THE EMPLOYMENT TRIBUNALS

Claimant: M Hanif
Respondent: Department for Work and Pensions

HELD AT: North East region; by video **ON:** 15-22 February 2021
In chambers: 23 February, 8 April and 28 April 2021

BEFORE: Employment Judge Aspden
Mr R Dobson
Mr S Moules

REPRESENTATION:

Claimant: Mr Barker, solicitor
Respondent: Mr Crammond, counsel

JUDGMENT

1. The following complaints made by the claimant under the Equality Act 2010 are dismissed, having been withdrawn by the claimant:
    a. the complaints that the respondent subjected the claimant to direct discrimination within section 13 of the Act and discrimination within section 15 of the Act;
    b. the complaint that the respondent harassed the claimant and victimised her by returning files to the claimant without cause and falsely claiming that she was removing barcodes from files.

2. The following complaints made by the claimant under the Equality Act 2010 are well founded:

a. The complaint that the respondent failed to comply with a duty to make reasonable adjustments, and thereby discriminated against the claimant, by failing to permit the claimant to listen to music at work.
b. The complaint that the respondent failed to comply with a duty to make reasonable adjustments, and thereby discriminated against the claimant, by failing to allow her to work from home reporting to someone other than Ms Hepperle from 8 November 2018.

3. The remainder of the claimant's complaints are not well founded and are dismissed.

REASONS

The claims and issues

1. The claimant is an employee of the respondent. In March 2019 the claimant brought proceedings in the employment tribunal comprising complaints under the Equality Act 2010 that she had been subjected to discrimination and harassment related to disability and sexual orientation, and victimisation. Those complaints proceeded under case number 2500446/2019.

2. In November 2019 the claimant brought further complaints against the respondent under the Equality Act 2010. Those complaints proceeded under case number 2504225/2019. There were originally said to be three discrete complaints of harassment and victimisation within those proceedings. The claimant's representative subsequently withdrew one of the complaints.

3. A direction was made that both sets of proceedings be heard together. The hearing was originally due to take place in April 2020 but the hearing had to be postponed due to the Covid pandemic.

4. Orders were made requiring the parties to agree a list of issues ahead of this hearing. Regrettably, at the start of this hearing the precise claims being pursued by the claimant remained unclear. Therefore, we prepared a list of the claims that appeared to be being made. In the course of discussions the claimant's representative withdrew all complaints of direct discrimination and discrimination within section 15 of the Equality Act 2010. That left complaints of harassment related to sexual orientation and disability, victimisation and discrimination by failing to comply with a duty to make reasonable adjustments.

5. After discussing matters with his client Mr Barker refined the list of claims further. Both parties agreed that the claims being made by the claimant are those annexed to this judgment. After the claimant had given evidence one of the complaints was withdrawn ie allegation 20.

6. The parties agree that all of the alleged unlawful acts occurred in or after December 2017. Mr Crammond confirmed that the respondent accepts the claimant had a mental health impairment constituting a disability from then and that the

respondent knew, or could reasonably have been expected to know, that was the case from the date it received an occupational health report in that month.

7. The claimant makes a number of claims that the respondent subjected her to detriment amounting to victimisation within section 27 of the Equality Act 2010. Consistently with what has been the claimant's position throughout these proceedings, Mr Barker confirmed that the claimant relies on two alleged protected acts:

   7.1. Firstly, she alleges she brought proceedings under the Equality Act 2010 against her former employer. This would be a protected act under section 27(2)(a).

   7.2. Secondly, the claimant alleges that the claimant did a protected act by sending a letter to Ms Pattison dated 22 June 2018. The claimant's case is that this was a protected act under section 27(2)(d) or (c) in that it constituted either making an allegation that someone has contravened the Equality Act 2010 or 'doing any other thing for the purposes of or in connection with' the Equality Act 2010.

Evidence and findings of fact

8. We heard evidence from the claimant.

9. For the respondent we heard evidence from:

   9.1. Ms Hepperle, who had been the claimant's line manager;
   9.2. Ms Pattison, who was Ms Hepperle's line manager at the material times;
   9.3. Mr Humphray, who managed the claimant for a period during 2018 and 2019;
   9.4. Mr Garrick, who was the claimant's manager from March 2019; and
   9.5. Mr Foster, who investigated a grievance brought by the claimant in 2019.

10. In addition, we took into account the documents to which we were referred in a bundle of documents prepared for this hearing together with certain other documents to which we were referred.

11. Important elements of this case were dependent on evidence based on people's recollection of events that happened some 18 months ago. In assessing that evidence we bear in mind the guidance given in the case of Gestmin SGPS -v- Credit Suisse (UK) Ltd [2013] EWHC 3560. In that case Mr Justice Leggatt observed that is well established, through a century of psychological research, that human memories are fallible. They are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. In the Gestmin case, Mr Justice Leggatt described how memories are fluid and changeable: they are constantly re-written. Furthermore, external information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all. In addition, the process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to parties, including employees and

family members. It was said in that case: 'Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.' In light of those matters, inferences drawn from the documentary evidence and known or probable facts tend to be a more reliable guide to what happened than witnesses' recollections as to what was said in conversations and meetings. We wish to make clear from the outset that simply because we do not accept one or other witness' version of events in relation to a particular issue, or refer to a witness' evidence as unreliable, does not necessarily mean we considered that witness to be dishonest.

12. In April 2017 the claimant started work for the respondent as a Presenting Officer ('PO') based in Teesside and working out of the respondent's Stockton office. In that role the claimant – and certain other POs in Teesside - reported to Ms Hepperle, a Higher Executive Officer ('HEO'). There was another HEO in Teesside, Ms Fraser. She managed her own team. However, there was some overlap in management responsibilities as each would provide cover for the other in the other's absence, for example when on annual leave. The HEOs across the North and into the Midlands, including Ms Hepperle and Ms Fraser, were managed by Ms Pattison who is, and was at all material times, a Senior Executive Officer ('SEO') based in Lancashire.

13. The respondent had in place, at all material times, a document setting out the procedures to be followed in the case of an employee who has absences related to illness. That document is entitled 'Attendance Management Procedures.' Amongst other things, that document provided as follows:

Returning to work

…

17. If the employee has reached or exceeded their trigger point, the manager must arrange a formal meeting with the employee. They should discuss the employee's absence record, understand more about the reasons for the level of absence and decide on the best course of action – see 'Formal Action' below.

Informal discussion

18. If an employee's sickness absence level gives cause for concern but is below the Trigger Point, a manager should have a supportive conversation with the employee. The purpose of the discussion is to enquire about the health and wellbeing of the employee and help them maintain a satisfactory level of attendance. …

Formal action for short-term absences

When a trigger point is reached

21. The trigger point is either:

(a) Eight working days cumulatively in any rolling 12-months period, pro rata'd for part-time employees. A disabled employee may have their trigger point increased as a Disabled Employee's Trigger Point ….

…

Health & Attendance Improvement Meeting (H&AIM)

23. When a trigger point is reached the manager must issue the employee with an invitation to a formal meeting called the Health & Attendance Improvement Meeting (H&AIM) ….

24. The H&AIM must be welfare focused. Its main purpose is for the manager to understand more about the employee's absence(s), including more about their

illness, the treatment they are having or had and what might be done to achieve a satisfactory level of attendance:

(a) There is no pre-determined outcome to the support-focussed H&AIM;

(b) Most of the time should be spent discussing support, help and health / wellbeing improvement, focusing as much as possible on practical things that might be done;

(c) Consider whether advice from Occupational Health is required

(d) Reasonable adjustments and other corrective/supportive measures should be considered and discussed. In relevant cases, it may be appropriate to award or increase a DETP.

(e) At the end of the meeting the appropriateness of a warning must be considered but this must not be the main point of the discussion.

25. A note must be made of the meeting which, if the employee consents, can be taken by another person. The manager must write to the employee within 5 working days of the meeting summarising any agreed supportive actions and advising them of the decision taken with the reasons for it. … The letters will also advise the employee what will be expected of them and what will happen if they do not meet the attendance standard.

Deciding a warning

26. At the end of a Health & Attendance Improvement Meeting (H&AIM) the manager must decide whether there are reasonable grounds to issue a formal warning. Warnings are not automatic or a default outcome but require a positive, case-specific decision by the line manager. For disabled colleagues an isolated or short/moderate increase in disability related absence wouldn't justify a warning. Warnings are appropriate in cases where there is a risk that poor attendance will continue. If a warning is given, the ideal outcome is that attendance improves and escalation to the next level of formal action is not required.

27. There are two levels of formal warning before dismissal is considered:

(a) First written warning – this is followed by a 6-months review period when attendance must be below 50% of the employee's normal trigger point to be considered satisfactory. If the review is passed, the employee comes out of formal action, but then starts a 12-months sustained Improvement Period;

(b) Final written warning – when attendance is unsatisfactory during a first written warning review period or sustained improvement period. …;

(c) Consideration of dismissal/demotion - when the employee reaches or exceeds their trigger point following a final written warning, or whilst in a sustained improvement period following a final written warning or when a continuous sickness absence can no longer be supported.

28. A decision to give, or not give, a warning is for the line manager to reasonably make applying the standards set out in the relevant part of the HR Decision Makers guide. ...

29. In deciding if a warning is appropriate, a line manager will consider what is fair and reasonable in the circumstances and have regards to:

(a) The level, frequency and nature of the sickness absence;

(b) Information about the treatment the employee is undergoing and the likelihood of improvement – Occupational Health advice might be sought on this;

(c) The employee's long-term attendance record;

(d) The employee's length of service and overall performance and attitude to work;

(e) The steps the employee is taking to improve their own health and wellbeing.
(f) What feels right and fair when standing back from the detail and considering the whole of the case.
30. A warning is not required when there is a reasonable expectation of improvement. A manager should also not give a warning if any one of the following circumstances applies; …
(c) The employee is disabled, the absence is directly related to the disability, and it is reasonable to increase the trigger point; …
(k) It would be perverse, unfair or disproportionate to give a warning taking into account the exceptional nature and/or circumstances of the absence and the employee's otherwise satisfactory attendance record.

14. It appears from the wording of that policy that there existed some other guidance for managers, including guidance on increasing trigger points for a disabled employee. We were not referred to that guidance. Ms Hepperle's unchallenged evidence, which we accept, is that the respondent's policies permitted the standard trigger point (8 days) to be increased by up to 50% ie by up to 4 days.

15. The respondent had in place, at all material times, a document which set out the process employees and managers were expected to follow if an employee wished to raise a grievance. That document is entitled 'Grievance and Issue Resolution Procedure.' The version of that document produced in these proceedings is dated March 2019. Ms Pattison suggested in her evidence that the version of that document that was in place in 2018 may have been different from the March 2019. However, we were not referred to any other version of that document and Mr Crammond said in submissions it was not the respondent's position that the policies to which we were referred were not in place at the material times. In any event, Ms Pattison herself referred us to that document when describing in her witness statements decisions she took in relation to matters raised by the claimant in 2018. We infer, therefore, that any changes that may have been made were not germane to the matters arising in this case.

16. The Grievance and Issue Resolution Procedure said the following, amongst other things:
4.1. What matters most is that the issue is raised and suitably addressed. There are 3 routes to achieving this. There are not meant to be used one after the other. Instead, the most appropriate route should be used depending on the type of concern or grievance. … The 3 routes, are all explained in more detail below.
• Employee Action, which can include voluntary Mediation – this is when an employee is advised, supported or coached to seek resolution themselves. This typically involves talking directly to the person causing the concern.
• Manager Action – this is when it is not appropriate or possible for an employee to resolve their issue them self, so they refer it to a manager for them to take action. This is normally the employee's line manger but does not have to be. It can be any manager trusted by the employee to take direct action, including someone working in a support function, like Human Resources (HR). Referrals for Manager Action can be anonymous – see 4.3.
• Management Investigation – this is when an investigation is conducted and any witnesses (should there be any) are interviewed. Notes are made of meetings

and certain employees have a right to be accompanied to those meetings. Where an employee raises a concern about alleged bullying, harassment or discrimination, it will be dealt with by Management Investigation unless the employee explicitly states a preference to use Employee Action, Manager Action or Mediation first to try and resolve the issue. The choice and decision to try and resolve the issue without Management Investigation must always be the employee's

…

5. ***Employee Action***

5.1. When work-related problems and issues do arise, employees must try to resolve them themselves. Self-resolution might be possible with advice, support and coaching from a line manager, other trusted manager or a trusted colleague. The Employee Assistance Programme can also help.

5.2. Where an employee is uncomfortable with someone's behaviour, they should try to have a private, honest and open discussion with the colleague concerned. If it is not possible to talk directly with the colleague, the employee's line manager may act as a facilitator and/or may suggest other ways in which to resolve the issue, for example, through mediation. Mediation must always be considered where workplace relationships have become strained or have broken down. See the How to: Use Mediation to resolve conflict guide for more information.

5.3. If the employee has tried but not been able to resolve an issue with the person concerned, or reasonably feels unable to attempt to resolve it, they may refer the matter to their line manager for Manager Action. If the person concerned is the line manager, the employee should speak to the countersigning manager or another trusted manager who they feel comfortable talking to.

6. ***Manager Action***

6.1. This could be the employee's line manager taking action to resolve the problem or reconsidering an earlier decision (e.g. refusal to allow time off or rostering) which has resulted in the grievance being raised. Under Manager Action, the manager receiving the concern or grievance takes responsibility for trying to resolve it.

6.2. The employee may also refer for Manager Action if they are unhappy about a management, operational or organisational decision. They would normally raise the issue with their line manager, or the manager who made the relevant decision, as soon as they become aware of its impact. Raising concerns about decisions with the decision maker is the quickest way to obtain more information and, where possible, resolution. If the matter is significant and it remains unresolved after discussion with the line manager, the employee can refer the matter to their countersigning manager or another trusted manager.

If the matter is significant and it remains unresolved after discussion with the line manager, the employee can refer the matter to their countersigning manager. In very exceptional cases, such as when gender is an issue, the employee can refer to another manager.

…

7. ***Management Investigation***

7.1. Management Investigation means enquiring into the complaint, giving notice of meetings and recording the discussions before reaching a decision. (Employees have a right to be accompanied by a colleague or trade union representative to meetings).

7.2. Complaints dealt with by Management Investigation often involve more people, take longer, and may increase the risk of long-term damage to relationships. Due to this, the Management Investigation procedures should be applied only when it is justified and is the best way of proceeding. …
7.3. Employees are expected wherever possible to progress their issue using the Employee Action or Manager Action procedures. Managers are required to engage constructively with employees to ensure the Employee Action and Manager Action procedures are meaningful and effective. Should the issue remain unresolved and, upon further reflection, the employee believes it is reasonable to do so, employees may have their grievance dealt with under the Management Investigation procedure …
Requesting a Management Investigation
7.7. If the grievance is appropriate for Management Investigation, the employee must:
• Complete form G1
• Submit the G1 form after a period of reflection but within 30 working days of the event or issue taking place. …
• be clear about the grounds for the grievance and the specific issue they want resolving
• describe what they have done so far to resolve the complaint themselves through Employee Action or Manager Action - if the employee has not taken these courses of action they should explain why
• stick to the facts
• avoid using language which might be considered insulting or abusive
• state what outcome is being sought
• send the G1 form to their line manager unless the grievance is a complaint of bullying, harassment or discrimination by the line manager in which case they should send the form to their countersigning manager. If there are circumstances why the employee does not want to involve either their line manager or their countersigning manager they should send the grievance to a different, independent manager.
…
Receiving the request for a Management Investigation
…
7.10. Where consideration indicates that the complaint can be resolved by Employee Action or Manager Action, the manager should meet with the employee to discuss the complaint and make a decision to resolve the issue. This action normally concludes the matter.
7.11. Where Employee Action or Manager Action is not appropriate (or has not resolved the issue), the manager must decide on a course of enquiry…

17. At some point before June 2018, the claimant was at a work training event with colleagues. One of the claimant's colleagues told Ms Hepperle that another member of staff had made a racist comment towards the claimant. Ms Hepperle, who had not witnessed the comment, took the claimant to one side to ask if she was alright. She also spoke with the trainer to establish what had happened and to the person who had made the comment, who then apologized to the claimant.

18. Between 28 November 2017 and 21 December 2017 the claimant was absent from work due to depression and anxiety. The claimant was, at this time, pursuing an

Employment Tribunal claim under the Equality Act 2010 against her former employer. This was one of the things that was causing her anxiety, as the claimant explained to Ms Hepperle at the time. Ms Hepperle kept in regular contact with the claimant during her absence. We were shown a number of messages sent from Ms Hepperle to the claimant at this time, the tenor of which is overwhelmingly supportive.

19. Whilst Ms Hanif was on sick leave, another PO in Ms Hepperle's team told her about a conversation that they had had whilst attending Tribunal. They told Ms Hepperle that one of the Tribunal members, who is a Doctor, had asked how the claimant was doing, and if she was enjoying her new job, suggesting that the claimant was working in a law firm. In their next 'Keeping in Touch' (of KIT) discussion Ms Hepperle told the claimant that someone had said the Doctor had been asking after her, and had queried whether she had taken up new employment. The claimant said she did not have a new job. Later, the claimant messaged Ms Hepperle expressing concern that people were talking about her behind her back. The claimant said 'Ya know when you said people are making comments etc. Are they saying other things about me? I'm not worries I would just like to know xx'. Ms Hepperle replied 'No xx no one is saying anything just said what the doctor had said xx'. The claimant then said 'Nice to know some PO's go out of their way to talk about other people. I won't let it get to me…just annoys me that they try and cause shit by feeding things back to my own Manager x'. Ms Hepperle replied 'I don't think it was that I think the doctor was asking how you were xx I think it was in all innocence but you had already discussed everything with me it's fine no problem as long as you ok xx'. The claimant then responded saying 'It's annoyed me because I know the intention of the person wasn't innocent. Some PO's are a bit sly. Also I have not applied to any law firms at all …'. Ms Hepperle replied saying 'Don't be annoyed I meant the doctor was just asking how you were doing xx like we said earlier it doesn't matter as you know that we have everything in hand and as long as you get better that's all that matters x The doctor was just asking as he had not seen you for a few weeks xx like we said earlier it doesn't matter what anyone else says or thinks I am just concerned that you get better that's all that matters and as we discussed you can talk to me anytime you don't need to take this on and get stressed I just want you to treat this with the contempt it deserves and ignore it is the best thing for it xx Whatever the intention was that hasn't had any impact you are a very good PO and I am very glad to have you on my team and respect you for the way you have dealt with some difficult situations in a very professional manner and nothing has changed that xx'.

20. One of the claimant's complaints in these proceedings is that, when she was off sick in December 2017, Ms Hepperle informed her that colleagues were talking and gossiping about her. Ms Hepperle denies that she did so. In her witness evidence the only specific occasion that the claimant identified on which Ms Hepperle is alleged to have said, in December 2017, that staff were 'gossiping' about her was during the KIT call referred to in the previous paragraph when Ms Hepperle told the claimant that someone had said the Doctor had been asking after her and had said something about a new job. Ms Hepperle denies that when the she said that people were gossiping about the claimant and that nobody within the team had been speaking badly about Ms Hanif whilst she was absent from work. She says she mentioned the conversation because, as the claimant's manager, she needed to check whether the claimant was in fact working in a different job whilst on sick leave.

Mr Barker drew our attention to a transcript of a subsequent conversation between the claimant and Ms Hepperle in which Ms Hepperle referred to people talking about both her and the claimant. We refer to that conversation in more detail below. We are invited to infer from that conversation that Ms Hepperle is likely to have told the claimant in December that staff were gossiping about her. Mr Barker also directed us to later messages between the claimant and Ms Fraser and the claimant's later grievance, which show that the claimant said from June 2018 that Ms Hepperle told her that people were gossiping about her. However, of much greater relevance and weight, in our view, are the messages exchanged by Ms Hepperle and the claimant about this matter very soon after the conversation about the Doctor. Those messages lend more support to Ms Hepperle's evidence than that of the claimant, in our judgement. In those messages Ms Hepperle appears to be seeking to reassure the claimant that no one has been gossiping about her: in particular in the message in which she says 'no one is saying anything [they] just said what the doctor said'. Looking at the evidence in the round we are not persuaded that Ms Hepperle told the claimant that staff were gossiping about her in December 2017 as alleged.

