treated less favourably than the comparator, the tribunal must then consider whether that less favourable treatment was (in this claimant's case) "because of race" or "because of disability". "Race" includes colour, nationality and ethnic or national origin.

112. Section 13 prohibits less favourable treatment "because of a protected characteristic". The intention or motives of the alleged discriminator are irrelevant – unintentional direct discrimination is unlawful, as are acts of direct discrimination performed for entirely non-discriminatory motives. The essential question is, "What caused the less favourable treatment?". Discrimination is to be treated as being because of the protected characteristic if the substantial or effective, although not necessarily the sole or intended, reason for the discriminatory treatment was the protected characteristic. [**Barton v Investec – 2003 IRLR332**].

113. "Harassment" has a wide scope, in that it covers harassment which "relates" to the relevant protected characteristic and not merely harassment which is "because of" the characteristic. Whether the unwanted conduct "relates to" the protected characteristic requires a consideration of the mental process of the putative harasser. In determining whether the conduct has the effect of violating the employee's dignity or creating the relevant environment for the purposes of Section 26 (1) (b), the Tribunal must take into account the employee`s perception, the circumstances of the case and whether it is reasonable for the conduct to have had that effect. In **Land Registry v Grant [2011 EWCA-CIV-769]** the Court of Appeal focussed on the words "intimidating, hostile, degrading, humiliating or offensive" and observed that, "tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment." The test as to whether conduct has the relevant effect is not subjective. Conduct is not to be treated as violating a complainant's dignity merely because she thinks it does. It must be conduct which could reasonably be considered as having that effect. However, the tribunal must take into account the complainant's own perception when making that assessment.

114. "Victimisation" contrary to Section 27 of the Equality Act 2010 requires the claimant to establish that she has been subjected to a "detriment". That means that the claimant only has to show that she has been treated badly, not that others have been treated better than her. The matters about which the claimant complains in the "protected act" must be unlawful under the Equality Act itself. The employee must establish that the employer subjected her to that detriment "because" she had performed a protected act. This requirement is very similar to the requirement in the definition of direct discrimination contrary to Section 13 set out above. The protected act has to be an effective and substantial cause of the employer's detrimental actions, but does not have to be the sole or principle cause.

115. An allegation of unfavourable treatment because of something arising in consequence of disability, contrary to Section 15 of the Equality Act 2010, again does not require the claimant to show that she has been treated less favourably than a named or hypothetical comparator. "Unfavourable treatment" is different to "less favourable treatment". It is sufficient for the claimant to show that she has been treated badly. However, the claimant must then go on to show that the alleged treatment was because of "something" which arose in consequence of her disability. An example would be an employee who is dismissed for long-term absences, when those absences were because of an illness which amounted to a disability. The reason for the unfavourable treatment (dismissal) would be the

absences (something) which arose as a consequence of the disability. It is for the claimant to establish what is the "something" and to establish how that arose in consequence of her disability. If a claimant is able to do that, the burden would fall upon the respondent to show that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

116. In an allegation of failure to make reasonable adjustments contrary to Sections 20 and 21 of the Equality Act 2010, it is for the claimant to establish that there is a provision, criterion or practice implemented by the respondent which puts disabled people at a substantial disadvantage when compared to people who are not disabled. The claimant would then have to show that the provision, criterion or practice placed her personally at that substantial disadvantage. The claimant would then have to establish an adjustment which could have been made and which was reasonable in all the circumstances and further that the making of the adjustment would remove the disadvantage.

117. In terms of the definition of "disability" itself, in Section 6 of the Equality Act 2010, it is for the claimant to satisfy the employment tribunal that she has a mental impairment which has a substantial and long-term adverse effect on her ability to carry out normal day to day activities. In deciding whether the substantial adverse effect is long-term, it must have lasted for 12 months or be likely to last more than 12 months. In considering whether it is "likely" that it will last more than 12 months, the question which the employment tribunal must ask itself is whether it could well happen that it would last for more than 12 months.

118. Where crucial facts are in dispute, the law generally imposes a burden on the claimant to prove, on the balance of probabilities, that her version of events is more likely than not to be correct. In discrimination cases, particularly those involving allegations of direct discrimination, the law recognises that it is extremely difficult, if not impossible, for a claimant to prove what was in the mind of the alleged discriminator. Because of that, in discrimination claims under the Equality Act 2010, the claimants benefit from a slightly more favourable burden of proof in recognition of the fact that discrimination is frequently covert and can present special problems of proof. Section 136 of the Equality Act 2010 provides that, once there are facts from which an employment tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof "shifts" to the respondent to prove a non-discriminatory explanation. That two-stage shifting burden of proof also applies to harassment under Section 26, victimisation under 27 and also discrimination arising from disability under Section 15 and the failure to make reasonable adjustments under Section 20. It is often difficult for an unrepresented litigant to grasp the principles of the two-stage approach required by Section 136. Those principles have been properly addressed in four key cases:-

