Case Number: 2301231/2017
2301584/2018

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**
Mr H Smith
Mr S Goodden

BETWEEN:

Ms A Parkinson **Claimant**

AND

The Commissioner of Police for the Metropolis **Respondent**

ON: **13-15 May, 15-19 July 2019 and on 2 and 28 August 2019 in Chambers**

Appearances:

For the Claimant: **Ms K Annand, Counsel**

For the Respondent: **Mr R Oulton and Ms A Chute, Counsel**

JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. The Claimant's claim in case number 2301231/2017 that the Respondent failed to make reasonable adjustments (sections 20 and 21(1) Equality Act 2010 ("Equality Act")) succeeds following a concession by the Respondent.

2. The Claimant's claims in case number 2301584/2018 of failure to make reasonable adjustments, discrimination arising from disability and harassment related to disability succeed.

3. The Claimant's claims of direct disability discrimination (s13 Equality Act) in case numbers 2301231/2017 and 2301584/2018 are dismissed having been withdrawn.

4. The Claimant's claims in case number 2301584/2018 of indirect disability discrimination and victimisation (sections 19 and 27 Equality Act) are dismissed having been withdrawn.

Reasons

1. The Claimant presented two claims to the Tribunal. The first claim (2301231/2017) was presented on 9 May 2017. In the first claim the Claimant claimed failure to make reasonable adjustments and direct disability discrimination. The claim of direct discrimination was withdrawn.

2. The second claim (2301584/2018) was presented on 1 May 2018. In the second claim the Claimant claimed failure to make reasonable adjustments, direct disability discrimination, discrimination arising from disability, indirect disability discrimination, harassment related to disability and victimisation. The claims of direct discrimination, indirect discrimination and victimisation were withdrawn.

3. The Tribunal began hearing the case on 13 May 2019. Unfortunately Mr Oulton became indisposed on the third day of the hearing and the Tribunal was obliged to adjourn the case until 15 July at which point Ms Chute had taken over as the Respondent's representative. This was not ideal for the parties and witnesses and the Tribunal was grateful to everyone concerned in the case for their co-operation in resuming it as early as possible.

The relevant law

4. The relevant law as regards the claims that were not withdrawn is set out in sections 15, 20, 21(1) and 26 and Schedule 8 paragraph 20 Equality Act which provide as follows:

15 Discrimination arising from disability

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

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

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

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

20 Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

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

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

21 Failure to comply with duty

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

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

26 Harassment

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

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

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

(i) violating B's dignity, or

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

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

(a) the perception of B;

(b) the other circumstances of the case;

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

Schedule 8 Part 3 paragraph 20(1):

A is not subject to a duty to make reasonable adjustments if A does not know, and

could not reasonably be expected to know…that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

5. It is also relevant to consider the law on the burden of proof which is set out in section 136 of the Equality Act. In summary, if there are facts from which the tribunal could decide in the absence of any other explanation that the Claimant has been discriminated against, then the tribunal must find that discrimination has occurred unless the Respondent shows the contrary. It is generally recognised that it is unusual for there to be clear evidence of discrimination and that the tribunal should expect to consider matters in accordance with the relevant provisions in respect of the burden of proof and the guidance in respect thereof set out in *Igen v Wong and others [2005] IRLR 258* confirmed by the Court of Appeal in *Madarassy v Nomura International plc [2007] IRLR 246*. In the latter case it was also confirmed, albeit applying the pre-Equality Act wording, that a simple difference in status (related to a protected characteristic) and a difference in treatment is not enough in itself to shift the burden of proof to the Respondent; something more is needed.

6. We heard evidence from the Claimant and from her Police Federation Representative Sue Palmer. Evidence for the Respondent was given by Police Sergeant Cook, the Claimant's line manager at the material time and his line manager Detective Inspector Luke Williams.