21. The claimant alleges that In December 2017 Ms Hepperle made inappropriate comments to her about her sexual orientation and told her not to divulge this on to the team as they would not understand and she would be causing more problems for herself. In her witness statement the claimant said Ms Hepperle had said to her, during her absence, 'you didn't tell me you are a lesbian' and had then advised the claimant not to tell the team 'as they are a lot older, insinuating that they were of an old-fashioned mind-set and would not approve of my sexuality.' Ms Hepperle denied making any such comment. As will be apparent from other of our conclusions we have found the evidence of both the claimant and Ms Hepperle to be unreliable in a number of respects. The burden of proof is on the claimant. She made no mention of this allegation in her particulars of claim; it only emerged when the claimant provided further information and even then the claimant did not say when Ms Hepperle was said to have made these comments. On balance we are not satisfied that Ms Hepperle did make the comments attributed to her by the claimant.

22. Ms Hepperle referred the claimant for an Occupational Health ('OH') assessment. She received the OH report on 8 December 2017 (pages 131 - 133). The OH adviser noted that the claimant's 'stressors are more closely linked to her ex-employment and non work related issues.' She said the claimant 'has suffered increasing levels of reactive depression and anxiety due to non work related factors, as well as factors relating to an ex employment. The accumulation of which have lead to her becoming temporarily unfit for work.' The adviser said the claimant's condition was being managed by her GP and that she had been prescribed medication and was having counselling, which she was finding helpful. The adviser recommended the following adjustments 'if the business needs can accommodate' them:

    - A phased return to her normal job role in approximately one month, with a return date discussed in one or two weeks.
    - Working full time but with a 50% workload, gradually increasing the work load over approximately one month.

- Return to her normal role attending court, which she enjoys, rather than being confined to the office, which the adviser said the claimant would find more stressful in comparison.
- Adjustment of sickness absence trigger points.

23. The claimant returned to work on 21 December 2017. On that day she had a 'return to work' meeting with Ms Hepperle. At this point the claimant had had 23 days' absence over the year in total, exceeding the 8 day trigger within the Attendance policy. In the meeting the claimant and Ms Hepperle discussed the fact that the claimant had reached the absence trigger point for a Health and Attendance Improvement ('H&AI') meeting. The respondent's policy says that employees will be given 5 days' notice of such a meeting. The claimant was due to take annual leave from 22 December until January 2018 so they agreed to meet again in January 2018 for the H&AI meeting. Ms Hepperle reminded the claimant of the help available to her from the DWP's Employee Assistance programme, which offers mental health support to employees. Ms Hanif confirmed she had contacted them and was waiting a referral to receive counselling.

24. On 11 January 2018 the claimant and Ms Hepperle met for the H&AI meeting. Another PO, Ms Hood, took notes. There was a dispute in the evidence as to who suggested that Ms Hood should take notes but, in our judgement, nothing turns on this. A typed record of the meeting was prepared from those notes. Ms Hepperle's evidence is that she gave the claimant a copy of the note to review and asked her to notify her of any changes or updates she considered appropriate; and that Ms Hanif made no changes to the note and signed the document on 12 January 2018 to agree that the note was a true reflection of what was discussed in the meeting (page 145). In her witness statement the claimant alleges that Ms Hepperle later amended the notes without her consent. The claimant says that during the meeting Ms Hepperle advised her to state that she was struggling with her sexuality and that her parents were not accepting of her and that the claimant had denied that this was the case and had said it was a highly inappropriate comment for a line manager to make. The claimant alleges that Ms Hood recorded this conversation in the minutes, but Ms Hepperle later amended them without the claimant's consent. When asked about this in the hearing, the claimant's evidence was somewhat inconsistent. On the one hand she said she had not seen the document until it appeared in the hearing bundle and had not signed it. On the other hand, when asked if she was suggesting someone had forged her signature she said she could not comment on that and that although it appears to be her signature she does not recall the document. When pressed, the claimant reverted to saying she had not signed it and that she 'totally disagreed' that she had seen and signed the document. When it was put to the claimant that there was no evidence that Ms Hepperle had amended the document and no evidence that someone had forged her signature the claimant said that she had not said someone had forged her signature and that she could only say she did not recall signing it. As for what Ms Hepperle is said to have altered, the claimant said when questioned that Ms Hepperle had not asked the claimant (as suggested in the notes on page 143 of the bundle) if there was anything else the claimant wanted to add, discuss or inform her of and that she herself had not said any of the things attributed to her in response (on pages 143 to 145). The claimant did not, at any time, say she had seen a copy of the notes at the time they were prepared and that the version in the bundle differed from the version she had seen

at that time. We note that in June 2018 the claimant also told Ms Fraser in a WhatsApp message that Ms Hepperle had tampered with the notes yet on 18 July 2018 the claimant said in a letter she sent to Ms Pattison 'I do not recall seeing any minutes for this meeting.' Given the inconsistencies in the claimant's evidence and the inherent inconsistency in the claimant's claims in 2018 that she knew Ms Hepperle had tampered with the notes whilst maintaining that she herself could not recall ever having seen any notes, we find the claimant's evidence on this matter to be unreliable and prefer the evidence of Ms Hepperle. We find that Ms Hepperle gave the claimant a copy of the notes that appear in the bundle and the claimant signed and returned a copy on 12 January 2018. The purpose of signing the notes was to confirm they were a true reflection of what was discussed. We infer that those notes are an accurate reflection of what was discussed at the meeting on 11 January 2018.

25. We infer the following from that note:
    25.1. There was a discussion about the trigger points in the attendance management policy. The claimant asked for the trigger points to be extended if possible and said she thought an extension by a couple of weeks would be suitable.
    25.2. The claimant confirmed she had had counselling sessions through Employee Assist that she had found very useful and that she had learnt some useful coping mechanisms.
    25.3. Ms Hepperle asked if the OH recommendation for a reduced workload, gradually increasing over approximately one month, was suitable and the claimant confirmed it was.
    25.4. The claimant said her absence was not related to issues within the workplace at DWP but was caused by her previous employment and personal issues.
    25.5. Ms Hepperle and the claimant discussed the fact that the claimant had had a panic attack at court before her absence. Ms Hepperle explained that she and other colleagues were available to support the claimant in the office and in court and she was going to arrange for two colleagues to 'buddy' the claimant in court if she needed it, which the claimant welcomed. The claimant said that as she now had support she did not think the issue would arise again, that she had not had any more panic attacks since taking medication, that the issues related to her previous employment and personal life had now been resolved and were no longer a 'trigger point', that she felt she could manage and deal with the stresses in court, and that the issues with her previous employer that had affected her badly related to homophobia and that in her current employment 'I don't have that worry.'
    25.6. The claimant said she would complete a stress management plan that afternoon but that she did not know what to put in some of the boxes. Ms Hepperle suggested they could go through it together that week, which the claimant said would be helpful.
    25.7. The claimant and Ms Hepperle had agreed the contents of a 'Back to Work' plan, which appears at page 136-8. The claimant confirmed there were no amendments to make.
    25.8. The claimant said listening to music helps her when she is feeling stressed and that it would be good if she could do this if needed at work. She said she has times when she feels a little anxious and listening to music helps

her to relax and so aids productivity. She also said her GP and counsellor had recommended she do something to distract her at times when she is around others and cannot control her emotions and that listening to music was a coping mechanism that worked for her. Ms Hepperle said she would consider that and discuss it with Ms Pattison. We note that 'headset' is also referred to as a coping mechanism in the claimant's stress management plan which was completed by Ms Hepperle and the claimant on 12 January 2018. We accept the claimant's evidence that she found listening to music helped her to cope with stress and counter feelings of anxiety and that this, in turn, was likely to aid her productivity.

25.9. Ms Hepperle asked the claimant if she needed any other support and said she (Ms Hepperle) was available if she did. The claimant said her sleep may be affected if her medication changes and she may then need to start work later. Ms Hepperle said that was something they could agree together if necessary and that the claimant should let her know and keep her informed of any changes.

25.10. The claimant talked about the claim she had made against her former employer, her parents supporting her now 'for the first time', her sexuality, which she said she felt she had had to hide because of her culture, her inability to speak to her family previously, bullying and harassment she said she was subjected to in her previous job because she is a lesbian, and her reluctance to trust managers, including Ms Hepperle. The claimant ended saying 'I let issues get to a boiling point but now they are under control. I have the correct support mechanisms and I can better manage my stress.'

26. The claimant has alleged in these proceedings that, in this meeting, Ms Hepperle 'advised her to use her culture and sexuality to "help her case" and avoid a warning.' That is not something that is reflected in the note of the discussion. For reasons already explained we have not found the claimant's evidence on this matter to be reliable. We are not persuaded that Ms Hepperle did, as alleged, advise the claimant to use her culture and sexuality to help her case and avoid a warning.

27. On 12 January the claimant and Ms Hepperle completed the stress management plan that begins at page 148 of the bundle. The plan is contained in a template document which is designed to identify and record things in the workplace that cause stress to an employee.

28. The claimant alleges that Ms Hepperle agreed around this time that the claimant should only be required to travel to local Courts. Ms Hepperle denies there was any such agreement. We note that there is no reference to such matters in the note of the meeting on 11 January (which we have found was an accurate record of what was said in that meeting), in the claimant's return to work plan, in the stress management plan or in a letter Ms Hepperle sent to the claimant on 12 January (which we refer to below). We infer that the claimant did not suggest that traveling to remote hearing centres, such as Leeds, might cause her any stress, anxiety or other difficulty or disadvantage. That matter was not discussed. We reject the claimant's evidence that she and Ms Hepperle agreed, whether at the 11 January meeting or before or after that that meeting that the claimant's court travel should be restricted to local courts of hearing centres.

29. After the meeting on 11 January Ms Hepperle asked Ms Pattison whether the claimant could be allowed to listen to music. Ms Pattison said this was not something the DWP allowed, and that, given the nature of Tribunal preparation work required considerable concentration from POs, that this would not be appropriate. Ms Hepperle told the claimant Ms Pattison had refused the request. The claimant's case is that Ms Hepperle said at the same time that she could continue to listen to music but that she should 'be careful not to get caught.' Ms Hepperle denies saying this. We note that there is nothing in the record of the meeting on 11 January 2018 to suggest Ms Hepperle herself thought listening to music may not be an appropriate adjustment to make. Furthermore, she was on friendly terms with the claimant and appears to have considered her something of a confidante and ally in a challenging working environment. We consider it likely that Ms Hepperle would not have wanted to jeopardise that relationship. We note also that the claimant did in fact listen to music in the office despite knowing Ms Pattison had said she could not do so. This lends some support to her claim that she believed she had her line manager's tacit approval for doing so. On the other hand, we acknowledge that Ms Hepperle told Ms Pattison later in the year, when Ms Pattison was investigating a grievance brought by the claimant, that she had not agreed that the claimant could listen to music. That could be considered to weigh in favour of Ms Hepperle's evidence that she did not tell the claimant in January 2018 that she could listen to music. Alternative explanations for what Ms Hepperle said to Ms Pattison, however, are that she had forgotten about what she had said to the claimant or that she believed she might get into trouble if she admitted that she had told the claimant she could do something that Ms Pattison had refused permission for. On balance, and notwithstanding that we do not consider the claimant's account of what was said around this time to be entirely reliable, we think it more likely than not that Ms Hepperle did tell the claimant in January 2018 that she could listen to music provided she was careful not to get caught.

30. After the meeting Ms Hepperle also considered whether to issue a warning and discussed it with Ms Pattison. A decision was taken to give Ms Hanif a first written warning for her absences. Ms Hepperle wrote to the claimant on 12 January 2018 explaining that decision. In that letter Ms Hepperle said 'I have decided to give you a First Written Warning and will monitor your attendance for 6 months from 12/01/18 to 11/07/18. This is called the Review Period. it your attendance is unsatisfactory at any time in the Review Period, your case will be considered again and l may give you a Final Written Warning. Sickness absences of 4 or more days in the Review Period will be unacceptable. If your attendance is satisfactory during the Review Period, your attendance will be monitored for a further 12 months starting on 12/07/18 and ending on11/01/19. This is called the Sustained Improvement Period. If your attendance becomes unsatisfactory again during the Sustained Improvement Period, you may be given a Final Written Warning.' That letter explained that the claimant could appeal the decision if she wished. The claimant did not appeal.

31. The claimant alleges Ms Hepperle told her the decision to give a warning had been taken by Ms Pattison. Ms Hepperle denies she said that. As already noted, Ms Hepperle was on friendly terms with the claimant and appears to have considered her something of a confidante and ally in a challenging working environment. We consider it likely that Ms Hepperle would not have wanted to jeopardise that relationship.

32. Ms Hepperle also discussed with Ms Pattison the option of increasing the claimant's 'trigger point' under the respondent's Attendance management policy. Ms Hepperle suggested to Ms Pattison a 50% increase to the claimant's trigger point, the maximum envisaged by the policy. Ms Pattison agreed that suggestion on 22 January 2018 and the claimant's trigger point was increased to 12 days instead of the standard 8 days. The effect of this was that, in future, the satisfactoriness of the claimant's attendance would be assessed by reference to the increased trigger point.

33. On 22 May 2018 Ms Pattison had a meeting with the POs that Ms Hepperle was not present for. Some of the POs spoke to Ms Pattison separately after the meeting. In those discussions some of the POs were critical of Ms Hepperle. One or more of the POs said there had been times when they had been unable to contact Ms Hepperle when they wanted or needed to, criticizing her diary upkeep and saying they believed she had not been where she claimed to be at the time. One or more of the POs expressed the opinion that Ms Hepperle was too close to the claimant and/or favoured the claimant over others. Ms Pattison said she would speak to Ms Hepperle and would visit the site again in July or August 2018 to check the concerns raised had been addressed.

34. Ms Pattison spoke with Ms Hepperle informally about the things that had been raised, either that day or the next. Ms Hepperle was upset about what had been said about her by the POs and telephoned the claimant on 23 May to talk about this. The claimant said she would call Ms Hepperle back on a different 'phone. Without Ms Hepperle knowing, the claimant recorded the conversation. Her evidence was that she did not deliberately record the conversation. It is unnecessary for us to make a finding as to whether or not the recording was deliberate. What is clear, however, is that the claimant did not delete the recording at the time and at some point she had a transcript prepared of what was said.

35. In this telephone conversation, Ms Hepperle told the claimant what Ms Pattison had told her some of the other POs had said, including that someone had said Ms Hepperle and the claimant were too close. In the course of that conversation Ms Hepperle recounted what she had said to Ms Pattison about one of the POs who she believed had been critical of her and in doing so divulged that she had been giving him help with work, that Ms Pattison had suggested doing a stress reduction plan with him, that Ms Hepperle had offered to do one but he had declined and that he had a second job. Ms Hepperle also referred to having 'bent over backwards' for another of the POs she believed had complained about her. Ms Hepperle was clearly stung by the criticisms of her and speculated as to who might have said what about her. The claimant made her own suggestions about who might have criticized her. Towards the end of the conversation the claimant referred to herself as Ms Hepperle's 'little spy' saying she was 'making friends with everybody' and was going to 'play it clever', that she, the claimant, had been 'doing it all wrong, not speaking to them and stuff like that' and that she was now 'going to get a little bit closer to them' and 'play the game' by making comments about Ms Hepperle being a bit harsh so that people would open up to her. Ms Hepperle told the claimant she no longer trusted Ms Fraser.

36. In early June 2018 the respondent decided that employees on fixed term contracts would be offered permanent contracts. However this was not, at the time, to extend to fixed term employees who had been given a warning for unsatisfactory attendance or performance. On 6 June Ms Hepperle issued the claimant with an offer of a permanent contract. Ms Hepperle was due to go on leave and told the claimant, in a text message, that she needed to sign the contract and return it before her leave. She said in that email that the claimant should not return the contract to Ms Fraser. The claimant and Ms Hepperle give differing accounts as to what was said before the contract was issued. We return to this later in our judgment.

37. Ms Fraser was due to leave her HEO role in June 2018 for a new role within a different department of the DWP. On 7 June she chaired a meeting with the POs in the office. Ms Hepperle was not present. As Ms Fraser was leaving the department, the meeting was used as a form of 'send off', with a buffet laid on. On Ms Fraser's departure, Ms Hepperle was to take over management responsibility for Ms Fraser's team. At the meeting, some people, including Ms Fraser and the claimant said things about Ms Hepperle that were critical of her and of her management style. Ms Fraser did nothing to discourage the criticisms, indeed she joined in with them. Ms Hood became upset about something Ms Fraser alleged Ms Hepperle had said about her and afterwards the claimant, Ms Hood and Ms Fraser spoke again.

38. Afterwards the claimant and Ms Fraser exchanged WhatsApp messages. The claimant messaged Ms Fraser saying: 'I have been thinking and going through previous messages and I have realised that [Ms Hepperle] had started this whole shit from December. She would feed me lines about people talking about me to make me paranoid and then pretend it wasn't a big deal. She made me feel like I'm crazy. She has been clever by not putting much in messages but I did find a couple.' The claimant included a copy of the message exchange she had had with Ms Hepperle about the Doctor who had asked after her when she was on sick leave in December. The claimant said 'This is just an example of how she fed me bullshit and made me a paranoid mess at work'.

39. Ms Fraser sent a reply in which she claimed Ms Hepperle: had tried to turn everyone against the claimant; used to tell everyone she was constantly out at court with the claimant or had to sort things out for the claimant; used the claimant 'as an excuse for so much'; fed the claimant information to make the claimant trust her; told Ms Fraser the claimant had been out drinking when meant to be off and that she was furious with the claimant; and had manipulated and isolated the claimant. She also criticized Ms Hepperle for speaking to the PO who had made a racist remark during training; Ms Fraser said she was 'gobsmacked' that Ms Hepperle had done so when the claimant had not said anything, adding 'it's like she purposely isolated you for reasons like race, culture sexuality when in fact no one ever thought of you any differently to the way they thought of each other!' Ms Fraser also alleged Ms Hepperle had said unflattering things about a number of other POs, claiming she had given one too much work to do; said she did not like another and that they were huffy and childish and like to get her own way; 'slates' another; and thinks another is 'needy' and the job is not suitable for them.

40. Ms Fraser and the claimant continued to exchange messages that evening, with Ms Fraser claiming Ms Hepperle used to tell her the claimant 'needed longer 121s'. In

one message the claimant said ‘She's probably lied about my previous court case. It was about fraud and an assault. She's probably said it was something more malicious. -I'm shocked ya know.’ Ms Fraser replied ‘She told me it was discrimination.’ The claimant then said ‘Omg. I don't know what to say’ and ‘She told me not to tell you that's what hurts. Then she told you anyway.’ The claimant also alleged that Ms Hepperle had changed the notes from the meeting she had had on 11 January. Ms Fraser responded ‘Disgusting that she changed notes that’s just so she could Control the meeting.’

41. The claimant and Ms Fraser continued to message each other over the next few days, with Ms Fraser criticizing Ms Hepperle for, amongst other things, giving her a big bouquet of flowers a few weeks previously ‘for no reason’. The claimant replied that Ms Hepperle was ‘just trying to be manipulating and make you think she isn't that bad.’ It is clear from other messages that Ms Fraser had also been speaking to other POs about Ms Hepperle and discussing whether they intended to raise a grievance.

42. In one exchange of messages between Ms Fraser and the claimant the claimant said Ms Hepperle had told her she would ‘fiddle the dates’ of the warning she was given for absences. Ms Fraser replied: ‘I don’t know how she can fiddle dates on a warning Cos it's held in sop and u get a written Copy with dates on a copy goes in your personal file.’ The claimant said she would ask Ms Pattison, saying ‘I don't care if they revoke my contract. As long as she gets in trouble.’ In those messages the claimant also claimed she was ‘scared’ of Ms Hepperle and referred to being ‘so confused’.

43. On 8 June, Ms Fraser sent an email to the POs in which she made negative remarks about Ms Hepperle, accusing her of ‘lies and manipulation’ and alleging, without further detail, that Ms Hepperle had ‘shared and openly discussed’ private conversations the POs had had with her. She encouraged everyone to raise a formal grievance about Ms Hepperle, saying ‘Please I beg of you don’t take this lying down.’

44. Ms Fraser also sent a long email to Ms Pattison on 8 June, in which she claimed ‘I was in 2 minds as to whether I should send you this email with all of this email however the team have begged me too as they need something done as they feel they are being ignored. They feel they are being bullied and manipulated and no one is taking any action.’ The claimant did not say in evidence that she asked Ms Fraser to contact Ms Pattison in these terms and we infer that she did not. In her email Ms Fraser relayed things she alleged the claimant had said to her about Ms Hepperle. She also made unspecific claims that she had been ‘informed of some horrendous stories [Ms Hepperle] has been telling some of her staff’ and that ‘the team shared with each other that things they have each told [Ms Hepperle] in confidence very personal things, [Ms Hepperle] has told someone else on the team that private conversation several people were very upset about this.’ Ms Fraser also alleged that ‘2 members of the team were sobbing with the revelations’ and implied that some staff were ‘in hysterics at work’. In addition Ms Fraser said the claimant ‘wanted to resign today.’