Igen Limited v Wong [2005 ICR931]
Laing v Manchester City Council [2006 ICR1519]
Madderassy v Nomura International PLC [2007 ICR867]
Hewage v Grampian Health Board – 2012 ICR1054

In the **Hewage** case, the Supreme Court endorsed the earlier decisions of the Court of Appeal in **Igen v Wong** and **Madderassy v Nomura.** The correct approach for the employment tribunal to take entails a two-stage analysis. At the first stage, the claimant has to prove facts from which the tribunal could infer the discrimination has taken place. Only if such facts have been made out to the tribunal's satisfaction (ie on the balance of probabilities), is the second stage engaged, whereby the burden then "shifts" to the respondent to prove – again on the balance of probabilities – that the treatment in question was "in no sense whatsoever" on the grounds of the protected characteristic. In deciding those cases, the Court of Appeal endorsed the following guidelines:-

- It is for the claimant to prove on the balance of probabilities, facts from which the employment tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. If the claimant does not prove such facts, the claim will fail.

- In deciding whether the claimant has proved such facts, it is important to bear in mind that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In many cases the discrimination will not be intentional but merely based on the assumption that "he or she would not have fitted in."

- The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

- The tribunal does not have to reach a definitive determination that such facts would lead to conclude that there was discrimination – it merely has to decide what inferences could be drawn.

- In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

- Those inferences could include any that it is just and equitable to draw from an evasive or equivocal reply to a request for information.

- Inferences may also be drawn from any failure to comply with a relevant code of practice.

- When the claimant has proved facts from which inferences can be drawn that the respondent has treated the claimant less favourably on a protected characteristic ground, the burden of proof moves to the respondent.

- It is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed that act.

- To discharge the burden, it is necessary for the respondent to prove on the balance of probabilities that its treatment of the claimant was in no sense whatsoever on the protected grounds.

- Not only must the respondent provide an explanation for the facts proved by the claimant, from which the inferences could be drawn, but that explanation must be adequate on the balance of probabilities that the protected characteristic was no part for the reason for the treatment.

- Since the respondent would generally be in possession of the facts necessary to provide an explanation, the tribunal would normally expect cogent evidence to discharge that burden – in particular, the tribunal will need to examine carefully explanations for failure to deal with any questionnaire procedure or any code of practice.

119. The Supreme Court went on to say in **Hewage v Grampian Health Board** that the factual content of cases does not simply involve testing the credibility of witnesses on contested issues of fact. Most cases will turn on the accumulation of multiple findings of primary facts, from which the tribunal is invited to draw an inference of a discriminatory explanation of those facts. The important point is that, although statute requires a two-stage analysis of the evidence, the tribunal does not in practice hear the evidence and the argument in two stages. It will have heard all the evidence in the case before it embarks on this analysis. Finally, it is now accepted that the bare facts of a difference in status and a difference in treatment only indicates the possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that on the balance of probabilities, the respondent had committed an unlawful of discrimination.

120. The issue of what amounts to a "prima facie case of discrimination" lies at the heart of the shifting burden of proof. It is often difficult to determine the precise point at which such a prima facie case will come about, since it all depends upon what inferences can be drawn from the surrounding facts. At the first stage, the onus lies on the employee to show potentially less favourable treatment from which an inference of discrimination could properly be drawn. This would involve identifying an actual comparator treated differently, or in the absence of an actual comparator, a hypothetical one who would have been treated more favourably. That always involves a consideration of all material facts as opposed to any explanation. Only if the claimant succeeds in establishing that less favourable treatment, will the onus switch to the employer to show an adequate (or non-discriminatory) reason for the difference in treatment.

121. In the present case it is therefore for Mrs Davison to establish on the balance of probability, facts from which the tribunal could infer that the respondent's treatment of her was discriminatory. To establish those facts, the claimant must set out in her pleaded case exactly what are the allegations and then provide persuasive evidence to support those allegations. The claimant's evidence in this case is set out in her witness statement and those documents in the hearing bundle to which the claimant referred. Many of the claimant's allegations were not supported by contemporaneous documents and the employment tribunal had to decide, on the balance of probability, whether the claimant's version of events was more likely to be correct than the version provided by the respondent's witnesses. This involves an assessment by the tribunal of the credibility and reliability of the evidence given by the claimant and the respondent's witnesses.

The tribunal was able to undertake that assessment over the course of this lengthy hearing. In his closing submissions, Mr Lewis specifically drew the tribunal's attention to the following matters ,which Mr Lewis submitted showed that the claimant's evidence was neither credible nor reliable:-

(i) the claimant was quick to perceive that she had been subjected to a detriment where, viewed objectively, she had not been;

(ii) the claimant was quick to assume (often on the basis of no evidence) that the reason for such perceived or actual treatment was connected to her race or disability, where objectively, it was not;

(iii) the claimant was quick to see in her own mind a conspiracy where, in fact, none existed.