7. There was a bundle of documents in three volumes containing in total 1065 pages including additional documents handed up during the course of the hearing. References to page numbers in this judgment are references to page numbers in that bundle. The bundle was not organised chronologically and this made it difficult for the Tribunal to find documents, slowing down the process of reaching its findings of fact in a case in which there were two consolidated claims and the relevant facts began almost four years before the hearing. We would recommend that in future cases the parties ensure as far as possible that the majority of the documents are presented to the Tribunal in chronological order.

The agreed issues

8. The agreed issues were amended by agreement between the parties during the course of the hearing. The amended issues are set out in an appendix at the end of these reasons.

Findings of fact

9. Although the first claim was conceded by the Respondent at the end of the hearing it is necessary to set out some of the factual background from the period to which the first claim relates, namely 5 October 2015 to 9 May 2017 in order to deal with the issues arising in the second claim.

10. The Claimant was a police constable with the Respondent, the Metropolitan

Police Service between 22 February 2004 and her ill health retirement on 19 January 2019. By virtue of s42 Equality Act her service is treated as employment by the Respondent.

11. It was conceded by the Respondent that the Claimant was a disabled person by virtue of her condition of dyslexia. The condition was diagnosed in October 2004 during the Claimant's training. We find as a fact that the Respondent was aware of the Claimant's disability from the point of diagnosis in 2004 and for the purposes of the Claimant's claims under s 20 and 21 Equality Act that it was aware that the Claimant was likely to be placed at a disadvantage because of her disability from the same point in time. We accept the Claimant's submission that on the facts of this case what matters is what is known to the Respondent as an organisation, not the state of knowledge of any one individual. We would have said more about our reasons for this conclusion but for the fact that it seems to us implicit in the Respondent's concession of the whole of the Claimant's first claim that it was also conceding that the Respondent as an organisation had knowledge of the Claimant's disability throughout the period to which both of her claims relate. It was clear from the facts of this case, and from the grievance outcome that the Claimant received in June 2017 that the Respondent did not have in place at the time of the Claimant's employment adequate systems for ensuring that information about an officer's disabilities transferred with them when they moved from one Borough to another. To suggest however that the Respondent did not on that basis have knowledge of the Claimant's disabilities at the relevant time would wholly undermine the regime of protection for disabled workers set out in the Equality Act.

12. Prior to the events giving rise to the claims the Claimant was employed in Islington where various adjustments had been put in place to enable her to carry out her duties despite her dyslexia. The Claimant had been assessed during her training and specific recommendations made. There was a further assessment by occupational health in 2013 leading to further recommendations. By the time the Claimant came to be working in Islington she had been provided with various forms of assistive technology including Dragon dictation software and Text Help Read and Write software. She found these useful and effective and made this clear to Sergeant Cook when he became her line manager (page 145). She explained that the software needed to be uploaded onto a terminal and training was then required to implement the voice recognition element. Although time is needed for the software to adjust to the user's voice, it was, she explained, "a good piece of software" that helped her with her dyslexia.

13. In October 2015 the Claimant was moved from Islington to Southwark for personal reasons. The Respondent conceded at the end of the hearing that in the period following her transfer and leading to the first claim it failed to make the reasonable adjustments necessary to enable her to continue to discharge her role effectively or in the alternative that it had failed to provide the Claimant with auxiliary aids that would have alleviated the substantial disadvantage to which the Claimant was put as a result of her dyslexia.

14. It was not conceded by the Respondent that it had not made reasonable adjustments during the period of the second claim. Its position was that by June or July 2017, a matter of weeks after the first claim was submitted, that it had made reasonable adjustments and/or provided auxiliary aids because it had given the Claimant access to version 9.5 of Dragon software and Text Help Read and Write on the desktop computer in the YOTS office. The Claimant did not dispute that this software had been made available. However she asserts that the measures put in place were insufficient to alleviate the disadvantage caused by her dyslexia.