45. Ms Pattison replied to Ms Fraser's email on 19 June 2018. She referred to her meeting with the POs on 22 May and the fact that she had addressed their concerns informally with Ms Hepperle at the time and had told the PO's that she would conduct a further site visit to check that the concerns raised had been addressed. She said that visit was due to take place from 31 July to 2 August. Ms Pattison also said 'I have taken on board the comments raised in your e mail however it would not be appropriate for me to comment on hearsay. I would need evidence from the individuals concerned in the form of a Grievance in order to investigate formally. I am sorry to hear that you felt you had to leave the team because of the unhealthy working environment and would recommend that you submit a Grievance if you wish me to investigate this matter further.' Ms Fraser responded that she did not wish to raise a grievance.

46. In June 2018 Ms Hanif called Ms Pattison at work to discuss concerns she had following the meeting on 7 June. The claimant said in her witness statement that this conversation happened after she raised the issue in writing on 22 June. We do not accept that was the case. The claimant acknowledged on cross examination that she met with Ms Hepperle on Ms Pattison's suggestion on 19 June. Furthermore, in a letter emailed to Ms Pattison of 22 June, the claimant refers to having had a brief discussion with Ms Pattison on 19 June. We find that it is more likely than not that the telephone conversation between Ms Pattison and the claimant occurred on 19 June. The conversation was brief. The claimant told Ms Pattison that Ms Fraser had said Ms Hepperle had been divulging Ms Hanif's personal business, and that a number of members of staff had become upset at or following the 7 June meeting because of things that had been said. The claimant said in evidence Ms Pattison had referred to the allegations as 'hearsay' when they spoke. That is the word Ms Pattison used in her email to Ms Fraser of 19 June. It is also the word used by Ms Pattison on a later date when discussing this conversation with the claimant (page 304 'The conversations we had was to seek advice from HR and that there needs to be evidence, we can't work with just hearsay we need actual evidence then we could do an investigation'). We find Ms Pattison said something to the claimant along the lines of being unable to investigate the claimant's allegations without some evidence as they were just hearsay. The claimant said she did not want to escalate her concerns, but wanted to know what else she could do about it. The claimant's evidence in her witness statement was that she was 'told to go and confront [Ms Hepperle] to resolve it.' On cross-examination the claimant said, variously, that Ms Pattison had 'advised' her to confront Ms Hepperle, 'told' her to do so, and 'suggested' that she speak to Ms Hepperle. Ms Pattison's evidence in chief was that she 'suggested to Ms Hanif that she could discuss what she had been told with Ms Hepperle to air out her concerns to see if an informal resolution could be reached by talking'. It is clear from her evidence that Ms Pattison understood she was following DWP guidance in the DWP grievance resolution procedure referred to above. We find it more likely than not that, whatever the exact words used by Ms Pattison, the gist was that the claimant should speak with Ms Hepperle about her concerns. Ms Hanif did not, at the time, voice any concerns about speaking with Ms Hepperle. She did not ask Ms Pattison to attend with her and Ms Pattison did not suggest that may be an option.

47. At about this time the claimant and another PO were messaging each other. In those messages the claimant referred to being stressed and claimed Ms Hepperle had

turned her against other POs. After speaking with Ms Pattison the claimant made her colleague aware that she had done so and said 'one of the options was confronting Julie too. Which I'm considering. I've joined GMB and I'm gonna get their opinion.' The claimant's colleague told her she had also spoken to Ms Pattison. The claimant said Ms Pattison had asked her what outcome she was wanting and that she had not been sure what to say. The claimant said she was going to speak to Ms Hepperle as it was 'Only fair she gets to respond before I submit anything' adding 'I will still submit something but just so I can include her response.'

48. The claimant met with Ms Hepperle to discuss her concerns on 19 June. They had a long discussion which lasted around four hours. Ms Hood joined them part way through the meeting. The claimant told Ms Hepperle what had happened in the meeting on 7 June. Ms Hepperle became upset during the meeting. The claimant told Ms Hepperle she did not intend to raise a grievance against her and the meeting ended with everyone seemingly on good terms with each other, or at least giving the appearance that they were.

49. Following that meeting the claimant asked Ms Fraser if she had any evidence of things Ms Hepperle had said to her. The claimant said she needed proof and was 'stressing more now'.

50. On 22 June 2018 the claimant sent an email to Ms Pattison attaching a letter which set out a number of allegations and complaints against Ms Hepperle and Ms Fraser. In that letter the claimant began:

> *'After a brief discussion with you on the 19th of June 2018 and considerable thought following that discussion, I have decided to document my concerns. My main reason for this, is that I am suffering considerable stress and it is work related stress. I am worried about my mental health and I feel, given the nature of my concerns, that they should be aired in accordance with procedures outlined by the Department for Work and Pensions.*
>
> *The following are a series of events that I wish to draw your attention to and I do not believe that I should be expected to, or that any reasonable person, should in fact have to tolerate such behaviour in a 'professional' work place. The behaviour that I will detail, in my opinion, amounts to victimisation, bullying and isolation. This would suggest that my concerns would need to be addressed accordingly.'*

51. The claimant went on in her letter to detail her complaints. They included complaints of breach of confidentiality by both Ms Hepperle and Ms Fraser and that both HEOs were using her and others in the team to isolate and victimize her in an attempt to damage and hurt each other. She referred to there being a culture of gossip on the team and said 'it is now at a stage where I can no longer come to work and feel like I am comfortable.' She added

> *'these experiences have been deeply traumatic and upsetting and it is impossible for me not to feel that they are all related and at the root of it is victimisation. My health has suffered considerably as a result of all of this. In effect I feel as though my life, at present, has been made a living hell due to the above messages and constant bombarding of messages from other staff members. It may be easy for an outsider to the situation to objectively advise to 'ignore' the messages, however, in a team where gossip is rife and individuals are ostracized openly, any attempt to ignore communication with my colleagues will be taken negatively*

and I feel, it will isolate me further. Please note that I have attempted to resolve the matters myself and these attempts have been unsuccessful. My attempts are in fact, in my opinion, making matters worse. I am being bombarded by other staff members to confirm what Julie may or may not have said to me and I feel as though the working environment is incredibly hostile and a higher level needs to intercept to resolve issues that have clearly got out of hand. I cannot emphasize enough how much it is impacting me personally and how it is affecting my mental health. I am seeking assistance and guidance and a resolution to a situation that I feel I should not have been dragged into by two experienced Line Managers. I firmly believe that this matter is bigger than me and a number of people could benefit from a wider discussion regarding my concerns and potentially to review the behaviours displayed by both Managers - Amanda Fraser and Julie Hepperle. I have received strong support and reassurances from various quarters that my concerns are genuine. I would be interested in your thoughts raised in this letter and to hopefully diffuse and rectify situations that I feel have now been exasperated and got out of hand.'

52. Ms Pattison responded by email shortly afterwards asking the claimant 'are you sending me this information as a formal grievance?' She said: 'If so please can I refer you to the guidance on the Intranet under Grievance Procedures. You will need to transfer the information on the attached document on to the GA1 form. Please contact me if you wish to discuss further. I didn't want to call you as I am aware that you are in the office and I wanted to respect your confidentiality regarding this matter.'

53. The claimant replied by email, referring to the section of the Grievance Procedures that address 'supported employee or direct management action' and saying she thought her concerns should be resolved without raising a formal grievance. She said 'My main concern is a deterioration of my mental health and at present I am suffering from significant stress which is work related.'

54. Ms Pattison asked the Human Resources department how she should deal with the complaints. Notwithstanding that the claimant had said she was not raising a formal grievance, the HR department said she should deal with the complaint formally, and conduct a management investigation into the allegations made. Ms Pattison emailed the claimant on 29 June telling her that was what she intended to do. She said the allegations were very serious and caused her great concern and that she had a duty of care to the claimant and other colleagues to investigate further. Ms Pattison said in the email 'I really want to support you with this and I am very concerned about how this situation is affecting your mental health, I do not want to cause you any further distress but as I have said I need to take action. I have tried to contact you today and left a message. If you could respond to this e mail I will pick it up on my return from leave. I am on leave from Monday 2nd July back Wednesday 11th July please can you call me from a private room on the 11th so we can discuss?'

55. The claimant's evidence in her witness statement is that her grievance was 'initially rejected on the basis it was not submitted on the prescribed "green form"'. We do not accept that as an accurate description of what happened. The grievance was not rejected: Ms Pattison simply asked the claimant to complete the relevant grievance form in accordance with the respondent's policy. The claimant accepted on cross-

examination that it would not have been difficult for her to put the information in form GA1.

56. Ms Pattison was on annual leave from 2 July to 11 July 2018.

57. Before 4 July a decision was made to train staff to present cases in tribunal in disciplines other than that in which they currently worked. Early on 4 July Ms Hepperle sent an email to several people, including the claimant, about the training, saying it would begin the following week with training for the claimant and a colleague. The claimant replied later that morning saying she was suffering from significant work-related stress and asking to postpone her training. Ms Hepperle replied by email, saying 'No problem I will change the training. We can look at stress at work on Thursday if you are in Stockton.' The claimant's evidence was that Ms Hepperle 'eventually agreed to move the training'. In fact Ms Hepperle replied to the claimant's request to postpone the training within half an hour. The claimant also emailed Ms Hepperle saying 'I don't feel that discussing stress at work will change anything at the moment, given the reasons why this stress has occurred. The issues, which you know about, are weighing heavy on my mind. I am happy letting you know as and when my stress will be impacted further, like I have with the additional training. I have sent you several texts and emails and an email in relation to whether you are receiving them and I still have not had a response.'

58. As part of the cross-over training POs from different disciplines were to observe each other conducting cases. The claimant was to observe a colleague, Mr Wake. In her email to Ms Hepperle on the morning of 4 July, the claimant said that Ms Hepperle had told her she could not observe a colleague, Mr Wake, doing certain cases for a particular reason but that Mr Wake had told her Ms Hepperle had given him a different reason. Responding to that point, after the claimant had emailed Ms Hepperle criticizing her for not responding to her messages, Ms Hepperle sent an email saying the explanation she had given Mr Wake was the same as the one given to the claimant. The claimant alleges in these proceedings that Ms Hepperle victimized and harassed her by asking to see the Claimant's personal messages with Mr Wake. Her evidence was that Mr Wake told her that Ms Hepperle had asked him to screenshot the content of their conversations, which the claimant says were private, and send them to her but that he had refused to do so. Ms Hepperle's evidence is that she did not ask to see messages between the claimant and Mr Wake but had simply spoken to Mr Wake on the 'phone and asked him to have a look at the messages he had sent the claimant in an attempt to establish whether the correct information had been relayed to the claimant about the training. Ms Hepperle's evidence is consistent with the account she gave Ms Pattison during an investigation after the claimant raised a grievance. We have not heard evidence from Mr Wake himself as to what, exactly, Ms Hepperle said to him. That restricts our ability to gauge whether what Mr Wake said to the claimant is an accurate reflection of what Ms Hepperle said to him. Furthermore, it is clear that at this time the claimant was highly suspicious of Ms Hepperle and her motivations and remains so. That that may have affected her perception or interpretation of what Mr Wake actually said to her, as well as her subsequent recollection of those matters. As explained elsewhere in this judgment, we have not found the claimant's evidence to be an entirely reliable guide to what was actually said or done at the time of the events with which we are concerned in these proceedings. Looking at the evidence

in the round, the claimant has not persuaded us that Ms Hepperle did asking Mr Wake to show her messages that had passed between him and the claimant.

59. On 4 July the claimant also sent an email to Ms Pattison, who was on leave. In that email the claimant said she was finding the current working environment extremely stressful and that she was not comfortable discussing things like managing stress with Ms Hepperle given her concerns about potential breaches of confidentiality. She said she felt she may need a different point of contact until the investigation was concluded. She also said she did not think Ms Hepperle should conduct her one-to-one meeting that was due to take place on 11 July.

60. Some time on 4 July the claimant telephoned Ms Hepperle asking if she could take the following day off work as flexi-time. One of the claimant's claims in these proceedings is that Ms Hepperle refused that request. In evidence, however, the claimant conceded, and we find, that Ms Hepperle agreed the request. The claimant said in her witness statement that Ms Hepperle ignored her request 'for a while' and only granted her request 'eventually' but made her check the respondent's guidance. In cross-examination, the claimant acknowledged that she made her request in a 'phonecall with Ms Hepperle and suggested that Ms Hepperle made her check the guidance before granting her request. Ms Hepperle's evidence was that she granted the flexi day request as soon as the claimant requested it over the 'phone and, after authorizing the request, directed the claimant to the respondent's guidance for future reference because the request had been made with little notice. We do not find the claimant's account to be reliable. Her account was vague and lacking in any specific detail as to the manner and timing of the request that she claimed had been ignored. She did not say what she did after Ms Hepperle referred her to the guidance and how Ms Hepperle then came to agree her request or how much time passed between her requesting time off and Ms Hepperle agreeing to her request, other than that it was 'a while'. Nor did the claimant make any mention of the request being ignored in an email she sent to herself on 9 July 2018 in which she purported to document the unfair treatment she perceived Ms Hepperle was subjecting her to. We prefer Ms Hepperle's evidence on this matter and find Ms Hepperle did not ignore the claimant's request to take the following day off as flexi-time but rather she granted it as soon as the claimant requested it.

61. On 6 July Ms Hepperle sent the claimant an email with the subject 'one to one objective meeting' in which she said 'Can you confirm an alternative date as we need to set your objectives for the coming reporting year.' The claimant suggested in evidence that this showed Ms Hepperle pressuring her to re-book the training. Ms Hepperle's evidence was that she was trying to fix a date for the claimant's one to one meeting, which was an annual appraisal of a kind which all staff were having at that time. We prefer Ms Hepperle's evidence on this issue as it is more consistent with the subject line of the email.

62. The claimant replied to that email referring to her 'heightened stress' and saying she would like to discuss who would conduct the discussion of her objectives with her, adding 'since writing the above I have spoken to you and it appears as though our working relationship has completely broken down.'

63. On 9 July the claimant emailed Ms Hepperle about some IT problems she was having. Ms Hepperle emailed the IT department the following day to say the matter was affecting the claimant's ability to do her job. The IT department replied saying the matter had been escalated. Ms Hepperle emailed the claimant the next day, 11 July, saying 'I have raised the issue again for you which has been escalated. Can you keep me informed of any contact/progress and also if you don't receive any contact either please.'

64. The claimant alleges that, on an unspecified date, Ms Hepperle removed a previously agreed reasonable adjustment by sending the Claimant to a remote hearing centre (Leeds). In further information supplied by the claimant in response to a Tribunal Order the claimant alleged that 'Between June 2018 and September 2018 [Ms Hepperle] started amending the diary at work to send me to locations that were also outlined in my stress reduction plan as not being appropriate. Leeds for example. Due to panic attacks and stress I was to remain locally.' For reasons already set out, we have rejected the claimant's assertion that there had been an agreement that she would not be required to work at remote locations. There are other inconsistencies in the accounts given by the claimant that cause us to further doubt the reliability of her evidence. The claimant implied in the further information supplied in response to the Tribunal Order that Ms Hepperle had sent her to remote locations on more than one occasion between June and September 2018. On cross-examination, however, the claimant acknowledged that in fact Ms Hepperle had only asked the claimant to attend a different hearing centre on one occasion, that she had told Ms Hepperle on her return that it had been a long day for her and she would not want to go there often and that Ms Hepperle had not asked her to go to a remote location again. We accept Ms Hepperle's evidence and find that: the claimant could, under her contract terms, be required to work at remote tribunals; in the Summer of 2018 staff were being sent to Leeds, and other sites, to fill the Tribunal diaries and maximise the use of resources and attendance at Tribunals; Ms Hepperle asked the claimant to attend a remote hearing centre on one occasion and the claimant agreed she was happy to do so; when the claimant returned, she told Ms Hepperle it had been a long day for her and she would not want to go there often; Ms Hepperle did not ask the claimant to attend a remote hearing centre again after that; at no time prior to this had Ms Hepperle agreed that the claimant would not be required to work at other tribunal centres; indeed we find that the matter had never been dismissed and nor had the claimant ever suggested this would be a reasonable adjustment to make.

65. At 9.45am on 11 July the claimant had emailed Ms Pattison, who had returned from annual leave that day. In that email the claimant was critical of Ms Pattison for not having contacted her. She said she believed Ms Hepperle was behaving inappropriately and unprofessionally and she did not feel she could work under her at that time. Ms Pattison called the claimant that morning and they agreed on some adjustments that were to take effect from that day. In an email to the claimant confirming what had been agreed Ms Pattison described them as 'reasonable adjustments' and said they would be documented in the claimant's personnel file. They were that the claimant would be allowed to work from home (an arrangement that was to be reviewed on 23 July) and would be managed by a different HEO, Ms Ridley, until further notice. Ms Pattison and the claimant discussed working from another site but the claimant said she would prefer to work from home and visit the

office one day a week to pick up files, complete printing and meet up with colleagues. The claimant told Ms Pattison that she had discussed work related stress issues with her GP and that she was taking medication. They agreed that Ms Ridley would discuss the claimant's stress reduction plan with her. Soon afterwards Ms Pattison decided that it would be better for the claimant to be managed by Mr Humphray whilst the investigation was ongoing rather than Ms Ridley and told the claimant of the change of plan.

66. About 45 minutes after Ms Pattison sent that email, the claimant received the email from Ms Hepperle about the IT issue that we refer to above. We infer that Ms Hepperle had not, at that stage, been told that she would no longer be managing the claimant and that Ms Pattison communicated that fact to Ms Hepperle at some point later that day. We find it more likely than not that Ms Pattison told Ms Hepperle that day that the claimant had raised a grievance against her.

67. At some point before 18 July, one of the other POs told Ms Hepperle that he found it difficult to communicate with the claimant because she was listening to music on her headphones in the office. In response to this complaint, Ms Hepperle spoke to the claimant and told her she was not to listen to music.

68. On 18 July the claimant sent an email to Ms Pattison attaching a document in which she set out what she described as 'supplementary concerns'. In that document the claimant said she believed Ms Hepperle had been 'concocting an insidious campaign of hate, discrimination and victimisation' against her for unknown motives. She said she did not believe she could work under or report to Ms Hepperle again in the future and that doing so would 'push [her] over the edge as far as [her] mental health goes.' The claimant went on to allege that Ms Hepperle had:
    68.1. ignored her messages requesting a flexi day for 5 July;
    68.2. bombarded her with emails regarding an IT issue and Personal Independence Payment ('PIP') training;
    68.3. asked another colleague, Mr Wake, to show her private messages between him and the claimant;
    68.4. abruptly told the claimant she could no longer listen to music at work, which the claimant said had been agreed in January as a reasonable adjustment; and
    68.5. diarised for the claimant to attend cases in Leeds despite previously agreeing not to send the claimant to Leeds for reasons personal to the claimant.

69. The claimant alleged in her letter that Ms Hepperle had done those things to deliberately cause her stress. The claimant also complained of other things Ms Hepperle had done, alleging that she had:
    69.1. called the claimant a number of times when she was off sick in December 2017 to tell her that her colleagues were gossiping about her;
    69.2. emailed colleagues telling them not to contact her when she was off sick, which the claimant said isolated her from her colleagues;
    69.3. appointed an inexperienced notetaker at her attendance management meeting on 11 January 2018 (the claimant said she did not recall getting any minutes from the meeting);
    69.4. told the claimant in January 2018 that it had been Ms Pattison's decision to give her a first written warning when it had been her own decision;

69.5. around 5 June 2018, told the claimant that she would work out a way to change the dates of the written warning so that she would qualify for a permanent contract;

69.6. would 'always advise [the claimant's] colleagues that [she] had many issues and,,.was accusing some of them of bullying her' and told her things her colleagues had said about her in order to isolate her;

69.7. told colleagues that she had reported someone for a racist comment when she had not done so; and

69.8. told colleagues, incorrectly, that she was always observing the claimant at Tribunals.

70. Ms Pattison added those complaints to the matters she was already investigating. As part of her investigation Ms Pattison interviewed Ms Fraser, Ms Hepperle, the claimant and a number of other staff who worked in the department. Different individuals gave differing accounts of what had happened, and what had been said, at the meeting of 7 June and afterwards.