Mr Lewis provided the following specific examples:-

(a) The issue of whether the claimant had experienced previous mental health or work-related stress issues. The claimant had specifically led the respondent's occupational health practitioners on at least two occasions to believe that she had not any such issues, whereas in her witness statement the claimant spent several paragraphs setting out how she had experienced such issues and how significant they had been to her. The claimant's excuse that her medication had adversely affected her memory, was unpersuasive and unsupported by any specific evidence;

(b) The claimant sent an e-mail testimonial by way of feedback on Mr Cullen's leadership, the contents of which were directly contradicted by the claimant in her evidence to the tribunal. The claimant's purported explanation, namely that she was pressurised by Mr Cullen in providing that testimonial, was neither persuasive nor supported by any evidence. Even if what the claimant says is correct, it shows that she sought to mislead her employer as part of its formal appraisal process, or otherwise sought to mislead the tribunal;

(c) The claimant insisted that she had no meaningful work to do whilst under Ms Hunter's command, whereas the evidence of contemporaneous discussions and records of one-to-one meetings between the pair of them, showed that the claimant was carrying out meaningful work;

(d) The claimant made a direct and explicit allegation that various people involved in these proceedings were "racist" and that HMRC itself is "institutionally racist". The claimant did not provide a single example of any such racist behaviour other than her own allegations. The allegation of institutionalised racism was based upon a document headed "HMRC End of Year Performance Rating Distribution – 2014/15" which showed that white employees exceeded expectations in 19.9% of cases, achieved expectations in 72.3% and were allocated "must improve" in 7.9%. The figures for ethnic minority employees were 14% for exceeded, 73.1% for achieved and 12.9% for must improve. The tribunal found that the

claimant's allegation of institutionalised racism was wholly inappropriate when based upon such flimsy and unhelpful evidence;

(e) The claimant was extremely quick to allege that any witness who disagreed with her version of events was "lying", either to colleagues as part of the respondent's investigatory processes or to the employment tribunal. When documents were produced to the claimant which tended to support the respondent's version of events and to discredit those of the claimant, the claimant was quick to allege that those documents were "fabricated, altered or forged". Those were extremely serious allegations against senior managers in the Civil Service and which would amount to a clear and obvious breach of the Civil Service code which sets out the core values and standards of behaviour which all civil servants are expected to uphold. Such allegations should not be made likely, yet the claimant was quick to do so without any meaningful evidence to support such allegations;

(f) The claimant maintained throughout these proceedings that the grievance raised against her by AB was "vexatious" and little more than a conspiracy between that complainant and Mr Robson. The complaint was in fact a serious allegation of bullying/harassment on the grounds of sexual orientation, where the claimant was alleged to have openly challenged and commented upon a junior employee's sexual orientation in the presence of other employees. The claimant categorised that allegation as "vexatious" was again wholly inappropriate, particularly when the claimant herself complained about such insignificant matters as Mr Robson shouting "everybody out" to those remaining staff at the end of the working day and maintaining that this amounted to direct race discrimination.

122. The tribunal's overall assessment of the claimant's evidence was that it was generally unpersuasive, not credible and that the claimant herself was not a reliable witness. The claimant had clearly taken great exception to the two occasions when she was marked as "needs improvement" by moderator panels in her appraisals and particularly to the raising of the grievance by YZ, the upholding of that grievance and the imposition of sanctions upon her as a result. The claimant has flatly refused to accept any of those decisions. The claimant maintained throughout that she was (and is) "a really good manager" or "the finished article", that being what the claimant said to her managers.

123. Where there was a difference between the evidence given by the claimant and that given by the respondent witnesses, in each case (for the reasons set out above), the tribunal found the evidence of the respondent's witnesses to be more credible, reliable and persuasive. Whenever corroborative witness evidence was available, it supported the respondent's version of events. Wherever there were contemporaneous documents produced, they again supported the respondent's evidence.

124. With regard to each and every allegation of direct discrimination (whether on the grounds of race or disability) the tribunal found there was no less favourable treatment of the claimant when compared to non-Sikh Indian or non-disabled employees. The treatment alleged either did not take place or was not less

favourable. Whenever there was any difference in treatment it was not because of the claimant's race or disability.

125. The conduct which the claimant alleged to amount to harassment either did not take place or did not satisfy the statutory definition of harassment in Section 26 of the Equality Act 2010. Similarly, the acts which the claimant alleged to amount to victimisation either did not take place or were not related to either of the accepted protected acts.

126. With regard to the allegations of a breach of Section 15 of the Equality Act 2010, the claimant simply did not establish that there was "something" which arose as a consequence of her disability and therefore could not establish that she was treated unfavourably because of that "something".

127. The claimant failed to establish that there was any provision, criterion or practice which placed her as a disabled person at a substantial disadvantage when compared to non-disabled people.

128. For those reasons, all the claimant's complaints of unlawful race and disability discrimination are not well-founded and are dismissed.

Authorised by EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 14 April 2021