15. The background to the software being installed on the desktop in the YOTS office is as follows. The Claimant had initially asked for her computer for Islington to be transferred to Southwark, but was told that this was not possible (email 1 October 2015 page 147). She therefore asked for a suitably equipped computer to be made available to her before she transferred to Southwark. This did not happen. Instead, once she had arrived in Southwark, the Claimant was launched on a protracted and ultimately frustrated quest to be supplied with suitable IT equipment with assistive technology. It later transpired, when the Claimant received the outcome of her grievance, that it would in fact have been possible to transfer the adapted equipment from Islington to Southwark. Had this simple step been taken a great deal of stress, time and effort on the part of the Claimant and her managers and ultimately these legal proceedings themselves, might have been avoided.

16. The Claimant began working in the Youth Offending Team Service ("YOTS") in Dulwich Road in January 2016, reporting to PS Cook. She was moved to an office based role in April 2016 and returned to the YOTS office on 16 September 2016. The work she was required to undertake from April 2016 was largely administrative, consisting principally of completing "Merlin" reports which involved reviewing multiple sources such as crime reports, intelligence reports and the Police National Computer to see whether individuals had been arrested. The Claimant was also required in some instances to look into any background of offending in family members. The work therefore involved processing large amounts of information, creating a narrative, reaching a conclusion and typing it into the Merlin report. The Claimant found this work difficult and time consuming because of her dyslexia and particularly so without the assistive technology she needed. She was also liable at any time to be called upon to do AID (non-scheduled police public order duties).

17. That same month the Claimant forwarded a request for assistive technology to PS Cook (page 145) and he then became involved in the attempt to obtain the necessary IT equipment. At page 151 there was an exchange of emails between PS Cook and "HRAC People Services" that was typical of the correspondence on the issue – an automated response would be generated and an indication given that the request was being processed by an "HR Agent". Despite PS Cook making clear in the email that the Claimant's performance and welfare were being affected, there was no satisfactory response. It was clear from the email correspondence that the Claimant was

expected to locate the equipment for herself through the Respondent's "ibuy" system. All IT equipment was being sourced through the Respondent's third party provider which was initially Capgemini and latterly ATOS. Throughout May, June and July of 2016 he Claimant experienced problems with various elements of the equipment she needed such as the battery and the smartcard and she was impeded by what was described by a very large backlog of calls (email from Stephen Magill 29 June 2016 page 183). PS Cook continued to intervene at intervals (pages 191, 198 and 234) and he too was evidently frustrated by the system with which he was required to deal. The situation dragged on, unresolved, throughout the remainder of 2016 and the early part of 2017 despite the Borough Commander, Simon Messinger, informing the Claimant in September 2016 that he would authorise the purchase of a new laptop. The Claimant's experience, which she described in detail in witness evidence that was corroborated by the contemporaneous documents, could properly be described as Kafkaesque. She described herself as feeling "stuck in a nightmare" – a description that seemed to the Tribunal to be amply justified by her experience. The bundle contained numerous examples of individuals trying and failing to work with the Respondent's byzantine IT procurement system to obtain an adequately functioning laptop for the Claimant. In December 2016 the laptop was rebuilt three times but the smartcard was not working (pages 313-314) and needed to be reset, requiring the Claimant to send it to Inverness (page 340). On 2 December 2016 PS Cook was told that there are no foundation laptops in stock and no expected date for new stock (page 319). On 11 January the laptop was returned to the Claimant and was still not working (page 364).

18. On 2 December PS Cook had also referred the Claimant for an occupational health assessment (page 786-789). The grounds for the assessment were set out on page 798 and included manifestations of stress and anxiety arising from her home circumstances. The referral also mentioned the Claimant's dyslexia and briefly alluded to difficulties in providing her with functioning assistive technology. There was a telephone assessment conducted by Anna Ojo on 12 January 2017 (page 818) as a result of which the Claimant was assessed as fit to work but with reduced workload or light duties until she had completed therapeutic counselling. The Claimant mentioned the IT problems during the assessment (page 818).

19. On 19 January 2017, fifteen months after beginning her transfer to Southwark, the Claimant submitted a grievance (pages 697-698). Her complaints were as follows:

    a. That the Borough had failed to meet her dyslexia needs and as the majority of her work was administrative she felt set up to fail;
    b. An issue about her working hours with which the Tribunal is not concerned in this case;
    c. The basis for the occupational health referral having been primarily the Claimant's home life. The Claimant expressed the view that her problems were also attributable to the Respondent's failure to provide her with the IT equipment she needed.