71. In the meantime, it was agreed that the would claimant work from home, visiting the office approximately once a week, and be managed by Mr Humphray. At the time he was a Presenting Officer Leader based in Manchester and reported to Ms Pattison. Mr Humphray met with the claimant in Manchester shortly after he started managing her. Subsequently he held regular telephone calls with the claimant.

72. While the claimant's grievance was being investigated the claimant raised concerns about being in contact with Ms Hepperle, particularly when the claimant went in to the office. She said she only wanted to go into the office when Ms Hepperle was not there. An arrangement was put in place for Ms Hepperle to work primarily out of a different office location and to update her weekly whereabouts in the diary and on the 'Virtual Buzz Board', which shows the whereabouts of the team. This arrangement was put in place so that the claimant could see when Ms Hepperle was due to be in the Stockton office. However, there were times when the claimant had difficulty accessing the Virtual Buzz Board claimant and occasions when it was not fully up to date. The claimant contacted Mr Humphray and Ms Pattison about those matters, explaining on one occasion that she had had a panic attack on seeing Ms Hepperle's car in the car park and that her GP had increased her medication. Ms Hepperle was reminded of the importance of updating the board, and it was also agreed that Mr Humphray would update the claimant directly with Ms Hepperle's days in the office on a weekly basis.

73. There were times when Ms Hepperle was in the office on days the claimant needed to be there. On one occasion Mr Humphray suggested that the claimant could hand over a couple of her tribunal cases to someone else so that she could go into the office on another day. The claimant replied that that would impact on the time she could spend with colleagues and said she was becoming more and more isolated by the reasonable adjustments. The claimant also told Ms Pattison by email of 21 September that she felt isolated from team meetings and that this was impacting her mental health a great deal and meant that she was less able to do her job. She added 'I am coming to a point where I have had enough. I feel as though the longer this is going on, the longer I am becoming isolated from a normal working life. I appreciate that allowing me to work from home was a reasonable adjustment.

However, I also feel I am being punished for raising serious issues to management.' The claimant said she believed the failure to discipline Ms Hepperle was disability discrimination and said 'I put you on notice that any further stress would be particularly damaging to me.'

74. In October 2018 Mr Humphray referred the claimant for an Occupational Health report, to assess what further support could be put in place for her. The claimant told the adviser about her grievance against Ms Hepperle. She also told him that: the steps taken to deal with the difficulties between the two of them, such as her working from home, had isolated her further and cut off valuable social interaction with other team members; she felt she was unable to attending team meetings to her detriment; she was experiencing disturbed sleep, anxiety and panic attacks, including as a response to seeing Ms Hepperle's car in the car park; although her GP had prescribed medication it was of limited value; she was finding the current situation intolerable and did not feel supported by managers.

75. In a report at the end of October, the adviser expressed the opinion that the claimant had a mental health issue that seemed to be 'in large part triggered and maintained by her perception of ongoing tensions in the workplace.' He added 'whatever the intention of her employers in attempting to create distance between the opposing parties this employee reports that it is contributing to her distress.'

76. We infer from that report and the emails from the claimant that led to the OH referral that, by the end of October 2018, the claimant's mental health had deteriorated significantly. This was, at least in part, attributable to the claimant encountering, and worrying about encountering, Ms Hepperle and was also contributed to by the claimant feeling isolated because she was working from home and apart from others in the team.

77. Ms Pattison concluded her investigations into the claimant's grievances in November and set out her findings and findings and decisions in two separate management investigation reports, one for the grievance against Ms Hepperle and one for the grievance against Ms Fraser. Ms Pattison sent the reports to the claimant on 8 November.

78. With regard to Ms Hepperle, Ms Pattison did not consider that the evidence supported the claimant's allegations that Ms Hepperle had bullied, harassed or victimized her or breached confidentiality. Although she considered there was evidence to suggest that some information had been shared between Ms Hepperle and Ms Fraser, she found that it was shared on a business need to know basis, there being an expectation that information about staff members is shared between HEO managers, in order to conduct line management duties and responsibilities. Ms Pattison told the claimant she had the right to appeal her conclusions.

79. Ms Pattison upheld the grievance submitted against Ms Fraser. She believed there was evidence that, at the meeting on 7 June, Ms Fraser had instigated a conversation which became heated and inappropriate, and had shared personal information regarding members of staff, including the claimant, which had resulted in people becoming upset. She found no legitimate reason for Ms Fraser sharing this information. She also considered that the email sent by Ms Fraser on 8 June fell

short of the standards of behaviour expected of a line manager, and was a misuse of power, and the Whatsapp messages sent by Ms Fraser to be in contravention of the DWP social media policy. Ms Pattison intended to initiate disciplinary proceedings against Ms Fraser but Ms Fraser resigned before any action was taken.

80. Ms Pattison spoke with the claimant on 8 November and told the claimant she had decided that what she described as the 'temporary adjustment' that was in place for the claimant to avoid contact with Ms Hepperle (working from home and reporting to Mr Humphray) was 'not operationally sustainable within the job role [the claimant was] currently doing.' Ms Pattison told the claimant she had to return to work in Stockton with Ms Hepperle as her Manager the following day or, alternatively, they could explore the possibility of an alternative job role for the claimant. In her email confirming the conversation Ms Pattison said 'It seems to me that these are the available options however if you have any other suggestions I am also happy to consider these. Please can you contact me as soon as possible to discuss further.' In his closing submissions Mr Crammond suggested that this email did not give an instruction, but gave options. However, Ms Pattison's own evidence was that she asked the claimant to return to working in the office. She did not suggest the claimant could continue working from home under the management of Mr Humphray while any other options were considered nor that the status quo could be maintained pending any appeal. In any event, it was clear that if the claimant wanted to remain in her PO role she was expected to work from the office rather than home and reporting to Ms Hepperle rather than anyone else.

81. The claimant went to see her GP the following day who signed her off work for four weeks with 'work related stress'. Ms Hanif appealed against the grievance decision for Ms Hepperle on 20 November. The appeal was dealt with by a Ms Hayes.

82. Mr Humphray kept in contact with the claimant during her sickness absence via regular 'phone-calls, in line with the respondent's absence policy. During a call on 23 November the claimant said she was still stressed but would be willing to return to work, though not reporting to Ms Hepperle. The claimant said she would consider a return to the Stockton office if Ms Hepperle were to work from the Wallsend office. During this call Mr Humphray told the claimant someone had raised a grievance against her. The claimant subsequently learned that it was Ms Hepperle who had raised the grievance. Following this conversation Mr Humphray referred the claimant for an Occupational Health assessment.

83. On 27 November the claimant spoke with Ms Pattison. The claimant emailed Ms Pattison with an account of their conversation later that day. We infer from that document, the claimant's later email to Ms Pattison of 11 December 2018, the notes from a meeting between the claimant and Mr Scott on 11 December 2018 and the evidence given by the claimant that, during the phone conversation, the claimant referred to Ms Hepperle's grievance against her and her own appeal against Ms Pattison's grievance decision and said she did not see how she could work for Ms Hepperle, that she had worked from home successfully for five months without an issue and would be willing to come back to work with a different line manager; that she thought it was unfair and unreasonable to expect her to work with Ms Hepperle; that no adjustments had been made for her and that her and that her mental health was not being considered. During that conversation Ms Pattison initially reiterated

that if the claimant were to return to work at Stockton as a PO then Ms Hepperle would be the claimant's line manager. However, when the claimant told her Ms Hepperle had raised a grievance against her Ms Pattison said she had been unaware of this, that it changed things and that she would discuss the matter with HR and get back to the claimant.

84. Mr Humphray conducted a 28 day attendance management review meeting with Ms Hanif on 11 December. They discussed the reasons for Ms Hanif's absence, what support she was receiving and what adjustments could be put in place for her return. The claimant made it clear that she did not feel she could return to work with Ms Hepperle as her manager and that was the only thing stopping her returning to work. She said she did not want to be on sick leave and suggested a return to work working from home, on a temporary basis, and with a different line manager. She said that if Ms Hepperle were not her line manager she felt she could return if she could initially work from home then ease herself back in to working from Stockton.

85. The same day the claimant emailed Ms Pattison. The claimant said she had not heard back from Ms Pattison since their conversation on 27 November 2018 when Ms Pattison had said she would speak to HR about the claimant being managed by someone other than Ms Hepperle. The claimant also told Ms Pattison she had had a few thoughts since speaking with Mr Humphray earlier in the day and asked if there may be any opportunities to transfer to work in Maidstone or to a PO or similar role in another department. Ms Pattison replied that day saying she would respond as soon as she knew what options were available.

86. Mr Humphray received the OH report (dated 10 December 2018) after his meeting with the claimant. The adviser expressed the opinion that the claimant 'would struggle attending her work place at present due to her anxiety and would be unable to work alongside the line manager, she is scared at returning to work.' She said at that time 'There is no date for a return to work and timescales for recovery are at this stage unclear and dependent on her continued progress with her therapy.' The adviser suggested that when the claimant was able to return to work, consideration could be given to offering her a phased return over a period of four weeks.

87. At some point shortly before Christmas 2018 the claimant and Ms Pattison had a brief telephone conversation. We infer this is the first time they had spoken since Ms Pattison's email to the claimant on 11 December 2018. They talked about the claimant's suggestion of a transfer to Kent, and about the claimant returning to work in her current role.

88. The claimant emailed Ms Pattison again on 27 December making the point again that there was no way she would work under Ms Hepperle. She referred to the fact that she had raised a grievance against Ms Hepperle and her outstanding appeal and said 'You are aware of the significant distress she causes me and my request is a reasonable one —I do not want to work with her due to the serious health implications she has been the root cause of through her bullying, harassment and victimisation which is continuing.' She again suggested she could work from home, saying 'this worked great for 5 months and no reason why we cannot temporarily do this again.' She also said she would be willing to work from Eston, which was close

to her home, and that she could work under another Line Manager or Mr Humphray, saying 'this has worked well and in line with policy and procedures.'

89. On 28 December Ms Pattison and the claimant spoke on the 'phone. Ms Pattison then emailed the claimant setting out what had been discussed. Ms Pattison had checked whether there were any PO vacancies in Maidstone but there were not. The nearest PO vacancy was in Bromley. Ms Pattison offered the claimant that position and the claimant said she would consider it. On the subject of working from home and for another line manager, Ms Pattison said this was not ideal for the claimant and 'has implications for the business.' Ms Pattison referred to the fact that working from home made the claimant feel isolated, which was 'not good for your wellbeing.' She said she would look into whether a desk was available at Eston and that if there was the claimant could work from that location. However, Ms Pattison said the claimant would still have to be line managed by Ms Hepperle until the outcome of her appeal was known and that it was 'not possible' for the claimant to continue to report to Mr Humphray, as that was 'only a temporary adjustment while [her] appeal was being heard.' Ms Pattison said she could look into different (non-Presenting Officer) roles in the Newcastle area and other vacancies in the South East if that was something the claimant was interested in.

90. On 3 January the claimant told Ms Pattison that she did not want to accept the position in Bromley because she did not have enough information about it and did not think she should have to ask HR for further information. In any event, the claimant said she would not transfer until her appeal was heard. The claimant repeated that she would not work for Ms Hepperle whatever the outcome of the grievance appeal and suggested that she could report to one of Ms Hepperle's deputies.

91. Ms Pattison replied by email with further information about the Bromley role. She said she would be willing to consider a move to Eston for the claimant, subject to what she described as a 'formal demand management request.' She added that as the claimant had said she could no longer work with Ms Hepperle 'the only other option that may be possible is a move to another area of DWP or another department in the North East area but this would not be a Presenting Officer role.'

92. The claimant had another absence review meeting with Mr Humphray in January 2019. After that meeting the claimant phoned Mr Humphray and asked if it was possible she could lose her job if she did not return to work. Mr Humphray answered that this was a potential outcome. The claimant then emailed Mr Humphray on 21 January saying 'I have thought about the options you have offered me and given the circumstances I feel it is best I return to work in my current post of Presenting Officer at the Stockton office once the current sick note ends. Although I do not feel any of the options are ideal for me, given the nature of my disability and zero reasonable adjustments being discussed with me, I feel it best that I make an attempt to return to work to bring some normality back to my current work situation.' Mr Humphray replied saying he would make the necessary arrangements.

93. The claimant's sick pay was due to end from 18 February 2019 in accordance with her terms and conditions. The claimant agreed to return to work during week commencing 4 February 2019 on a phased return basis, building up her hours

gradually over the first four weeks. It was agreed that the claimant would have a one to one meeting with Mr Humphray in her first week back. The claimant also agreed to mediation with Ms Hepperle, which Mr Humphray said he would arrange. Mr Humphray later contacted the claimant and explained that a phased return to work may affect the claimant's pay. The claimant was told that she could, as an alternative, take some annual leave for her non-work days. Those steps agreed arrangements were set out in the claimant's back to work plan on page 407D of the bundle. The claimant decided she would prefer to return on full time hours. So they agreed a revised return to work plan that involved the claimant taking annual leave on Monday and Tuesday of week commencing 4 February, then working from home for the remainder of that week. The claimant was then to return to work from the Stockton office on 11 February and Mr Humphray said he would arrange for her to initially be allocated cases to present over half days. Those arrangements were documented in the back to work plan.

94. On 6 February 2019 the claimant learned that Ms Hepperle's grievance against her had not been upheld.

95. The claimant had been told that when she returned to work she would be line managed by Ms Hepperle and Ms Pattison asked Ms Hepperle to send an email to the team telling them when the claimant would be returning to work, which she did. However, Ms Hepperle's evidence was that Ms Pattison did not tell her that she was to continue as the claimant's line manager but nor, she accepted, did Ms Pattison tell her that she would not be the claimant's line manager. It is apparent from the content of Ms Hepperle's grievance against the claimant that she did not want to manage the claimant. She told us that her union was involved at this time.

96. What transpired was that Mr Humphray continued to manage the claimant upon her return. Ms Pattison said in evidence that she could not recall why that was. Ms Hepperle's evidence was that she had nothing to do with the claimant upon her return to work. Mr Humphray's evidence, which was consistent with a statement he gave during a subsequent grievance process, was that Ms Pattison asked him to continue to manage the claimant because Ms Hepperle had not agreed to mediation. We accept his evidence and find that, shortly before the claimant was due to return to work, Ms Pattison asked Mr Humphray to continue to line manage the claimant 'pending a resolution to the line manager issue.' Mr Humphray told the claimant that he would continue to line manage her. Mr Humphray's evidence was that he told the claimant before she returned to work that Ms Hepperle had not agreed to mediation. That is also what he said in his statement given as part of a subsequent grievance investigation. However, given that the claimant was still sending emails asking about mediation some weeks after she returned to work we find it is more likely than not that Mr Humphray did not tell her, when she returned to work, that Ms Hepperle was not prepared to engage in mediation.

97. The claimant's evidence was that she was asked to take the first two days of her return to work as holiday because the respondent was not ready for her to return. On balance, we find it likely that was the case. We find that the claimant's return to work was somewhat disorganized with Ms Pattison making decisions as to who was to manage the claimant at the last minute. We find it more likely than not that was because Ms Hepperle had made it clear she believed the relationship between her

and the claimant had broken down and Ms Pattison belatedly acknowledged that Ms Hepperle and the claimant could not work together effectively.

98. Mr Humphray had a 'welcome back discussion' with the claimant on Friday 8 February. The claimant said in that meeting she was now well enough to be in work and did not want to be referred for a further OH assessment at that time. Mr Humphray updated the claimant about work-related issues. He explained that he was not going to issue a further warning under the absence procedure.

99. On 22 February the claimant emailed Mr Humphray asking for an update on the mediation that had been discussed. The claimant also said 'I have been back a few weeks and I am still feeling slightly isolated by the fact that things were supposed to go back to normal — they have not. I was assured by Caroline on more than one occasion that Julie had no issue with me returning. I have not yet seen Julie, although she has attended Stockton office when I have not been there and she sent an email informing the other PO's that I have returned. I was advised that I would be returning under her management and that this was the only option - so I am a little confused with what is going on?' The claimant also emailed Ms Hayes asking for an update on her appeal.

100. The claimant sent an email to Mr Humphray on 27 February alleging that Ms Hepperle had been 'discussing matters' with another PO, Mr Goulding, and using him as a 'spy'. The next day the claimant emailed Mr Humphray again asking him to let her know what was happening. He replied saying he was still waiting to speak to Ms Pattison and had told her he needed to speak to her as soon as possible. Ms Hanif responded saying 'No problem. Obviously these matters are playing on my mind and causing me to feel extremely stressed and upset.' We infer the claimant had heard nothing further by 4 March as, on that date, she emailed Mr Humphray again pressing him for a response. She said 'Nothing that has happened since I have returned has helped my mental health, in fact it is getting worse. I feel as though I am being ignored so that I deteriorate to a point where I just walk away from my job.' The claimant said that if Ms Pattison could not resolve the issues the claimant would like them 'raising to a higher grade.' Later that day the claimant also emailed Mr Humphray about the lack of response she had had to her appeal against the grievance outcome.

101. Later that day Ms Pattison's line manager, Mr Protheroe, emailed the claimant. He said he had spoken with Ms Pattison to discuss the claimant's situation and 'some of the difficulties she has experienced trying to resolve your issues.' He acknowledged that the situation was 'far from ideal' and said he would be working with Ms Pattison to provide a solution 'as soon as practically possible' and would provide a further update on 'next steps' no later than the end of the week. Alluding to the complaints the claimant had made about Ms Hepperle, Mr Protheroe directed the claimant to the respondent's policy on alleged Bullying and Harassment should the claimant feel she needed to take the matter further. We infer that Mr Humphray had referred matters to Mr Protheroe as the claimant had suggested.

102. Two days later, on 6 March, the claimant emailed Mr Protheroe alleging that another PO, Mr Lloyd, had spoken about her 'in a derogatory manner' to someone from outside the DWP. The claimant said:

'I wanted to make you aware of a distressing conversation I had yesterday at Teesside Tribunal with a representative from another organisation. The individual stated that they were shocked to see me at Tribunal as they Were made aware by another Presenting Officer, Mark Lloyd, that I would no longer be attending Tribunals as I would not be returning to the team following issues that I had 'caused on the team. Mark had stated to the Representative that I was "nothing but trouble" … This is the second time I have been informed that I was not expected to return and that individuals on my team are speaking about me in a derogatory manner. This is one of the reasons I am finding it intolerable to work with individuals that have been poisoned by Julie and they are now discussing matters with outside organisations openly..ifJulie is not the individual that advised Mark that I would not be returning then I feel the matter should be looked into. Len Goulding was also told the same thing and a lot more regarding myself and he confirmed that Julie and Ritchie spoke to him openly about matters concerning me. This is clearly a way to isolate me further and force me to leave. I have done nothing but raise concerns and i am being punished continuously… '

103. Mr Protheroe replied the next morning saying 'I am sorry to hear about your experience at the Tribunal. I will pick this issue up with Caroline and Scott to make sure that you supported in this situation and aware of the options that can be used to resolve this issue.' The claimant forwarded that email to Mr Humphray saying

'Sorry to have rang you so upset. I am just struggling with how individuals are still being allowed to isolate and treat me like this. Those individuals (like Mark Lloyd) are not and should not be involved in anything! I have said this over and over again that Julie has created a hostile environment for me and she is continuing her campaign of bullying and harassment through others now. I am suffering significantly because of this. I have no support here and I am left to suffer with such disgusting behaviour. At what point will someone listen to me? How many more times do I raise a complaint? I have and I will remain professional but I do need some support with resolving issues. Right now I am being made to feel more and more isolated by the day and it is being allowed to happen openly.'

104. One of the claimant's complaints in these proceedings is that, on or around the time of her return to work, she was isolated by colleagues. The claimant's evidence at this hearing was that, in February 2019, another PO, Mr Goulding, 'advised' her that Ms Hepperle had asked him 'to report back to her with any information he obtained from her such as what times she was coming into the office.' Ms Hepperle's evidence was that this is not true. She says that in February 2019 she was no longer line managing the claimant and nor did she have any direct contact with her. On cross examination Ms Hepperle said Mr Goulding had said something to her about the claimant but that she had not encouraged him to do so. As evidence of what Ms Hepperle said, the claimant's account is hearsay and we treat it with circumspection. We have not heard evidence from Mr Goulding himself as to what, specifically, Ms Hepperle said to him, the context of that conversation and what he subsequently said to the claimant. As already noted elsewhere in this judgment, the claimant was highly suspicious of Ms Hepperle and her motivations and remains so. That may have affected her perception or interpretation of what Mr Goulding actually said to her as well as her recollection of those matters. As explained elsewhere in this judgment, we have not found the claimant's evidence to be an entirely reliable guide

to what was actually said or done at the time of these events. Looking at the evidence in the round, we are not satisfied that it is more likely than not that Ms Hepperle did ask Mr Goulding to report back to her with information about the claimant.