20. The Respondent did not provide a grievance outcome until June 2017 and we return to that below.

21. PS Cook made a second occupational health referral three months after the first on 2 March 2017. The occupational health assessment was conducted by telephone on 28 March by an occupational health adviser, Yoma Itoje. Her report was at page 821 and it noted that the Claimant had made contact with Access to Work and had an appointment scheduled for 6 April. The detailed Access to Work report was at page 742 and it made a series of recommendations in terms of assistive technology, the majority of the cost of which would be met by Access to Work (approved Access to Work grant dated 10 April 2017 page 801):

    a. Dragon ProAccess individual Version 15 (or latest approved) including Binaural Noise Cancelling Headset;
    b. Text Help Read and Write Gold AtW Download version;
    c. Olympus DM770 digital voice recorder
    d. Seven Half Days' Dyslexia Strategy training;
    e. Half Day's Dragon Pro-Access refresher training including using the voice recorder with Dragon;
    f. Half day refresher training for Text Help Read and Write Gold;
    g. Pack of 5 coloured overlays.

22. On 28 April 2017 a meeting took place between Jane Mann, the Respondent's Head of Service Assurance & Performance for Digital Policing, PS Cook, a representative from ATOS and a representative from HR to discuss "options to expedite a resolution" in relation to the Claimant's need for dyslexia adjustments. The Claimant had by then been struggling to complete an administrative workload for over 12 months without any assistive technology in place. It was proposed that the XP desktop computer in the YOTS office be utilised. Notwithstanding that by this point the Claimant had been asking for a suitably equipped computer for 18 months (since October 2015) the Respondent was offering a solution that Jane Mann herself admitted might be prone to difficulty. She said:

> **"Unfortunately after checking the details against that asset given it was found that the machine is one of the older XP machines that might well present performance issues. As a result we have subsequently identified a new XP machine which will be built and tested offsite.**
>
> **Our aim is to be in a position to deliver the machine to you next week together with an engineer so any issues can be resolved without further delay. However in order to ensure it is fully operational with your headset, we would ask whether you could send one of your headsets to Fiona Standing 19th Floor ESB to hopefully reach us as early as possible next week (preferably by Wednesday).**
>
> **As stated this is an interim solution until such time as we can either resolve the issues with your current XP laptop or provide an alternative solution."**

It was therefore not the Respondent's intention at the time that this solution would be a permanent solution to the problems with which the Claimant was struggling. In practice however all further attempts to provide the Claimant with assistive technology that was nearer to the recommendations made by Access to Work effectively ceased once this interim solution had been fully implemented.

23. A problem with the headset manifested itself a week later when it emerged that it was not picking up sound (page 437).

24. On 9 May 2017 the Claimant submitted the first claim to the employment tribunal complaining of a failure to make reasonable adjustments and direct disability discrimination. At that point the Claimant still did not have a functioning computer with any version of Dragon software or Text Help Read and Write. It is the Respondent's case that the requisite adjustments were made shortly after that with the provision of Dragon 9.5 and Text Help Read and Write Software on the desktop computer in the YOTS office. However that was not the end of the Claimant's difficulties as we now go on to describe.

25. On 15 May 2017 the Claimant sent the email at page 445 to PS Cook setting out the details of the equipment recommended by the Access to Work Report that had been produced the previous month. He forwarded it to Jane Mann and Fiona Standing (an employee of ATOS). Fiona Standing responded the same day with the email at page 444. She addressed each item in turn as follows:

    a. Dragon software: the Claimant was seeking the latest version that the Respondent was currently using, which according to her email was Dragon Naturally Speaking Version 13. Ms Standing's response was *"This is done – the latest version is on the XP desktop we supplied last week. Once the newer version has passed UAT then we will supply a new desktop, but no ETA for that yet although I have asked for an update from the project team."*
    We consider that to have been a not wholly accurate response as the version that had been given to the Claimant was version 9.5, not version 13.

    b. "Latest up to date desktop": Ms Standing gave the elliptical response: *"Again at this point in time this is complete as above. Once 8.1 desktop UAT is complete for Dragon".*

    c. "Until they can put the latest software on the laptop". The Claimant's point about a laptop was that she could use it anywhere (including away from noisy environments), she would not be restricted to one terminal and would have greater opportunity to train the software to recognise her voice, which was a necessary part of the process of ensuring that the software worked effectively for her. Ms Standing replied *"There is no project or plan to get the 8.1 laptop running with*

> *the Dragon software, the 8.1 laptop rollout has now finished. The Mobility (Win10 laptop and tablet) project starts in September 2017 – April 18. Whether Anita gets one will depend on the type of worker she is classed as (flex, field, fixed). We are awaiting confirmation whether AT users are in scope with this project also*."

26. This last comment was a surprising state of affairs in light of an email (page 430) sent to PS Cook by Graham Healy, manager in Digital Policing only two weeks earlier on 28 April 2017 which said "*From a business perspective, I can confirm that funds have been made available to integrate Assistive Technology apps onto WIN 8.1 so that when the new laptops and tablets are deployed later this year they will work with the AT apps from the outset. The purchase order for this work has been raised and is now with the supplier I cannot offer any timescales as yet but will enquire and get back to you."* That email had led the Claimant to believe that she would have a functioning laptop by August 2017. Fiona Standing's email suggested that that was not going to be the case. Graham Healy's email was sent in response to an email from PS Cook suggesting that legal proceedings against the Respondent were now imminent, as was in fact the case.

27. Arrangements were then made for David Easton, IT trainer, to give the Claimant some training on the Dragon software that had by then been installed in the desktop in the YOTS office. He attended the YOTS office on 1 June 2017. However it transpired that the desktop had insufficient memory to support the software. It had 2GB when 4 GB was required. At page 468-9 is an email dated 2 June from the Claimant to Jane Mann explaining this and also pointing out that the training provided had been unsatisfactory in a number of respects. The trainer had been late, having gone first to the wrong address, the environment had been noisy and the Claimant had had to interrupt the training to perform various work tasks. Subsequently David Easton emailed PS Cook and urged him to *"if you could put any pressure on whoever regarding the extra memory needed in the computer, then please do. She really needs to be able to practise, at least simple dictation and correction, before she forgets what we covered yesterday and the lack of memory will seriously hinder that".*

28. On 12 June 2017 the Claimant received her grievance outcome from Sophie Sterling (pages 700-741). The delay was attributable to certain matters outside Ms Sterling's control and to the thorough approach she took to the grievance investigation. Certain passages stand out. At page 719 Ms Sterling comments "…It is quite apparent that the assistive technology (AT) issues and waiting periods for software/hardware that PC Parkinson has endured whilst at Southwark have been inexcusable", adding in the following numbered paragraphs:

> **"4.9 The AT issues could have been rectified with a call to the then ICT provider, Capgemini, by either PC Parkinson or Sergeant Fraser, asking for clarification regarding the removal of the workstation that contained her agreed reasonable adjustments, had this action been taken, the workstation could have been allocated as a Southwark resource, and PC Parkinson would have**

been able to continue on with her duties.

4.14 By his own admission Sergeant Cook stated in retrospect, he should have completed a handover with PC Parkinson's previous line managers, Sergeant Jerry Pickers (MD) and Sergeant Neil Fraser (NI), as he would have been better equipped to deal with the current issues.

4.30 On countless occasions, Sergeant Cook has tried in vain to contact the necessary people and departments so as to help expedite the arrival of PC Parkinson's reasonable adjustments, but has been unable to make progress as he has been hindered by the lack of ownership by HQ Digital Policing, ATOS and Capgemini in regards to this issue, and unfortunately as he is the first point of contact for PC Parkinson, he is the face of the borough. He has been left somewhat unsupported and in desperate need of answers as to how best to support his officer.