105. The claimant also alleges that another colleague, Mr Lloyd, had told two people from outside the organization that she would not be returning to work. Her evidence is that, on 4 March 2019, she saw someone at Court who said he was surprised to see the claimant and that Mr Lloyd, had told him that the claimant would not return to work. The claimant sent Mr Protheroe an email about this the next day. The claimant alleges that 'a similar incident then occurred at Sunderland Tribunal on 8 March 2019'. These allegations were raised in a grievance by the claimant in March 2019, which was investigated by Mr Foster. We refer to the grievance below. During the grievance process Mr Foster interviewed Mr Lloyd. Mr Lloyd accepted that he told one person that the claimant was no longer on his team but denied saying she was not returning. He said this was on 4 January 2019, when the claimant was on sick leave. He denied having spoken about the claimant with the second person referred to by the claimant. We have not heard evidence from Mr Lloyd or from either of the individuals to whom he is alleged to have made comments about the claimant. Given the inherent unreliability of hearsay evidence we are not persuaded that it is more likely than not that Mr Lloyd said anything about the claimant other than on 4 January 2019 when he said, during a conversation, that the claimant was no longer on his team.

106. On 12 March the claimant told Mr Humphray she had seen her doctor who had prescribed some additional medication for anxiety and panic attacks. In that email she said 'As you are aware I have been struggling lately with further incidents occurring and I have struggled with having little face to face support since being back. I know you are limited given the distance between us. Nevertheless, I did state that I would always update you with regards to my condition.'

107. At around this time a decision was taken that with effect from 25 March responsibility for managing POs based in Wallsend, Durham, TVP, Eston and Stockton would be split between two HEOs: Ms Hepperle, who would be based at Durham, was to be responsible for managing the staff at Wallsend and Durham whilst Mr Garrick, who would be based at TVP, would be responsible for managing staff at TVP, Eston and Stockton. The claimant was, therefore, to be managed by Mr Garrick.

108. Mr Humphray told the claimant about the change on 13 March 2019. He also referred to the recent concerns the claimant had raised about other members of staff and asked that, if she wished to take formal action, she complete a GI form or make a formal complaint via email. The claimant replied the next day, 14 March, saying she thought it was 'a little insulting' to be asked to complete forms for her concerns. She described this as 'another way to ignore my worries' and said 'I expect continued poor management of issues and the reason is clear - I do not matter and I will not matter to the Department. Other individuals have been prioritised and i am punished for raising valid concerns. This is the message I have been sent over and over again. i am absolutely deflated at present.' She alleged that her 'stress and

mental health' was being ignored and that nothing was being done to help support her.

109. Whilst being managed by Mr Garrick the claimant asked again to be able to listen to music. Although Ms Pattison had refused this request the previous year, when she and Mr Garrick spoke about it Mr Garrick told her that POs in his team in Newcastle listened to music on headphones while working. On learning this Ms Pattison agreed that the claimant could listen to music on headphones while working.

110. In March 2019 Mr Foster was appointed to investigate the complaint raised by the claimant to Mr Protheroe on 6 March 2019. Mr Foster emailed Ms Hanif on 19 March asking for some further information). Meanwhile, on 15 March, Mr Protheroe told the claimant that her appeal outcome was expected in the next week. On 28 March 2019 the claimant contacted Mr Protheroe again as she had not received the expected appeal outcome. He said he was chasing it up. Later that day the claimant told Mr Humphray that she still did not feel supported and was still feeling isolated from her colleagues. The claimant forwarded her email to Mr Garrick on 9 April 2019.

111. At the beginning of June 2019 the claimant was told her appeal against the outcome of her grievance against Ms Hepperle had been unsuccessful. Meanwhile Mr Foster had been investigating the claimant's grievance. Having investigated, he decided not to uphold the grievance. He sent the claimant a letter on 16 July 2019 informing her of his decision and enclosing a report setting out his findings.

112. Although the two teams of POs were separately managed by Mr Garrick and Ms Hepperle respectively, there was some cross over between the two teams because the two Tribunal sites, Teesside and Tyneside, are within the same administration area. Mr Garrick tried to manage the schedules of his POs, and the claimant's in particular, to ensure there was as little cross over between the two teams as possible because he understood the claimant found it difficult coming into contact with Ms Hepperle and her team. One of Mr Garrick's and Ms Hepperle's responsibilities was to manage the PO schedules to try and balance consistency in the Tribunals for the judges and panel members, to minimise public spending where possible and to maximise the use of resources. They would often amend the POs' diaries to achieve this. We accept Mr Garrick's evidence that this was something that happened regularly and the claimant had accepted numerous diary changes that he had made without complaint.

113. On 27 August 2019 Ms Hepperle made a change to the claimant's diary for 11 September 2019. Ms Hepperle asked the administration department to let the claimant know she had made the change and they did so by email that day. When the claimant discovered this she telephoned and emailed Mr Garrick alleging that Ms Hepperle was attempting to control her.

114. Mr Garrick's evidence was that it had previously been agreed that Ms Hepperle had to notify Mr Garrick of any diary changes or any other decisions she needed to make which affected Ms Hanif. He described this as an 'agreed protocol'. Ms Hepperle's evidence was that this arrangement was only put in place after this

incident. We prefer the evidence of Mr Garrick on this matter; it is likely that, given the breakdown of the relationship between the two, measures would have been put in place to avoid contact between Ms Hepperle and the claimant and the idea of a protocol for agreeing diary changes is consistent with that. Ms Hepperle made the diary change on 27 August 2019 without consulting Mr Garrick.

115. Mr Garrick spoke to Ms Hepperle to discuss the change she had made. We accept his evidence that he believed, having spoken to Ms Hepperle, that she had had good reason to make the diary change as she had identified that there was a crossover between the schedule of one of her team members and the claimant on a particular date in September. Mr Garrick's evidence in this regard is consistent with that of Ms Hepperle, who said she had noticed that the claimant and a Newcastle-based PO were both scheduled to attend hearings in the same hearing room in the Tribunal in Teesside on the same date; that it would be more efficient to have just one PO attend to deal with all of the hearings and that Tribunal Judges and panel members prefer, where possible, to have the same PO throughout the day for consistency; and that the Newcastle-based PO should be the one to deal with the hearings because, of the two of them, only the Newcastle-based PO was trained to deal with all of the hearings in question.

116. Ms Hepperle left the DWP in January 2020. In March 2020 Ms Hanif was moved back into her original team under a new line manager.

117. Having set out our primary findings of fact, we now return to some particular allegations made in the proceedings.

118. In Allegation 1, the claimant claims that, since the moment she started work for the Respondent, but on dates unknown to the claimant, Ms Hepperle victimized her and subjected her to disability and sexual orientation related harassment by discussing the claimant's personal affairs with colleagues. The burden is on the claimant to prove that Ms Hepperle discussed the claimant's personal affairs with colleagues. If she does so, the claimant also bears the burden of showing facts from which we could conclude that Ms Hepperle discussing the claimant's personal affairs was conduct related to sexual orientation and disability and was because she did a protected act.

119. The claimant alleges she was told by Ms Fraser, when they spoke on 7 June 2018, and in the messages they exchanged subsequently, that Ms Hepperle had shared with her private information about the claimant. As evidence of what Ms Hepperle said to Ms Fraser, the claimant's account of what Ms Fraser told her in discussions on 7 June is hearsay and lacking in detail. However, Ms Fraser referred in messages to the claimant's discrimination claim against her former employer, information about her family and home life and information about her sexuality, amongst other things. Ms Fraser also made a sweeping claim to Ms Pattison in an email of 8 June 2018 that Ms Hepperle had shared personal information; she made similar claims when interviewed after the claimant had put in a grievance against her. Ms Fraser herself has not given evidence at this hearing and, therefore, the veracity and reliability of what she said has not been tested by cross-examination. The tone and content of the messages that passed between Ms Fraser and the claimant following the meeting of 7 June 2018, and the fact that Ms Fraser appeared

so keen for staff to raise grievances against Ms Hepperle, strongly suggest that Ms Fraser had an axe to grind with Ms Hepperle and was trying to foment trouble for her. That causes us to doubt the reliability of what she said. What is more, the claims she made about what Ms Hepperle told her contained little factual detail as to the dates on which and circumstances in which Ms Hepperle is said to have shared information.

120. We accept that, as managers who covered for each other, some information about employees is likely to have been shared. It is possible that that may have included information about the reasons for the claimant's absence in November/ December 2017 but it is also possible that Ms Fraser learned about such matters from another source, such as Ms Hood, who was present in the meeting on 11 January 2018 when the claimant's absences were discussed, or from matters the claimant herself disclosed at the meeting on 7 June (we note that one of the claimant's colleagues asserted in an interview as part of the claimant's grievance process, the record of which is at page 326 of the bundle, that the claimant had herself shared information about herself).

121. The claimant also alleges that Ms Hepperle shared personal information about her with other staff, which she says she learned about at the meeting on 7 June 2018. The only clear example she gives, however, relates to the incident during training when one of the claimant's colleagues made a racist remark, which Ms Hepperle subsequently upbraided him for. The claimant seems to claim that Ms Hepperle told her colleagues she had complained about this individual when she had not done so. Ms Hepperle denies having told anyone that the claimant had complained. The evidence before this Tribunal as to what the claimant was told, however, was vague and inconsistent. On the one hand, when interviewed as part of the grievance process, the claimant alleged that two of the POs had said Ms Hepperle had, at some point, said the claimant had complained that the individual in question was racist. In her witness statement, however, the claimant was critical of Ms Hepperle for taking her to one side in front of colleagues because, according to the claimant, this 'gave the impression that I had raised an issue.' Furthermore, one of the POs who, according to the claimant, said Ms Hepperle had told them the claimant had complained about the racist comment did not confirm that when interviewed as part of the later grievance process. The other referred to Ms Hepperle having said there had been a complaint (which there had been: from Ms Hood) but not that Ms Hepperle said the claimant had complained.

122. Mr Barker submits that the transcript of the telephone conversation between the claimant and Ms Hepperle on 23 May 2018 shows that Ms Hepperle has a tendency to divulge information about staff members inappropriately. We accept that Ms Hepperle was indiscrete on that occasion. However, we were also shown messages between Ms Hepperle and Ms Fraser in which Ms Hepperle appears reluctant to be drawn into discussions about staff.

123. The claimant has led no evidence at all that Ms Hepperle knew of the claimant's sexual orientation or her mental health condition 'from the moment she started work for the respondent'. The claimant's own evidence was that she told Ms Hepperle she is a lesbian in December 2017, eight months after her employment began. The claim that Ms Hepperle subjected the claimant to harassment related to sexual orientation

and/or disability 'from the moment she started work for the respondent' may be hyperbole. Alternatively, it may indicate that the claimant's perception of Ms Hepperle's behaviour and her motivations has become grossly distorted. Either way, it does nothing to enhance the quality of claimant's evidence in our eyes.

124. Looking at the evidence in the round, we are not satisfied that Ms Hepperle did, as alleged, discuss the Claimant's personal affairs with colleagues.

125. For the same reasons we do not consider it more likely than not that Ms Hepperle shared personal and highly sensitive information about the claimant with Ms Fraser, in an inappropriate forum and highly derogatory manner, which is what the claimant claims at Allegation 8.

126. In Allegation 16 the claimant alleges that Ms Hepperle harassed and victimised her by amending her SOP record on an unknown date between 4 July and 18 July 2018. The claimant alleges that Ms Hepperle said she would change the SOP record on 5 June 2018 when they discussed the fact that permanent contracts were to be issued to fixed term staff. The claimant says that Ms Hepperle told her that because of her sickness warning, she would not be eligible for a permanent contract but that she would amend the warning so that it would not affect the claimant's ability to be made permanent. The claimant alleges Ms Hepperle did subsequently amend the claimant's records and this allegation forms the basis of one of the claimant's complaints in these proceedings. Ms Hepperle gives a very different account of what happened. Ms Hepperle says that she had not checked the dates of the claimant's warning and had thought the warning period was to expire in advance of the roles being made permanent and that the claimant was therefore eligible for a permanent contract. She says she, therefore, issued her with an offer of new contract terms. Ms Hepperle denies altering the record of the claimant's warning in any way.

127. The burden is on the claimant to prove the facts on which her complaints are based. In this case, therefore, it is for the claimant to prove that Ms Hepperle altered the dates as alleged. We have not found the evidence given by either the claimant or Ms Hepperle in these proceedings to be entirely reliable, as explained elsewhere in these findings of fact.

128. The claimant relies on screenshot images to support her case that the records were altered. One of those images (at 252 of the bundle) purports to show the claimant's 'SOP' record as at 18 July 2018, which shows a warning given on 11 January 2018 to be reviewed on 12 July 2018. The other (at 251 of the bundle) purports to be an image of the same document but taken on another date. It shows a warning issue date of 26 December 2017. In her witness statement the claimant said the she took the image on page 252 on 6 June 2018 and took the image at page 251 a few weeks later. The claimant corrected that evidence at the hearing, explaining that she had meant to say the image taken on 6 June 2018 was the one at page 251 and the image at 252 was the one taken at a later date. We acknowledge that this could have been a simple error in the claimant's statement: it is easy to muddle up page numbers in documents. However, there is another inconsistency in the claimant's evidence and that is that the claimant said in her witness statement that she took the first image on 6 June 2018 but in her letter to Ms Pattison of 18 July she says she took the first image on 4 July 2018.

129. In support of her claim, the claimant points to the fact that Ms Hepperle said not to give the signed contract to Ms Fraser, which suggests Ms Hepperle was trying to issue the claimant with a contract surreptitiously. Ms Hepperle, on the other hand, said she was pressing the claimant to return the contract to her before she went on holiday because she wanted to be sure the matter was dealt with before the deadline date and the claimant had concerns about Ms Fraser's integrity and may not had had confidence in her to process the contracts correctly and in time.

130. The claimant also points to the fact that just a few days after the alleged discussion with Ms Hepperle, the claimant told Ms Fraser that Ms Hepperle had said she would 'fiddle' the dates on the system and she also made the same allegation, in more detail, in her grievance letter of 18 July 2018. We accept that that evidence could be seen as supporting the claimant's case. However, we note that Ms Fraser, in her reply to the claimant's message, expressed doubt as to Ms Hepperle's ability to change the records on the system. That supports Ms Hepperle's evidence that she did not make any changes. Also supporting Ms Hepperle's evidence is the fact that Ms Pattison investigated this matter during the claimant's grievance process and we find was told that no changes had been made to the system since 18 January when it was updated with the claimant's warning for unsatisfactory attendance for the period 11 January to 12 July.

131. We have heard no evidence as to the dates on which the new contracts were to take effect and whether the changes allegedly made by Ms Hepperle would in fact have assisted the claimant (if, that is, Ms Hepperle had been correct in thinking that those with expired warnings were eligible for a permanent contract).

132. The burden of proof is on the claimant. Looking at the evidence in the round, she has not satisfied us that it is more likely than not that Ms Hepperle did tamper with the SOP records as alleged.

Relevant legal framework

133. It is unlawful for an employer to harass an employee, (Equality Act 2010 section 40). It is also unlawful for an employer to victimise and employee and to discriminate against an employee by subjecting him or her to detriment: section 39 of the Equality Act 2010.

Harassment

134. Under section 26 of the Equality Act 2010, unlawful harassment occurs where the following conditions are satisfied:
(a) an employer engages in unwanted conduct related to a protected characteristic, which includes disability and sexual orientation;
(b) the conduct has the purpose or effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee.

135. In deciding whether conduct has the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee, each of the following must be taken into account—
(a) the perception of the employee;
(b) the other circumstances of the case; and
(c) whether it is reasonable for the conduct to have that effect.

136. Where a Claimant contends that the employer's conduct has had the effect of creating the proscribed environment, they must actually have felt or perceived that their dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for them: Richmond Pharmacology v Dhaliwal [2009] ICR 724, EAT. A claim of harassment will not be made out if it is not reasonable for the conduct to have the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee: Ahmed v Cardinal Hume Academies (29 March 2019, unreported).

137. Whilst a one-off incident may amount to harassment, a Tribunal must bear in mind when applying the test that an 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration: Weeks v Newham College of Further Education UKEAT/0630/11, [2012] EqLR 788, EAT. The fact that a Claimant is slightly upset or mildly offended by the conduct may not be enough to bring about a violation of dignity or an offensive environment and the Court of Appeal has warned tribunals against cheapening the significance of the words of the Act as they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment: Land Registry v Grant [2011] ICR 1390, CA.

Victimisation

138. Section 27 of the Equality Act 2010 provides as follows:

"(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.…."

139. For the purposes of section 27, a detriment exists if a reasonable worker (in the position of the Claimant) would or might take the view that the treatment accorded to them had, in all the circumstances, been to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337. As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522G, the tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An alleged victim cannot establish 'detriment' merely by showing that they had suffered mental distress: before they could succeed it would have to be objectively reasonable in all the circumstances: St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540, [2007] UKHL 16.

Failure to make reasonable adjustments

140. Under section 39(5) of the Equality Act 2010 a duty to make reasonable adjustments applies to an employer. A failure to comply with that duty constitutes discrimination: Equality Act 2010 s21.

141. Section 20 of the Equality Act 2010 provides that the duty to make reasonable adjustments comprises three requirements, set out in s 20(3), (4) and (5). This case is concerned with the first of those requirements, which provides that where a provision, criterion or practice of an employer's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer must take such steps as it is reasonable to have to take to avoid the disadvantage. Section 21(1) provides that a failure to comply with this requirement is a failure to comply with the duty to make reasonable adjustments.

142. In considering whether the duty to make reasonable adjustments arose, a Tribunal must consider the following (Environment Agency v Rowan [2008] IRLR 20):

142.1. whether there was a provision, criterion or practice ('PCP') applied by or on behalf of an employer;

142.2. the identity of the non-disabled comparators (where appropriate); and

142.3. the nature and extent of the substantial disadvantage in relation to a relevant matter suffered by the employee.

143. A duty to make reasonable adjustments does not arise unless the PCP in question places the disabled person concerned not simply at some disadvantage viewed generally, but at a disadvantage which is substantial (ie more than minor or trivial) and which is not to be viewed generally but to be viewed in comparison with persons who are not disabled: Royal Bank of Scotland v Ashton [2011] ICR 632, EAT.

144. An employer is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know, that the employee (a) has a disability; and (b) is likely to be placed at the substantial disadvantage. 'Likely' in this sense means 'could well happen': SCA Packaging v Boyle [2009] ICR 1056. This has to be assessed in the light of the information available at the relevant time,

not with the benefit of hindsight: Richmond Adult Community College v McDougall [2008] EWCA Civ 4, [2008] ICR. 431.

145. The predecessor to the Equality Act 2010, the Disability Discrimination Act 1995, contained guidance as to the kind of considerations which are relevant in deciding whether it is reasonable for someone to have to take a particular step to comply with the duty. Although those provisions are not repeated in the Equality Act 2010, the EAT has held that the same approach applies to the 2010 Act: Carranza v General Dynamics Information Technology Ltd [2015] IRLR 43, [2015] ICR 169. This is also apparent from Chapter 6 of the Code of Practice on Employment (2011), issued by the Equality and Human Rights Commission, which repeats, and expands upon, the provisions of the 1995 Act. The 1995 Act provided, as does the Code of Practice, that in determining whether it is reasonable for an employer to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular, to—
    145.1. the extent to which taking the step would prevent the substantial disadvantage;
    145.2. the practicability of the step;
    145.3. the financial and other costs of making the adjustment and the extent of any disruption caused;
    145.4. the extent of the employer's financial and other resources;
    145.5. the availability to the employer of financial or other assistance to help make an adjustment; and
    145.6. the type and size of the employer.

Burden of proof

146. The burden of proof in relation to allegations of victimisation and harassment is dealt with in section 136 of the 2010 Act, which sets out a two-stage process.

    146.1. Firstly, the Tribunal must consider whether there are facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an unlawful act of discrimination against the claimant. If the Tribunal could not reach such a conclusion on the facts as found, the claim must fail.
    146.2. Where the Tribunal could conclude that the respondent has committed an unlawful act of discrimination against the claimant, 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.