6.2 Public sector organisations are required to procure goods, services or constructions from outside companies who have completed and successfully bid on the contracts that have been tendered. The MPS have, over a number of years, acquired services from outside companies, who, unlike the MPS, have not placed reasonable adjustments or the needs of AT users within the forefront of their services. It would also be remembered that companies who have been successful in attaining public sector contracts often outsource work to third party companies, which may lead to a delay on receiving of goods/services. The above, I believe may have unfortunately led to PC Parkinson's current AT situation.

6.3 The breakdown of communications can be seen throughout the emails provided, where if a senior supervisor had intervened at an earlier period and rectified the situation, this grievance could have been prevented. However it should be noted that Capgemini and ATOS have made attempts to rectify the issues that have been raised, even if the attempts have not concluded with PC Parkinson receiving the software that she requires.

8.4 Clear guidance needs to be provided to all first line managers regarding reasonable adjustments and where this information can be located. All staff that require reasonable adjustments should have a copy of these adjustments located within their Met HR records. When staff members are transferred/promoted etc, there should be an accurate handover, so as to inform the new line manager of any reasonable adjustments, misconduct and welfare/development issues."

29. The Tribunal notes that many of the conclusions reached and recommendations made are not relevant to this specific case (being comments directed at the Respondent's procurement processes and the approach of the third party suppliers.) Some are comments on matters within the scope of the first reasonable adjustments claim which has already been conceded by the Respondent. However at bottom of page 737 is a clear instruction that there should be no further delay by Digital Policing in conjunction with ATOS in providing the Claimant with her "suitable reasonable adjustments".

30. At page 468 the Claimant urged Ms Sterling to include the Access to Work recommendations within the body of her grievance outcome report. Ms

Sterling replied at page 467, falling short of agreeing to do so. “As for the access to work document, I have referred to it within the report and your reasonable adjustment should reflect the below, as far as the organisation can deliver to you as they can only do so much…. I cannot add these to the recommendations, as they did not form part of my assessment, which was to look into the software/hardware issues that you were experiencing”.

31. The Claimant attended the fire at Grenfell Tower on the night of 13-14 June 2017. An account of its effect on her is at page 475A, an email to PS Cook asking to be excused from AID during a shift starting at 23.00 on the night of 14 June. It was plain from the email that the incident had had a serious effect on the Claimant’s state of mind. The Claimant was scheduled to be doing a considerable amount of AID at this time, which interfered with her ability to spend time in the YOTS office practising with the Dragon software on the desktop computer, which at this point had only been available to the Claimant for a very short period of time and was already dogged by the problem of insufficient memory on the computer.

32. The Claimant was therefore struggling with her work during this period. She found the YOTS office a difficult environment in which to concentrate and practise with the Dragon software. The software had a tendency to pick up background noise which made it unsuitable for use in a noisy office environment and was one of the reasons that Claimant had been keen to be provided with a laptop. On 23 June PS Cook emailed David Easton, the IT trainer, asking him to make contact as the Claimant had reported to him and ATOS that the voice recognition software was not picking up her voice (page 476). He added “I remember you saying on the day that Anita had to persevere and over time the software could get better.” Mr Easton replied on 28 June attaching a statement (page 483-485) recording his thoughts on Anita’s training and why she was struggling with the software. His assessment was that the Claimant’s difficulties were derived mainly from what he described as “her poor diction and grammar with dictation often rushed and without thinking about what she was going to say”.

33. It was unclear to the Tribunal whether when Mr Easton produced this report the Respondent had attempted to address the problem of inadequate memory on the Claimant’s computer. But whether or not there had been an attempt to upgrade the memory before Mr Easton produced his report, it transpired on 17 July when Mr Easton visited the office again with Fiona Standing, that the memory had not in fact been upgraded to 4GB as recommended. It had only 3.5GB (Claimant’s witness statement paragraph 140). That remained the case well into 2018 - on 5 March 2018 an email to the Claimant from Digital Policing (page 554) confirmed that her workstation had only 3.5GB of RAM “which will make text help read and write run slow and freeze” – a problem of which the Claimant complained regularly (including in an email to Sophie Sterling on 6 July 2017 (page 486)). Therefore as late as March 2018 the Claimant was advised that her machine needed to be upgraded to 4GB RAM and that she should log a request call with authorisation from her Finance and Resources Manager.