147. The Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258 made the following points in relation to the application of the burden of proof:
    147.1. 'It is important to bear in mind in deciding whether the claimant has proved facts from which the Tribunal could conclude that there has been discrimination that it is unusual to find direct evidence of … discrimination: few employers would be prepared to admit such discrimination, even to themselves and in some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in.'
    147.2. In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will

therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

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

147.4. 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.

147.5. Where the claimant has proved facts from which the Tribunal could conclude that the respondent has treated the claimant less favourably because of disability, it is then for the respondent to prove that it did not commit that act or, as the case may be, is not to be treated as having committed that act. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

Time limits

148. The Equality Act 2010 provides as follows:

123 Time limits

(1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of—

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

(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.

…

149. In the case of conduct extending over a period, section 123(3)(a) applies. In cases involving numerous discriminatory acts or omissions, it is not necessary for the claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what she has to prove, in order to establish a continuing act, is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs': Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686, [2003] IRLR 96.

150. In South Western Ambulance Service NHS Foundation Trust v King [2020] IRLR 168, the EAT considered the authorities on this issue and held that the only acts that can be considered as part of a continuing course of conduct are those that are upheld as acts of discrimination or some other contravention of the Equality Act 2010.

151. A failure to comply with a duty to make reasonable adjustments is an omission and, therefore, engages section 123(3)(b) and (4). The application of these provisions was considered by the Court of Appeal in the case of Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640, [2018] IRLR 1050. The Court of Appeal held that ascertaining when the respondent might reasonably have been expected to comply with its duty is not the same as ascertaining when the failure to comply with the duty began. As Lord Justice Leggatt said:

> *'Pursuant to s 20(3)… the duty to comply with the …requirement begins as soon as the employer is able to take steps which it is reasonable for the employer to have to take to avoid the relevant disadvantage. It can readily be seen, however, that if time began to run on that date, a claimant might be unfairly prejudiced. In particular, the claimant might reasonably believe that the employer was taking steps to seek to address the relevant disadvantage, when in fact the employer was doing nothing at all. If this situation continued for more than three months, by the time it became or should have become apparent to the claimant that the employer was in fact sitting on its hands, the primary time limit for bringing proceedings would already have expired. This analysis of the mischief which s 123(4) is addressing indicates that the period in which the employer might reasonably have been expected to comply with its duty ought in principle be assessed from the claimant's point of view, having regard to the facts known or which ought reasonably to have been known by the claimant at the relevant time.'*

152. The three month primary time limit is calculated taking into account section 140B, which provides as follows:

> *140B Extension of time limits to facilitate conciliation before institution of proceedings*
> *(1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).*
> *(2) In this section—*
> *(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*
> *(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.
(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

153. Section 18A of the Employment Tribunals Act 1996 provides as follows:
18A(1) Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.

154. The EAT has held that, if a potential claimant tells ACAS about certain matters, any subsequent claim made need not be confined to those matters, or even to matters that had already occurred at the time the reference to ACAS was made. All that is required is that the proceedings in the claim form are related to a 'matter' between the parties that existed at the time early conciliation began: Compass Group UK & Ireland Ltd v Morgan [2016] IRLR 924, [2017] ICR 73 (EAT). The term 'matter' is a broad one. As it was put by Langstaff P in Drake International Systems Ltd v Blue Arrow Ltd [2016] ICR 445 (EAT), a '"matter" may involve an event or events, different times and dates, and different people. All may be sufficiently linked to come within the scope of "that matter"'.

155. In H M Revenue & Customs v Serra Garau [2017] ICR 1121 (EAT) (and also Peacock v Murreyfield Lodge Ltd UKEAT/0117/19 (24 September 2019, unreported)) the EAT there held that the early conciliation provisions do not allow for more than one certificate of early conciliation per 'matter' to be issued by ACAS. If more than one such certificate is issued, a second or subsequent certificate is outside the statutory scheme and has no impact on the limitation period.

156. The combined effect of the decisions in Morgan and Serra Garau appears to be that, once a claimant has obtained an early conciliation certificate naming a prospective respondent: (a) they cannot start the early conciliation process again in respect of the same respondent unless a new matter arises that is not related to a 'matter' between the parties that existed at the time the original early conciliation process began and in respect of which the claimant provided ACAS with the requisite information (ie the proposed respondent's name and address); and (b) if they do start the early conciliation process again, that new process will not extend the time for bringing any claim that is related to any matter that existed at the time the original early conciliation process began.

157. Section 123(1) gives the Tribunal a broad discretion to extend time for claiming beyond the three-month time limit.

158. Mr Crammond refers us to the case of British Coal Corpn v Keeble [1997] IRLR 336 for guidance as to how we should approach the exercise of our discretion. We bear in mind, however, that the Court of Appeal has recently cautioned against giving the decision in Keeble 'a status which it does not have': Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23. In that case, Lord Justice Underhill said 'the best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay".'

159. There is no presumption that the ET should exercise its discretion to extend time. The burden is on the claimant to persuade the tribunal to exercise its discretion in their favour. In Robertson v Bexley Community Centre [2003] IRLR 434, where Auld LJ held that 'the exercise of discretion is the exception rather than the rule'. One of the factors relevant to considering whether to exercise our discretion to consider a claim brought outside the time limit is the public interest in the enforcement of time limits. We note, however, that the Court of Appeal has held that there is no requirement that the Tribunal be satisfied that there was a good reason for any delay in claiming and time may even be extended in the absence of an explanation of the delay from the claimant: Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640, [2018] IRLR 1050. 24.

Conclusions

Protected acts

160. The claimant makes a number of claims that the respondent subjected her to detriment amounting to victimisation within section 27 of the Equality Act 2010. The claimant relies on two alleged protected acts:

160.1. Firstly, she alleges she brought proceedings under the Equality Act 2010 against her former employer. This would be a protected act under section 27(2)(a).

160.2. Secondly, the claimant alleges that the sending of her letter to Ms Pattison dated 22 June 2018 was a protected act under section 27(2)(d) or (c) in that it constituted either making an allegation that someone has contravened the Equality Act 2010 or 'doing any other thing for the purposes of or in connection with' the Equality Act 2010.

161. In respect of her complaints about detriments she alleges she was subjected to before 22 June 2018, the claimant alleges the respondent subjected her to the detriment in question because of the first of those alleged protected acts. In respect of the complaints about detriments she alleges she was subjected to after 22 June 2018 the claimant alleges the respondent subjected her to detriments because of one or other or both of the alleged protected acts.

162. We have found as a fact that the claimant brought proceedings under the Equality Act 2010 against her former employer. This is a protected act under section 27(2)(a).

163. With regard to the claimant's letter of 22 June 2018, at the outset of the case we asked Mr Barker to identify specifically which parts of the letter the claimant relied on as constituting an allegation that the Equality Act had been contravened or 'doing any other thing' for the purposes of the Act. Mr Barker referred to the fact that the claimant alleged (in the second paragraph) that her mental health had been damaged by work related stress and was alleging the respondent was responsible for this happening. Clearly that is not sufficient to constitute an allegation, even an implied allegation, that the Act had been infringed in some way as it says nothing about what the respondent had done to cause of the alleged damage.

164. In his closing submissions Mr Barker urged us to look at the letter in its entirety. He refered us to the fact that the claimant says in that letter that she is concerned about a breach of confidentiality, that Ms Fraser had alleged that Ms Hepperle had divulged her 'personal and highly sensitive information' and 'intimate and personal details' of her private life and the claimant believed that was likely to be true, and that Ms Fraser herself 'revealed the extent of what was shared with her' in front of other POs, leaving her feeling 'humiliated and ashamed'. Mr Barker submited that, looking at the letter in the round, those comments by the claimant should be read in the context of the content of the messages the claimant referred to in the letter, in which Ms Fraser suggested Ms Hepperle had said something about the claimant's sexuality. Mr Barker suggested it is implicit that the claimant is complaining about Ms Hepperle having divulged information about her sexual orientation.

165. We agree that the letter must be looked at in the round and that an allegation that the Equality Act was breached need not be express. However, we do not agree that what the claimant said constituted even an implied allegation that the Equality Act had been infringed. Looking at the letter as a whole, in as far as it contains any allegation of wrongdoing, it is an allegation that Ms Hepperle and Ms Fraser have breached the claimant's confidentiality by discussing private matters about the claimant. Reading between the lines, it is tolerably clear that the claimant was suggesting that the matters discussed may have touched upon matters connected in some way with her sexual orientation, amongst various other things. We believe it would be reading too much into what was said, however, to interpret what the claimant was saying as an allegation that the discussions constituted some sort of unlawful act under the Equality Act 2010, such as harassment under section 26. Discussing matters that relate in some way to an individual's sexual orientation may or may not constitute unwanted conduct related to sexual orientation and if it does it may or may not constitute harassment depending on its purpose or effect. In this case it is far from clear that the claimant was suggesting that she believed the alleged breaches of confidence constituted harassment under the Act (or some other infringement of the Act). There was, for example, no suggestion that her confidential information had been divulged because of or for some other reason related to her sexual orientation. What the claimant did say was that her concern was that there had been a breach of confidentiality and that she believed Ms Fraser and Ms Hepperle were using the staff, herself included, to damage and hurt each other.

166. Looking at the letter in the round we are not satisfied that the letter of 22 June 2018 contained an allegation that anyone had contravened the Equality Act 2010 nor that it constituted 'doing any other thing' for the purposes of or in connection with the

Act. We conclude, therefore, that the claimant did not do a protected act in sending that letter.

Claim 2500446/2019

167. The claimant's claims within these proceedings are those numbered 1 to 18

Allegation 1: a. harassment related to disability and/or sexual orientation; b. victimisation

168. The claimant alleges that, since the moment she started work for the Respondent, but on dates unknown to the claimant, Ms Hepperle victimized her and subjected her to disability and sexual orientation related harassment by discussing the claimant's personal affairs with colleagues.

169. As recorded in our findings of fact, we are not satisfied that Ms Hepperle did, as alleged, discuss the Claimant's personal affairs with colleagues.

170. This complaint, therefore, fails.

Allegation 2: harassment related to disability and/or sexual orientation

171. The claimant alleges that, in December 2017, Ms Hepperle informed the Claimant that colleagues were talking and gossiping about her, planting seeds in her head to isolate her, and doing the same to them about her and that by doing so the respondent engaged in unwanted conduct related to disability and/or sexual orientation constituting harassment within section 26 of the Equality Act 2010.

172. As recorded in our findings of fact, the claimant has not established that Ms Hepperle told the claimant staff were gossiping about her in December 2017 as alleged.

173. Ms Hepperle did say to the claimant that someone had said the Doctor had been asking after her in Tribunal and had said something about the claimant having a new job. The claimant alleges that Ms Hepperle said this because she wanted to make the claimant paranoid so as to isolate the claimant from her colleagues and she did so because she is a homophobe and a sadist. In cross examination the claimant alleged that Ms Hepperle was 'grooming' her. The evidence simply does not support an inference that Ms Hepperle saying what she did to the claimant was in any way related to the claimant's sexual orientation or disability or that Ms Hepperle was intentionally trying to turn the claimant against her colleagues or cause the claimant to think she was being gossiped about, and doing so because of, or by using, the claimant's vulnerable mental state or because of the claimant's sexual orientation.

174. The claimant's case fails because she has not proved facts from which we could conclude that Ms Hepperle engaged in unwanted conduct related to disability or sexual orientation as alleged.

175. Furthermore, we are satisfied in any event that the reason Ms Hepperle recounted what she had been told by another staff member was that, as the claimant's manager, she needed to check whether the claimant was in fact working in a different job whilst on sick leave and needed to explain to the claimant why she was asking.

176. In this complaint the claimant also alleges that, in December 2017, Ms Hepperle was also 'doing the same to [her colleagues] about her'. This appears to be an allegation that Ms Hepperle informed the claimant's colleagues that the claimant was gossiping about them. In his closing submissions Mr Barker directed us to a number of documents that he said the claimant relies on in support of this complaint. None of them suggest that Ms Hepperle told the claimant's colleagues that the claimant was gossiping about them in December 2017 or at any other time for that matter. On the evidence before us the claimant has not proved that Ms Hepperle did so.

177. For those reasons this complaint is not made out.

Allegation 3: harassment related to sexual orientation

178. The claimant alleges that In December 2017 Ms Hepperle made inappropriate comments to the claimant about the Claimant's sexual orientation and told her not to divulge this on the team as they would not understand and she would be causing more problems for herself. The Claimant alleges that by doing so the respondent engaged in unwanted conduct related to sexual orientation constituting harassment within section 26 of the Equality Act 2010.

179. The claimant has not persuaded us that Ms Hepperle made the comments attributed to her by the claimant. Therefore, the complaint is not made out.

Allegation 4: harassment related to disability and/or sexual orientation

180. The claimant alleges that the respondent failed to act in December 2017 to prevent a campaign of harassment by Julie Hepperle. The Claimant alleges that this was unwanted conduct related to disability and/or sexual orientation constituting harassment within section 26 of the Equality Act 2010.

181. There had been no campaign of harassment by Ms Hepperle in or before December 2017. Nor was there any reason for the respondent to believe there would be in the future (indeed nor was there any such campaign at any time): the claimant had made no complaint about Ms Hepperle to anyone in or before December 2017.

182. There is simply no basis for the claimant's complaint that there was a deliberate failure to act on the part of the respondent to prevent harassment, still less that there was any unwanted conduct in this regard related to disability and/or sexual orientation.

183. This complaint is not made out.

Allegation 5: harassment related to disability and/or sexual orientation

184. The claimant alleges that Julie Hepperle gave the Claimant a warning for her absence in January 2018, stating it was not her decision but that of Caroline Pattison. The Claimant alleges that by doing so the respondent subjected the claimant to unwanted conduct related to disability and/or sexual orientation constituting harassment within section 26 of the Equality Act 2010.

185. We have found as a fact that Ms Hepperle gave the claimant a warning for her absence and that she said that it had been Ms Pattison's decision.

186. There are no facts from which we could properly conclude that either the giving of the warning or Ms Hepperle telling the claimant it had been Ms Pattison's decision had anything at all to do with the claimant's sexual orientation.

187. As for the complaint of disability related harassment, we accept that the giving of the first written warning for absence was, from the claimant's perspective, unwanted conduct. The warning was given to the claimant because of her absence from work not because of her disability, however. We accept that the claimant's absence from work which led to the giving of the warning was related to her disability and in that sense the giving of the warning could be said to be related to disability.

188. However, it is clear that the giving of the warning was in accordance with the respondent's policies, which required Ms Hepperle to consider whether to give a warning and gave Ms Hepperle a discretion as to whether or not to issue a warning in the circumstances given that the claimant's absences had exceeded the trigger point in the policy by some margin. There is simply no evidence from which we could properly infer that Ms Hepperle's intention was to violate the claimant's dignity, or create an intimidating, hostile, degrading, humiliating or offensive environment for her. There is no credible evidence that there was any animosity between Ms Hepperle and the claimant at this time or that Ms Hepperle might have any motive to deliberately upset the claimant.

189. As for the effect of giving the warning, and Ms Hepperle saying it was Ms Pattison's decision, in no way can this reasonably be said to have violated the claimant's dignity. Nor, in all the circumstances, including the fact that the warning was in accordance with policy, there was no history of animosity between the claimant and Ms Hepperle and the fact that the claimant had no reasonable cause to suspect that Ms Hepperle was acting in bad faith, was it reasonable for it to create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Therefore, even if the claimant subjectively perceived that it had that effect, and there is little evidence that that was the case, we find that Ms Hepperle's conduct in giving the claimant a written warning for her absence, and telling the claimant that it was Ms Pattison's decision, did not have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her as, in all the circumstances, it was not reasonable for it to have that effect.

Allegation 6: failure to make reasonable adjustments

190. The claimant makes the following allegation: 'the Respondent's absence procedure requires a warning to be given if a member of staff has a period of sick leave for more than 8 consecutive days without disability. If a person is deemed disabled, the absence trigger point can be moved to allow for longer absences when related to disability.' The claimant alleges that this is a provision, criterion or practice (PCP) that put her at a substantial disadvantage in comparison with persons who

are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

191. Mr Crammond submits that the PCP relied on by the claimant in this case did not exist: the respondent's absence procedure did not require a warning to be given if a member of staff has a period of sick leave for more than 8 consecutive days without disability. We agree with that submission. The policy does require a manager, when that trigger point is reached to hold a Health & Attendance Improvement Meeting with the employee (paragraph 23 of the policy) and, at that meeting, to consider whether or not to issue a warning (paragraphs 24 and 26 of the policy). However, it is clear from paragraphs 26, and 28 to 30 that there is no requirement that a warning be issued nor any expectation that a warning will be issued: it is a matter for the manager's discretion.

192. It follows that the claimant's complaint is not made out.

Allegation 7: failure to make reasonable adjustments

193. The claimant makes the following allegation: 'The Respondent does not allow members of staff to listen to music whilst carrying out their office-based tasks.' The claimant alleges that this is a provision, criterion or practice (PCP) that put her at a substantial disadvantage in comparison with persons who are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

194. Mr Crammond submits that there is no evidence of a practice, simply a specific decision that related to the claimant only. In the alternative he submits that any alleged practice was at the Stockton office only.

195. We do not accept Mr Crammond's submission. When, in January 2018, Ms Pattison told Ms Hepperle the claimant could not listen to music she said this was 'not something the DWP allows'. It transpires that there are some parts of the DWP in which listening to music was permitted, notably by Mr Garrick in his team. Nevertheless, that does not detract from the fact that Ms Pattison was not making a one-off decision that concerned only the treatment of the claimant; she was applying what she considered to be a practice applicable generally. Even if that practice had only been applied in Stockton, that does not mean it was not a practice: there is no requirement that an employer applies or would apply a practice to all of its employees, or even the majority of employees for it to qualify as a practice for the purposes of sections 20-21 of the Equality Act 2010.

196. The claimant alleges the rule put her at a substantial disadvantaged in comparison with persons without a disability because it deprived her of the ability to manage her stress levels which could lead her workload to suffer. As recorded in our findings of fact, we have accepted that the claimant found listening to music helped her to cope with stress and counter feelings of anxiety and that this, in turn, was likely to aid her productivity. We find that the respondent's practice of not permitting listening to music deprived the claimant of a coping mechanism that helped her to manage anxiety and stress levels. That put the claimant at a disadvantage compared with those without a disability because people without a disability were much less likely to experience anxiety in the workplace. The disadvantage was more than minor or trivial because anxiety had the potential to affect the claimant's productivity at work, as well as her mood.

197. The respondent has not shown it did not know, and could not reasonably be expected to know, that the claimant was likely to be subject to a substantial disadvantage in this way given that the claimant explained matters to Ms Hepperle on 11 January.

198. The respondent was, therefore, under a duty to take such steps as were reasonable to avoid the disadvantage. The claimant's case is that the adjustment which should have been made was for the Claimant to be permitted to listen to music. Although Ms Pattison objected to the claimant listening to music because she thought it would affect her ability to concentrate and interact with others, POs in Mr Garrick's team were permitted to listen to music. There is no suggestion that the nature of their work or office environment differed from the claimant's in any material way that made listening to music appropriate for them but not for the claimant. Indeed, the 'rule' for the claimant's office was changed in 2019 (when Mr Garrick took over managing it) and, from then, POs there were permitted to listen to music. That being the case, we find that permitting the claimant to listen to music was a reasonable step for the respondent to have to take to avoid the disadvantage to the claimant.

199. Initially, Ms Hepperle said the claimant could listen to music provided she did not get caught. This was an adjustment to the usual practice, in that it went some way towards mitigating the effect of the rule. Tacitly condoning the claimant listening to music provided she did it discreetly and did not get caught was not the same as giving the claimant express permission to do so and the failure to give that express permission was a breach of the respondent's duty to make reasonable adjustments. That breach was compounded when, later in the year, Ms Hepperle told the claimant she must not listen to music, effectively removing the limited adjustment that had been made by Ms Hepperle in January.

200. The complaint at allegation 7 is well founded.

Allegation 8: harassment related to disability and/or sexual orientation

201. The claimant alleges that Ms Hepperle harassed her by, on an unknown date or dates, sharing personal and highly sensitive information about the Claimant with Ms Fraser, in an inappropriate forum and highly derogatory manner.

202. As recorded in our findings of fact, we are not satisfied that Ms Hepperle did, as alleged, share personal and highly sensitive information about the Claimant with Ms Fraser, in an inappropriate forum and highly derogatory manner.

203. This complaint fails.

Allegation 9: failure to make reasonable adjustments

204. The claimant alleges that the Respondent's dispute resolution policy requires members of staff to try and resolve any disputes between the parties under the guidance of a line manager and that this is a PCP that puts the claimant at a substantial disadvantage in comparison with persons without a disability. The claimant alleges that the requirement put her at a substantial disadvantage in comparison with someone without a disability as she was forced to try and resolve her issues with Ms Hepperle without adequate support and was at risk of further

detriment to her mental health because her depression and anxiety were exacerbated by the actions of Ms Hepperle. She contends that the respondent was under a duty to take such steps as were reasonable to avoid that disadvantage and the steps the respondent should have taken were: (1) for Ms Pattison to tell Ms Hepperle to stop what she was doing to the Claimant, (2) for Ms Pattison to have spoken to Ms Hepperle when the Claimant first raised concerns (on 19 June 2018) and (3) for Ms Pattison to accompany the Claimant to the meeting she had with Ms Hepperle on 19 June 2018.

205. The conclusions of the Tribunal, by a majority comprising EJ Aspden and Mr Dobson, are as follows:

205.1. Reading the respondent's dispute resolution policy as a whole, the majority do not consider that it is correct to say that it contains a strict requirement for employees to try to resolve any disputes themselves. Although, read in isolation, this is what paragraph 5.1 of the policy says, the policy must be read as a whole. Paragraph 5.3 recognises that there are situations in which an employee may reasonably feel unable to attempt to resolve a dispute with the person concerned and says that in such cases Manager Action under the policy may be appropriate as an alternative. Nevertheless, the tenor of the policy is that there is a strong expectation that employees will try to resolve disputes by speaking with the other individual themselves, in the first instance, before referring a matter for manager action (see paragraph 6.20) or for a Management Investigation (paragraph 7.3). That strong expectation is, we find, a PCP.

205.2. We accept that the claimant had a mental health impairment which meant that she was susceptible to anxiety. We also find that the claimant was now clearly suspicious of Ms Hepperle and angry at the thought that Ms Hepperle may have said things about her to others. We note that, when messaging another PO and Ms Fraser after the meeting of 7 June, the claimant referred to feeling confused and stressed. We note also that Ms Fraser's email to Ms Pattison of 8 June 2018 claimed that the claimant was thinking about resigning, although the claimant did not say that was the case in this hearing and, for reasons explained elsewhere in this judgment, we have cause to doubt the reliability of what Ms Fraser was saying at this time. We accept that some individuals with a history of mental health impairments like that of the claimant are likely to have found it more difficult to confront a line manager who they considered had done them wrong.

205.3. In her witness statement, however, the claimant did not say that she thought speaking with Ms Hepperle was likely to exacerbate her anxiety: she simply said she did not feel Ms Pattison's suggestion that she speak with Ms Hepperle was appropriate because she 'did not feel comfortable speaking with Ms Hepperle' if she had been discussing her private information behind her back. Neither did the claimant suggest to Ms Pattison at the time of their discussion, or at any other time before speaking with Ms Hepperle on 19 June, that dealing with or speaking to Ms Hepperle was causing her anxiety or that she might find it difficult or stressful speaking to Ms Hepperle about the issues she was concerned about. Nor did the claimant betray any sign of anxiety about speaking with Ms Hepperle in the message she sent to one of her colleagues

when she told her that she was thinking of 'confronting' Ms Hepperle and when she said she was going to speak with Ms Hepperle as it was 'only fair she gets to respond before I submit anything.'

205.4. The fact that the meeting with Ms Hepperle lasted three or four hours is not suggestive of a situation that the claimant found stressful or a cause of anxiety and all parties appeared to be happy with the outcome at the time and the claimant made no reference in her witness statement to finding the meeting stressful. By the time the claimant wrote to Ms Pattison on 22 June 2018 she clearly felt differently again about Ms Hepperle. We note that the claimant said in that letter that her attempts to resolve matters herself were 'making matters worse'. However, the letter implies that the reason for that was that other staff members were asking her what Ms Hepperle had said, not that she had found the experience of trying to resolve matters by speaking with Ms Hepperle stressful in itself.

205.5. We bear in mind that the claimant is very articulate and is used to presenting cases in a court environment. We do not suggest that confronting one's line manager is analogous, but the nature of the claimant's work and the fact that she had seemingly been able to cope with it without difficulty is evidence that the claimant was, at the time, able to cope well with challenging situations. We are also mindful of the fact that the difficulties that had led to the claimant's absence from work the previous year were unrelated to work and that the claimant had worked with Ms Hepperle since her return to work without incident until the meeting of 7 June.

205.6. Looking at the evidence in the round we do not find that, at this particular time, speaking with Ms Hepperle about the matters that were concerning her was likely to be a particular source of anxiety for the claimant. We do not accept that the expectation that employees would try to resolve disputes by speaking with the other individual themselves, in the first instance, put the claimant at a substantial disadvantage (ie one that was more than minor or trivial) in comparison with people without a disability.

205.7. Even if we are wrong about that and the expectation that staff would, in the first instance, try to resolve disputes by speaking with the other individual themselves did put the claimant at a disadvantage that was more than minor or trivial in comparison with people without a disability, for the reasons that follow we find that, on 19 June 2018, the respondent did not know that was likely to be the case and could not have been expected to know that was likely to be the case. Although the respondent (including Ms Pattison) knew that the claimant had a mental health impairment that constituted a disability, the claimant did not suggest to Ms Pattison at the time of their discussion, or at any other time before speaking with Ms Hepperle on 19 June, that dealing with or speaking to Ms Hepperle was causing her anxiety or that she might find it difficult or stressful speaking to Ms Hepperle about the issues she was concerned about. Nor was there anything in the OH report or return to work plan to indicate that that might be the case. The claimant had made it clear in her meeting with Ms Hepperle on 11 January that the causes of her problems were unrelated to work at the DWP. There had been no suggestion of any problems in the relationship between the

claimant and Ms Hepperle until now; indeed Ms Pattison had been told by other POs less than a month earlier that they thought Ms Hepperle treated the claimant more favourably than she did others. We acknowledge that Ms Fraser had, by this time, written to Ms Pattison suggesting that Ms Hepperle had betrayed the claimant's confidence and suggesting that the claimant was upset at Ms Hepperle, but at the same time Ms Fraser indicated others in the team had become 'hysterical' and had been 'sobbing'.

205.8. For those reasons, the majority concludes that a duty to make reasonable adjustments did not arise.

206. It follows that this complaint is not made out and is dismissed.

207. Mr Moules does not agree with that conclusion. He would have found as follows:

207.1. Given the use of the word 'must' in paragraph 5.1 of the respondent's dispute resolution policy, Mr Moules concludes that it is not merely a strong expectation that employees bringing disputes ought to try, in the first instance, to resolve those disputes informally with the person(s) concerned. Rather, it is imperative that they do so. This requirement is a PCP.

207.2. The Respondent had received Occupational advice (at page132) that said the claimant 'has suffered increasing levels of reactive depression and anxiety due to non work related factors, as well as factors relating to an ex employment.' The claimant's depression was exacerbated by adversarial situations, the grievance process was an adversarial situation and there was a risk to the claimant's mental health. Evidence of that effect on her mental health can be seen in the claimant's email to Ms Pattison of 22 June where she says 'My main concern is a deterioration of my mental health and at present I am suffering from significant stress which is work related.' More importantly, clear evidence of that effect is in the claimant's 22 June 2018 grievance letter at page 174 of the bundle, where the claimant says 'Please note that I have attempted to resolve the matters myself and these attempts have been unsuccessful. My attempts are in fact, in my opinion, making matters worse. I am being bombarded by other staff members to confirm what Julie may or may not have said to me and I feel as though the working environment is incredibly hostile and a higher level needs to intercept to resolve issues that have clearly got out of hand. I cannot emphasize enough how much it is impacting me personally and how it is affecting my mental health. I am seeking assistance and guidance and a resolution to a situation that I feel I should not have been dragged into by two experienced Line Managers. I firmly believe that this matter is bigger than me and a number of people could benefit from a wider discussion regarding my concerns and potentially to review the behaviours displayed by both Managers- Amanda Fraser and Julie Hepperle. I have received strong support and reassurances from various quarters that my concerns are genuine. I would be interested in your thoughts raised in this letter and to hopefully diffuse and rectify situations that I feel have now been exasperated and got out of hand.' Whilst Mr Moules considers that the claimant here is describing not only the effects of others bombarding her but also the impact on her of having to confront Julie Hepperle and the respondent did not contest that point. The PCP put the claimant at a substantial disadvantage in

comparison with persons without a disability because of the risk to the claimant's mental health of confronting Ms Hepperle.

207.3. The respondent has not shown that it did not know and could not reasonably be expected to know that the PCP was likely to put the claimant at that disadvantage given the content of the OH report. When Ms Pattison spoke to the claimant on 19 June 2018 and said she should speak to Ms Hepperle about her concerns, the respondent knew or ought to have known that the claimant's depression was exacerbated by adversarial situations, the grievance process was an adversarial situation and there was a risk to the claimant's mental health.

207.4. Therefore the respondent was under a duty to take such steps as it was reasonable to have to take to avoid the disadvantage.

207.5. As described in the findings of fact, within the respondent's own grievance policy there were two alternatives to requiring the claimant to approach Ms Hepperle in the first instance: 'management action' and 'management investigation'. The Grievance Procedure itself acknowledges that 'What matters most is that the issue is raised and suitably addressed. There are 3 routes to achieving this. There (sic) are not meant to be used one after the other. Instead, the most appropriate route should be used depending on the type of concern or grievance.' With that in mind, there were two things that could have been done by the respondent to avoid the disadvantage:

207.5.1. Ms Pattison was already dealing with Ms Hepperle via, what can only really be termed, 'management action'. There was a meeting scheduled for a few weeks hence (referred to in Ms Pattison's email to Ms Fraser of 19 June 2018) and Ms Pattison could have given the claimant the option of rolling-in the Claimant's concerns to that on-going process. The final paragraph of the claimant's grievance letter of 22 June 2018 suggests that this is precisely the sort of thing the claimant thought would help.

207.5.2. Alternatively, the respondent could have waived the expectation/requirement that those bringing grievances need to try and resolve them informally in the first instance and conducted a 'management investigation'. In relation to the complaints made by the claimant about Ms Fraser in her letter of 22 June, which the respondent treated as a grievance against her, separate from the one against Julie Hepperle, the respondent waived the requirement for the Claimant to try to resolve the matter informally in the first instance: there was no expectation that the claimant had to speak to Ms Fraser before her grievance against her was subjected to a 'management investigation', as per the grievance procedure. Ms Fraser was still an employee of the respondent at the relevant time, albeit she had moved roles within the DWP.

207.6. Those are steps that it was reasonable for the respondent to have to take in the circumstances. The respondent did not take either of those steps.

207.7. For those reasons Mr Moules would have concluded that the respondent failed to comply with its duty to make reasonable adjustments.

Allegation 10: failure to make reasonable adjustments

208. The claimant makes the following allegation: 'The Respondent's grievance policy requires all grievance forms to be submitted on form GA01'. The claimant alleges that this is a provision, criterion or practice (PCP) that put her at a substantial

disadvantage in comparison with persons who are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

209. This complaint concerns the grievance submitted by the claimant in July 2018. The claimant also raised a grievance in March 2019 but as that was submitted after the proceedings containing this complaint were issued it is not the matter with which we are concerned.

210. Mr Crammond submits that it was not a requirement that all grievance forms be submitted on form GA01. We disagree. Paragraph 7.7 of the relevant policy states explicitly 'If the grievance is appropriate for Management Investigation, the employee must complete form G1.' Furthermore, Ms Pattison's response to the claimant's letter of 22 June was to say the claimant needed to use form G1 if the claimant was intending to raise a grievance. We find that the Respondent's practice was to require grievances to be submitted on form GA01.

211. Mr Cramond's alternative submission is that the PCP did not put the claimant at a disadvantage because her grievance was accepted and dealt with under the respondent's policy even though it was not on form GA01. The claimant does not suggest that her grievance was not dealt with. Rather, her case is that 'the repeated criticism of the claimant for failing to adhere to minor procedural errors, despite significant allegations, put the claimant at significant disadvantage as it gave the impression her concerns were not being taken seriously. As the claimant suffers with stress and anxiety, the belief that she was not being taken seriously affected her mental health.

212. We do not accept that the claimant was criticised for not using the correct form, still less that she was criticised repeatedly. She was merely asked for clarification as to whether the letter was intended as a grievance (a reasonable approach given that the claimant's letter was ambiguous) and told that she needed to use form G1 if she was raising a grievance, which is what the respondent's policy provided for. In any event, even if the claimant perceived Ms Pattison's email as critical, and even if that was a 'disadvantage', it was not the requirement to use GA01 that put the claimant at that disadvantage, it was Ms Pattison's initial response to the claimant's email of 22 June 2018.

213. In any event, the claimant said when asked by Ms Pattison that her letter of 22 June was not intended as a formal grievance. That being the case, the requirement to use form GA01 did not apply to her and cannot have disadvantaged her.

214. The claimant does not seek to argue that it was more difficult or more stressful for her to use form Ga01. Had she done so we would have rejected that argument given that the claimant accepted on cross examination that she would not have had any difficulty using form GA01 for a grievance. In any event, the respondent could not reasonably have been expected to know of any such disadvantage.

215. It follows that there was no duty to make reasonable adjustments in relation to the requirement to use GA01 to raise a grievance. Even if there had been, we would have found that the respondent did make an appropriate adjustment by treating the claimant's letter of 18 June as a grievance.

Allegation 11: a. harassment related to disability and/or sexual orientation b. victimisation

216. The claimant alleges that Ms Hepperle harassed her and victimised her by refusing a flexi-day request made by the claimant on 4 July 2018.

217. We have found that Ms Hepperle did not refuse the claimant's flexi-day request as alleged. The complaint is not made out.

Allegation 12: a. harassment related to disability and/or sexual orientation b. victimisation

218. The claimant alleges that Ms Hepperle harassed her and victimised her in July 2018 (before 18 July 2018) by bombarding her with emails about an IT issue, training and a 1-2-1 when she knew the Claimant was upset over Ms Hepperle's behaviour.

219. Ms Hepperle was the claimant's line manager at this time. She emailed the claimant, along with others in the team, about some training that was being organised. The claimant sent an email asking to postpone the training and Ms Hepperle responded, by email, agreeing. At around this time the claimant complained to Ms Hepperle that she had not responded to emails and texts she had sent and Ms Hepperle then sent an email responding to a point the claimant had raised about observing Mr Wake in Tribunal. A couple of days later Ms Hepperle emailed the claimant trying to arrange a date for the claimant's one to one objective setting meeting that was due at that time and then four days later Ms Hepperle sent a couple of emails in an attempt to sort out an IT problem the claimant was having and had told her about.

220. It is a distortion of the facts to describe Ms Hepperle as having 'bombarded' the claimant with emails. She did not do so.

221. In any event, even if sending those emails could conceivably be considered to have subjected the claimant to detriment or constituted unwanted conduct, there is no evidence from which we could properly infer that they were sent because the claimant brought a Tribunal claim against her former employer or that the sending of those emails was in any way related to the claimant's disability or sexual orientation.

222. The complaints are not made out.

Allegation 13: a. harassment related to disability and/or sexual orientation b. victimisation

223. The claimant alleges that Ms Hepperle harassed her and victimised her by asking to see the Claimant's personal messages with another member of staff, Mr Wake.

224. We have found that Ms Hepperle did not ask to see personal messages between the claimant and Mr Wake. The complaints are not made out.

Allegation 14: a. harassment related to disability and/or sexual orientation b. victimisation

225. The claimant alleges that Ms Hepperle harassed her and victimised her by removing a previously agreed reasonable adjustment, namely listening to music.

226. We have found that Ms Pattison said in January 2018 that the claimant could not be permitted to listen to music. However, Ms Hepperle told the claimant that she could listen to music provided she was careful not to get caught. At some point before July 2018 one of the claimant's colleagues complained about the claimant wearing headphones and Ms Hepperle told the claimant not to use them.

227. There is no evidence from which we could properly infer that Ms Hepperle instructed the claimant not to listen to music because the claimant brought a Tribunal claim against her former employer or that the instruction was in any way related to the claimant's disability or sexual orientation. In any event, we are satisfied that Ms Hepperle told the claimant not to listen to music because a colleague had complained and Ms Hepperle had previously been told by Ms Pattison that the claimant was not to listen to music.

228. The complaints are not made out.

Allegation 15: a. harassment related to disability and/or sexual orientation b. victimisation

229. The claimant alleges that Ms Hepperle harassed her and victimised her by removing a previously agreed reasonable adjustment by sending her to a remote hearing centre (Leeds).

230. We have found that it was never agreed that the claimant would not be sent to remote hearing centres. The complaints, therefore, fail as the claimant has not established the alleged detriment.

Allegation 16: a. harassment related to disability and/or sexual orientation b. victimisation

231. The claimant alleges that Ms Hepperle harassed her and victimised her by amending her SOP record on an unknown date between 4 July and 18 July 2018.

232. We have not found that it is more likely than not that Ms Hepperle did change the record as alleged. The complaints, therefore, fail.

Allegation 17: failure to make reasonable adjustments

233. The claimant alleges that when her grievance was rejected in November 2018 she was required to return to work from the office, managed by Ms Hepperle. The claimant alleges that this requirement was a provision, criterion or practice (PCP) that put her at a substantial disadvantage in comparison with persons who are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

234. Immediately on being notified that her grievance had not been upheld, the claimant was told she had to return to work in Stockton with Ms Hepperle as her Manager the following day. Ms Pattison said that, alternatively, they could explore the possibility of an alternative job role for the claimant but did not suggest the claimant could continue working from home under the management of Mr Humphray while that, or any other alternatives, were considered nor that the status quo could be maintained pending any appeal.

235. By requiring the claimant to carry out her PO role from the office rather than home and reporting to Ms Hepperle the respondent was effectively requiring the claimant to observe the usual requirements applicable to all other POs ie that they work from the office and report to the HEO responsible for the team. That was a PCP that the respondent applied to the claimant from 8 November 2018.

236. The claimant alleges that the PCP placed her at a substantial disadvantage as 'her anxiety would be increased and she would have to work with someone from whom she did not receive adequate support.' We have found that, by this time the claimant's mental health had deteriorated significantly and that this was, at least in part, attributable to the claimant encountering, and worrying about encountering, Ms Hepperle. When she was told she would have to return to the office working for Ms Hepperle if she wished to remain in her PO role she immediately took sick leave, which suggests her mental health deteriorated still further. We find it likely that that deterioration was caused not just by the fact that her grievance had not been upheld but also by the requirement to return to the office working for Ms Hepperle. We find it likely that the reason the claimant was affected so much was that she already had a pre-existing condition before the problems she perceived with Ms Hepperle arose. In the circumstances, we find that the requirements to work from the office and report to Ms Hepperle put the claimant at a substantial disadvantage in comparison with someone without a disability.

237. The respondent has not persuaded us that it did not know and could not reasonable have been expected to know that requiring the claimant to return to the office reporting to Ms Hepperle was likely to put the claimant at that disadvantage. The claimant had sent emails explaining how she felt about encountering Ms Hepperle and the respondent had commissioned Occupational Health advice because of concerns about the claimant's mental health. The OH adviser said the claimant had a mental health issue that seemed to be 'in large part triggered and maintained by her perception of ongoing tensions in the workplace.'

238. The respondent was, therefore, under a duty to make take such steps as were reasonable to avoid the disadvantage to the claimant.

239. We accept that the fact that the claimant was working from home and reporting to someone outside the team was leading to her feeling isolated and that, in itself, was exacerbating the claimant's mental health problems. Permitting the claimant to work from home and report to someone else on a permanent basis would not have been suitable adjustments to make as that would simply have replaced one source of anxiety with another. Nevertheless, however stressful the claimant found that sense of isolation, she had managed to continue carrying out her duties, until she was told to return to the office working for Ms Hepperle. We find that maintaining the arrangement whereby the claimant worked from home reporting to a different manager on a temporary basis was likely to have at least reduced the level of anxiety experienced by the claimant at that time by maintaining some distance

between the claimant and Ms Hepperle and enabling the claimant to avoid one of the triggers that exacerbated her mental health conditions. Certainly, that is what the claimant was suggesting in correspondence with Mr Humphray on 11 December 2018.

240. Ms Pattison acknowledged in her email to the claimant of 8 November that the claimant may wish to explore the possibility of an alternative job role and may have any other suggestions. It would have been a reasonable adjustment to maintain the arrangements that had been in place (the claimant working from home and reporting to Mr Humphray) for a reasonable period whilst the claimant considered those matters.