34. Given the chronology, the Tribunal consider that on a balance of probabilities, Mr Easton was basing his observations of the Claimant in his report on his experience of her on the training day on 1 June, at which point it was he himself who identified the memory problem as likely to have caused the software to perform poorly. Furthermore the Claimant had only just been provided with the software at that point. This makes Mr Easton's assessment of the Claimant difficult to comprehend and undermines its relevance. As Ms Annand pointed out in her submissions, the Claimant had used the software in Islington and would therefore have been in a position to know whether it was operating properly or not. She would not have suggested to PS Cook that she be provided with it or have referred to it as a useful piece of software if the problems had been her own inability to use it properly. The specific problems of which she complained – that Text Help Read and Write would keep disappearing (a matter which cannot have been related to the Claimant's grammar or diction), and that the software would freeze or run very slowly (pages 486, 488, 554-555, 573 and 575) were problems she raised repeatedly. Slow running and freezing was also a problem that the engineer who would visit in July 2017 and the Respondent's IT provider in March 2018 both confirmed was attributable to insufficient memory on the computer. Although it was put to the Claimant that the IT provider might have been wrong, the Respondent did not have any evidence to suggest that this was the case. The evidence points the other way – that the Claimant's experience of the equipment with which she had been provided was consistent with the desktop computer having insufficient memory to run the assistive software effectively.

35. The Respondent's evidence in support of its assertion that the problems lay principally with the Claimant herself rather than with the equipment with which she had been provided, thus consisted solely of Mr Easton's report. This fell far short of convincing the Tribunal that the problems the Claimant was experiencing with the software were of her own making rather than with the equipment with which she had been provided. The evidence clearly suggests that the problems arose from the inadequacies of the equipment that had been supplied to her.

36. The Claimant emailed Digital Policing again on 10 July asking for Dragon Version 11 to be installed. Fiona Standing replied (page 489) saying that the Claimant was licensed to get version 11, but that version 11 did not work on the XP computer that the Claimant was using. However once testing on Win 8,1 was complete she would be given a new 8.1 machine and upgraded to version 13.5. This seems to be at odds with what Ms Standing had said on 15 May as reported at paragraph 24(c). The Claimant replied (page 488) describing in detail the problems she was still having with the arrangements that had been put in place for her. These included:

    a. The fact that she was doing a lot of AID and therefore had little time to practise with the Dragon software and train it to recognise her voice;
    b. The fact that she was limited to one fixed terminal – a laptop would

have given her much more flexibility;
c. The tendency of the software to freeze;
d. The tendency of Text Help Read and Write to disappear.

37. The visit by David Easton and Fiona Standing referred to in paragraph 33 took place to enable them to see whether the software problems could be resolved. They urged the Claimant to speak very slowly to try to get the software to function, but her speech had to be so slow that it became impracticable for her to work effectively. The engineer who accompanied them confirmed during the visit that the requisite memory had not at that point been installed onto the computer – it still had only 3.5 GB of memory. Despite this fact, at page 1022-3 there was an exchange of emails between David Easton, Fiona Standing and Jane Mann, copied to PS Cook, the gist of which was that the problem lay in the Claimant's hands and not in the technology. The Tribunal found that conclusion very difficult to reconcile with the fact that at the time the computer on which the Claimant was working had insufficient memory to support all of the software she needed to help her work effectively. As we have already noted, even if the Claimant's grammar and diction had contributed to her difficulties it is difficult to understand how they would have caused Text Help Read and Write to disappear. Fiona Standing herself concedes at page 1023 that the noisy office environment with a radio playing at high volume was probably not helping matters. The Claimant gave a detailed description at paragraph 141 of her witness statement, which is compatible with the Tribunal's own observations based on the video evidence the Claimant provided and to which we return below, of her frustrations at working with the hardware and software combination provided to her at this time. The Tribunal accepted that the situation was immensely frustrating for the Claimant.