241. The claimant exercised her right of appeal in the grievance process. The respondent's grievance procedure suggests that appeals should be dealt with in a relatively short timescale: 10 days for the appeal to be lodged, a meeting to be arranged within a further 5 days and an outcome 5 days after the meeting. Although we know that the appeal in this case took a long time to resolve, we were not told why that was but there is no reason for us to think the delay was due to something outside the respondent's control. There is no evidence that it was anticipated, at the time the claimant appealed, that it would take so long to resolve. Permitting the claimant to continue working from home reporting to someone other than Ms Hepperle whilst her appeal was being considered is a step the respondent could have taken to avoid the disadvantage to the claimant. We consider that is a step that it was reasonable to expect the respondent to take.

242. In failing to take these steps we conclude that the respondent failed to comply with a duty to make reasonable adjustments.

243. This complaint by the claimant is well founded.

Allegation 18: victimisation

244. The claimant alleges that she faced a hostile environment on her return to work after a period of sickness absence in February 2019, in that the claimant was isolated from colleagues and the Back to Work Plan was ineffective, and that this constituted victimisation contrary to section 27 of the Act.

245. The claimant's claim of victimisation will only be made out if a) the claimant establishes that she was subjected to a detriment; and b) we find that the reason the claimant was subjected to that detriment was that the claimant brought a Tribunal claim against her former employer.

246. With regard to the first of those points, the claimant's assertion that 'the Back to work plan was ineffective' does not identify any act or deliberate failure to act on the part of the respondent whereby the respondent subjected the claimant to detriment.

247. As for the complaint that the claimant was isolated from colleagues, Mr Barker refers to the following: not being told that mediation had been rejected by Ms Hepperle, not being told Ms Hepperle had refused to manage the claimant and not being provided with 'proper support' on her return to work.

248. It is not clear what 'proper support' Mr Barker is suggesting was not provided that should have been. We accept, however, that there appear to have been some last minute changes made to the original plan that Ms Hepperle would manage the

claimant and that the lack of clarity may have been unsettling for the claimant. However, Mr Humphray continued to support the claimant upon her return: we have not found, on the evidence before us, that he did not do so. We can see that there was a lack of communication with the claimant about mediation, with the claimant having to press for updates. However, whatever failings there may have been in this regard, there are no facts from which we could conclude that they had anything to do with the claim the claimant brought against her former employer.

249. Although not referred to in Mr Barker's written submissions, the claimant suggested in these proceedings that Ms Hepperle sought to isolate her by asking Mr Goulding to spy on her after her return to work in February 2019 and that she was further isolated by another colleague, Mr Lloyd, telling people from outside the organisation that she was no longer part of the team. We have not been persuaded that Ms Hepperle did ask Mr Goulding to spy on the claimant. In any event, whatever Ms Hepperle said to Mr Goulding, there is no evidence that it was motivated by, or had anything at all to do with, the claim the claimant made against her former employer. Similarly, although Mr Lloyd told a third party that the claimant was no longer in his team, there are no facts from which we could properly conclude that he did so because the claimant had made a claim against her former employer, as opposed to simply conveying his understanding of the position as it stood at the time, the claimant being on sick leave.

250. It follows that this complaint is not made out.

Claim 2504225/19

Allegation 20: a. harassment related to disability and/or sexual orientation b. victimisation

251. The claimant alleges that the respondent harassed her and victimised her, on or around 27 August 2019, by changing the claimant's diary without permission from her or her line manager.

252. We have found that, on 27 August 2019, Ms Hepperle made a change to the claimant's diary for 11 September 2019 and asked the administration department to let the claimant know she had done so. We are satisfied, having heard from Mr Garrick and Ms Hepperle, that Ms Hepperle had a good business reason to make the change and it was one that Mr Garrick agreed was right to make. We are also satisfied that the change would not have disadvantaged the claimant in any way given that it was made more than a fortnight before the day in question.

253. In changing the diary without consulting Mr Garrick, however, Ms Hepperle failed to follow the agreed protocol. Notwithstanding that failure, we consider there is no valid basis for inferring that Ms Hepperle's decision to change the claimant's diary and/or her failure to consult Mr Garrick before doing so was related to the claimant's sexual orientation or her disability or was because the claimant had, some two or more years earlier, brought a Tribunal claim against her former employer, a company with which it is not suggested Ms Hepperle had any connection. A theme running through the claimant's complaints, repeated throughout her grounds of claim is that Ms Hepperle is homophobic and that influenced her treatment of the claimant. There is not a shred of credible evidence that that is the case. Another theme

running through the claimant's complaints is that Ms Hepperle acted as she did in order to exacerbate the claimant's mental health problems. We have found no evidence to support such an inference.

254. For those reasons we conclude that these complaints are not made out.

Time points

255. The only complaints we have upheld are those contained in allegations 7 and 17.

256. The claimant brought the proceedings in which those complaints were made on 8 March 2019.

257. The claimant contacted ACAS for the purposes of early conciliation on two occasions before bringing the proceedings.

257.1. The claimant first contacted ACAS and provided prescribed information about a matter on 11 October 2018 (day A). She was send an early conciliation certificate by email on 11 November 2018 (day B).

257.2. The claimant also contacted ACAS and provided prescribed information about a matter on 9 January 2019 (day A). She was send an early conciliation certificate by email on 9 February 2019 (day B).

Allegation 17

258. The complaint within allegation 17 was a complaint that the respondent failed to comply with a duty to make reasonable adjustments.

259. We have found that the duty to make adjustments arose on 8 November 2018. That was the date on which the claimant was disadvantaged by the respondent's practice of requiring POs to work from the office and report to the HEO who led their team and the date from which the respondent was able to take steps which it was reasonable for it to have to take to avoid the relevant disadvantage. Before then the claimant was not disadvantaged by the practice because the respondent did not apply it to her: she had been permitted to work from home and was reporting to someone other than Ms Hepperle.

260. However, we do not find that, on that date, Ms Pattison can reasonably be said to have consciously decided not to make reasonable adjustments for the claimant simply by virtue of the fact that she told the claimant that she had to return to the office working for Ms Hepperle now that her grievance was at an end. Rather, it appears to us, and we find, that she had simply not addressed her mind to the question of whether the claimant may need adjustments to be made at that time. Bearing in mind the guidance in Abertawe Bro Morgannwg University Local Health Board v Morgan we do not find that this was an act inconsistent with complying with the duty to make reasonable adjustments.

261. When the claimant raised the issue of working from home and reporting to another manager as an adjustment in the conversation at the end of November 2018, Ms Pattison said she would take advice and get back to the claimant. They did not discuss the matter again until just before the Christmas break in 2018 and it was not until Ms Pattison's email of 28 December 2018 that she made it clear to the claimant that she was not going to make the adjustment that the claimant had been asking for. In all the circumstances, we find that Ms Pattison did not do an act inconsistent with making the adjustment in question until her email of 28 December 2018. Until then the period within which the claimant might reasonably have expected to make

the adjustment was ongoing. We, therefore, find that, for the purposes of section 123, we must treat the discriminatory act as having occurred on 28 December 2018.

262. As noted above, the claimant brought the proceedings in which those complaints were made on 8 March 2019. That is less than three months from the date of the unlawful act. The complaint in respect of allegation 17 was, therefore, brought in time.

Allegation 7

263. The complaint within allegation 7 concerns the failure to make an adjustment to permit the claimant to listen to music. Clearly this claim was not brought within the primary 3 month time limit if that complaint is looked at in isolation. At the very latest, the three-month time limit expired on 11 December 2018, a month after the first early conciliation certificate was sent to the claimant, if, that is, Ms Hepperle's instruction to the claimant not to listen to music was given some time between 12 and 18 July 2018. If the instruction was given on an earlier occasion in July or in June then the three month time limit expired in September or October 2018. Indeed it is arguable that the respondent decided upon this omission in January 2018, when Ms Pattison said the claimant could not listen to music as requested (although we have found that Ms Hepperle agreed with the claimant at the time that she could still do so discreetly. The claimant is not assisted, even allowing for time spent in early conciliation.

264. Mr Barker submits that this discriminatory omission was part of conduct extending over a period and that, therefore, section 123(3)(a) applies to treat that conduct as having occurred at the end of that period.

265. The only other act that we have found to be discriminatory is the respondent's failure to make the adjustment of permitting the claimant to work from home and for another manager after 8 November 2018 whilst alternatives were considered and whilst the claimant's appeal was ongoing. Applying South Western Ambulance Service NHS Foundation Trust v King [2020] IRLR 168, this is the only conduct that the claimant can rely on as constituting part of the continuing act.

266. We note that these two discriminatory omissions both entailed a failure to make reasonable adjustments. They also both turned on decisions made by Ms Pattison. Beyond that, however, in our judgement the omissions were of a different character. They constituted two separate and discrete failures that were not linked to each other and cannot be said to be evidence of a 'continuing discriminatory state of affairs' in the sense described in Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686, [2003] IRLR 96.

267. The claimant's claim in respect of allegation 7 is only within the Tribunal's jurisdiction if we consider it is just and equitable to extend time. In this regard, we note that the claimant will be prejudiced if we do not permit her to pursue this claim in that she will be without a remedy for the discrimination that occurred. However, we must also take account of the fact that the public interest in time limits being observed. In this case the delay was of more than a few weeks or days. The claimant was told 10 months before she brought her claim that Ms Pattison had said she could not listen to music and was prohibited from listening to music even discreetly in June or July 2018. It is apparent from emails sent to Ms Pattison on 18 July 2018 that the claimant was, by then at the latest, aware of the duty to make

reasonable adjustments and believed that the failure to allow her to listen to music was a breach of that duty. We note that the claimant had mental health difficulties in the late summer and autumn but they did not prevent her from communicating her concerns to Ms Pattison in correspondence and during the disciplinary process. We do not consider that the claimant's mental health difficulties prevented her from bringing a claim. However, the claimant did not simply sit on her hands. She made a complaint through the respondent's grievance procedure in the first instance. In doing so, the claimant acted in accordance with the ACAS Code of Practice on Discipline and Grievances. She allowed the grievance process to take its course (the duration of which was a matter outside her control) and then sought to appeal the decision, again in line with the ACAS Code. The claimant then brought proceedings in March 2019, after pressing the respondent, without success at the time, to progress the appeal. In taking those steps the claimant gave the respondent an opportunity to remedy the discrimination that had occurred, which the respondent did not take at the time. By raising this matter as a grievance in July 2018, the claimant gave the respondent an opportunity to investigate and obtain an account from Ms Hepperle of what had been said. In our judgement, that mitigated the prejudice to the respondent that might otherwise have been caused because it reduced significantly the extent to which the cogency of the evidence was likely to be affected by the delay in claiming. In any event, the only real factual dispute in this part of the case was whether or not Ms Hepperle told the claimant in January 2018 she could listen to music discreetly. There was no dispute at all over the fact that the claimant was not formally allowed to listen to music and the fact that Ms Hepperle told the claimant in June or July that she was not to listen to music.

268. In all the circumstances, we consider it would be just and equitable to extend time for bringing the claim to the date on which the claim was in fact made in March 2019.

269. We conclude, therefore, that the claim in relation to allegation 7 is in time.

EMPLOYMENT JUDGE ASPDEN

REASONS SIGNED BY EMPLOYMENT JUDGE ON 19 May 2021

Annex
List of Claims

List of complaints

Claim 2500446/2019

Allegation 1: a. harassment related to disability and/or sexual orientation; b. victimisation

The claimant alleges that since the moment she started work for the Respondent, but on dates unknown to the claimant, Ms Hepperle discussed the Claimant's personal affairs with colleagues, which the Claimant discovered at a meeting on 7 June 2018.

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Allegation 2: harassment related to disability and/or sexual orientation

The claimant alleges that, in December 2017, Ms Hepperle informed the Claimant that colleagues were talking and gossiping about her, planting seeds in her head to isolate her, and doing the same to them about her.

The Claimant alleges that by doing so the respondent subjected the claimant to unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010.

Allegation 3: harassment related to sexual orientation

The claimant alleges that In December 2017 Ms Hepperle made inappropriate comments to the claimant about the Claimant's sexual orientation and told her not to divulge this on the team as they would not understand and she would be causing more problems for herself.

The Claimant alleges that by doing so the respondent engaged in unwanted conduct related to sexual orientation amounting to harassment within section 26 of the Equality Act 2010.

Allegation 4: harassment related to disability and/or sexual orientation

The claimant alleges that the respondent failed to act in December 2017 to prevent a campaign of harassment by Ms Hepperle.

The Claimant alleges that by doing so the respondent engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010.

Allegation 5: harassment related to disability and/or sexual orientation

The claimant alleges that Ms Hepperle gave the Claimant a warning for her absence in January 2018, stating it was not her decision but that of Ms Patterson.

The Claimant alleges that by doing so the respondent engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010.

Allegation 6: failure to make reasonable adjustments

The claimant alleges that the respondent applied the following PCP(s) which put her at a substantial disadvantage in comparison with persons who are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

(i) The alleged PCP: The Respondent's absence procedure requires a warning to be given if a member of staff has a period of sick leave for more than 8 consecutive days without disability. If a person is deemed disabled, the absence trigger point can be moved to allow for longer absences when related to disability.

(ii) The alleged disadvantage: This PCP put her at a substantial disadvantage in comparison with persons without a disability in the following way(s). The Claimant was deemed disabled by Occupational Health in December 2017. Despite this she was not afforded the extended absence trigger point in accordance with policy. This placed her at a substantial disadvantage as she did not have the benefit of the policy and would fail her probation period due to receiving a sickness absence warning.

(iii) Suggested adjustment: Ms Hepperle conducted a back to work interview failing to adhere to the Respondent's rules, advising the Claimant to use culture and sexuality to help her case, amending and including information in the minutes without the Claimant's knowledge or consent. Ms Hepperle the Claimant a warning for her absence in January 2018, stating not her decision but that of Ms Pattison. The adjustment which should have been made was not to give the claimant the warning and to adhere to the rules on absence.

Allegation 7: failure to make reasonable adjustments

The claimant alleges that the respondent applied the following PCP(s) which put her at a substantial disadvantage in comparison with persons who are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

(i) The alleged PCP: The Respondent does not allow members of staff to listen to music whilst carrying out their office-based tasks.

(ii) The alleged disadvantage: The Respondent agreed as part of a Stress Management Plan to allow the Claimant to listen to music when she felt overwhelmed with stress and anxiety at work. This was never implemented

and eventually removed from the Stress Management Plan by Ms Hepperle without the Claimant's approval. The Claimant was therefore at a substantial disadvantage as she believed she was receiving support, which was then removed, causing damage to her mental health. The failure to allow the adjustment prevented the Claimant from undertaking a means of stress management and so left her at a substantial disadvantage as when experiencing high levels of stress her workload would suffer.

(iii) Suggested adjustment: The adjustment which should have been made was for the Claimant to be permitted to listen to music.

Allegation 8: harassment related to disability and/or sexual orientation

The claimant alleges that, on an unknown date or dates, Ms Hepperle shared personal and highly sensitive information about the Claimant with Ms Fraser, in an inappropriate forum and highly derogatory manner, which the Claimant discovered at a meeting with Ms Fraser on 7th June 2018.

The Claimant alleges that by doing so the respondent engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010.

Allegation 9: failure to make reasonable adjustments

The claimant alleges that the respondent applied the following PCP(s) which put her at a substantial disadvantage in comparison with persons who are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

(i) The alleged PCP: The Respondent's dispute resolution policy requires members of staff to try and resolve any disputes between the parties under the guidance of a line manager.

(ii) The alleged disadvantage: the Claimant had made allegations of harassment and breach of confidentiality against her line manager. The Respondent was aware of the Claimant's depression and anxiety and that they were exacerbated by the actions of her line manager. By imposing the dispute resolution policy regardless of this, the Claimant was at a substantial disadvantage as she was forced to try and resolve the issue without adequate support and was at risk of further detriment to her mental health.

(iii) Suggested adjustment: When the Claimant raised concerns with Ms Pattison about Ms Hepperle having inappropriately shared the Claimant's personal information with Ms Fraser, Ms Pattison instructed the Claimant to talk to Ms Hepperle. The Claimant spoke to Ms Hepperle but the meeting was unsuccessful. The adjustments which should have been made were; (1) for Ms Pattison to tell Ms Hepperle to stop what she was doing to the Claimant,

(2) she should have spoken to Ms Hepperle when the Claimant first raised concerns and (3) for Ms Pattison to accompany the Claimant to the meeting.

Allegation 10: failure to make reasonable adjustments

The claimant alleges that the respondent applied the following PCP(s) which put her at a substantial disadvantage in comparison with persons who are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

(i) The Respondent's grievance policy requires all grievance forms to be submitted on form GA01.

(ii) The alleged disadvantage: In relation to (d) above, the Claimant had raised significant allegations against Ms Hepperle but did not use form GA01. The repeated criticism of the Claimant for failing to adhere to minor procedural errors, despite significant allegations put the Claimant at significant disadvantage as it gave the impression her concerns were not being taken seriously. As the Claimant suffers with stress and anxiety, the belief that she was not being taken seriously affected her mental health.

(iii) Suggested adjustment: The Respondent refuses to make the reasonable adjustment of thinking outside procedural boxes. The adjustments would have been to allow such significant grievances to be made without the criticism for minor procedural error.

Allegation 11: a. harassment related to disability and/or sexual orientation b. victimisation

The claimant alleges that Ms Hepperle refused a flexi-day request made by the claimant on 4 July 2018.

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Allegation 12: a. harassment related to disability and/or sexual orientation b. victimisation

The claimant alleges that in July 2018 (before 18 July 2018) Julie Hepperle bombarded the claimant with emails when she knew the Claimant was upset over her behaviour, specifically emails about an IT issue, training and a 1-2-1.

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Allegation 13: a. harassment related to disability and/or sexual orientation b. victimisation

The claimant alleges that, on an unspecified date but prior to 18 July 2018, Julie Hepperle asked to see the Claimant's personal messages with another member of staff, Karl Wake.

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Allegation 14: a. harassment related to disability and/or sexual orientation b. victimisation

The claimant alleges that, on an unspecified date but prior to 18 July 2018, Julie Hepperle removed a previously agreed reasonable adjustment, namely listening to music.

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Allegation 15: a. harassment related to disability and/or sexual orientation b. victimisation

The claimant alleges that Julie Hepperle removed a previously agreed reasonable adjustment by sending the Claimant to a remote hearing centre (Leeds).

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Allegation 16: a. harassment related to disability and/or sexual orientation b. victimisation

The claimant alleges that, on an unknown date between 4 July and 18 July 2018, Ms Hepperle amended the Claimant's SOP record.

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Allegation 17: failure to make reasonable adjustments

The claimant alleges that the respondent applied the following PCPs which put her at a substantial disadvantage in comparison with persons who are not disabled and the respondent failed to comply with a duty to make reasonable adjustments to avoid that disadvantage.

(i) The Claimant was allowed to work from home due to the dispute with Ms Hepperle. This arrangement was then removed on 08 November 2018 following the outcome of the grievance and the Claimant was advised that she must return to work with Ms Hepperle.

(ii) The alleged disadvantage: by revoking the Claimant's ability to work from home, the Respondent required the Claimant to work with a member of staff she had alleged was harassing her. The Respondent was aware of the Claimant's mental health conditions and the history between the Claimant and Ms Hepperle. The return to working with Ms Hepperle placed the Claimant at a substantial disadvantage as her anxiety would be increased and she would have to work with someone from whom she did not receive adequate support.

(iii) Suggested adjustment: The Claimant was allowed to work from home, but this facility was withdrawn on 8 November 2018. The adjustment which should have been made was for the Claimant to be permitted to continue to work from home until a change of manager could be facilitated permanently.

Allegation 18: victimisation

The claimant alleges that the Claimant faced a hostile environment on her return to work after a period of sickness absence in February 2019, in that the claimant was isolated from colleagues and the Back to Work Plan was ineffective.

The Claimant alleges that by doing so the respondent subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Claim 2504225/19

Allegation 19 a. harassment related to disability and/or sexual orientation b. victimisation

The claimant alleges that the admin department returned files to the claimant without cause, falsely claiming that she was removing barcodes from files.

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.

Allegation 20: a. harassment related to disability and/or sexual orientation b. victimisation

The claimant alleges that, on or around 27 August 2019, the respondent's admin department changed the claimant's diary without permission from her or her line manager.

The Claimant alleges that by doing so the respondent:

The Claimant alleges that by doing so the respondent:

a. engaged in unwanted conduct related to disability and/or sexual orientation amounting to harassment within section 26 of the Equality Act 2010; and/or

b. subjected the claimant to victimisation within section 27 of the Equality Act 2010.