38. Her difficulties were exacerbated by the nature of the work PS Cook was giving her to do and in particular the preparation of Merlins, which were designed to generate risk assessments about young offenders to enable the design of suitable interventions. As noted previously, the task involved substantial amounts of typing, dictation and information management and the Claimant had to work long hours in order to complete her work. It is not surprising that she found very stressful the combination of the type of work she was being given and the ineffectiveness of the assistive technology.

39. About a month after the Grenfell Tower fire PS Cook prepared a UPP (Unsatisfactory Performance Procedure) Notice under the Police (Performance) Regulations 2012 regarding the Claimant's performance in her role and dated it 18 July 2017. It was unclear whether this was actually sent to the Claimant, but what was clear was that Sergeant Cook had multiple concerns about the Claimant's performance by this point. It is also clear from the way that PS Cook described the issues at page 491A-B that his concerns were inextricably bound up with the Claimant's IT issues and his perception of where the responsibility lay for the difficulties she was experiencing. By this stage he was expressing the view that the difficulties lay almost entirely with her.

40. In an exchange of emails with the Claimant on 10 July about her circumstances including the IT issues and the fact that she was regularly being asked to do AID, PS Cook had maintained that the Claimant was on a development plan rather than any formal performance management process (page 487A). This is confirmed by the document at page 463, which was PS Cook's input in to an application for an alternative role as Safer Schools Officer which the Claimant had made on 30 May 2017. PS Cook did not support the application on the grounds that her performance was below standard in her current role, that she required close supervision to monitor her work and that the role required working without supervision. He also pointed out that she was on a development plan for "her failure to manage risk around young people effectively. Not the quantity of work neither her lack of IT skills". The suggestion that it was the Claimant's performance in risk assessment rather than the speed of her work was however at odds with the content of the UPP Notice referred to in the preceding paragraph, whose focus was the Claimant's output and with the minutes of the case conference on 12 September 2017 in which PS Cook recorded that "The quantity of your work is not there yet, but the quality has improved" (page 491G).

41. The Claimant herself described her development plan as "management action" and clearly perceived herself as being performance managed. In her email of 10 July to PS Cook (page 487B) she alluded to the fact that she was being impeded by ongoing IT problems, although there were other issues at that point including her domestic circumstances and the frequency with which she was being asked to do AID. However the Claimant went on sick leave on 20 July and did not return to work until January 2018. PS Cook's performance concerns were not pursued and were superseded by a process directed at the Claimant's attendance.

42. In that regard the Claimant was referred by occupational health to see a Consultant Psychiatrist, Dr Price on 6 September 2017, by which time she had been absent from work for over six weeks. The report, at page 826-828 diagnosed the Claimant as having generalised anxiety disorder, concluded that she was not fit for work at the time, noted her dyslexia as a disability under the Equality Act and confirmed that with the appropriate reasonable adjustments, treatment, help and support "she will be able to return back to her previous role and be able to offer a good service in the future". He also reiterated that the issue with the Claimant's Dragon Software should be looked into as soon as possible.

43. A case conference took place on 12 September 2017. PS Cook met with the Claimant and her Police Federation representative Sue Palmer. Catherine Dolding from HR and a note taker were also present. However Dr Price's report was not available prior to the meeting and Catherine Dolding followed up with occupational health afterwards to find out what Dr Price had said (page 491R). Having received the response summarising the report at page 491Q she then discussed the report with PS Cook and wrote a further email to occupational health on 13 September (page 491O) setting out the

Respondent's position at the time, which was that reasonable adjustments had already been made and the Claimant's ongoing difficulties with her computer equipment were of her own making. She said that Dragon Software had already been installed and that the "trainer/expert" (which we take to be a reference to David Easton) had told her that the software was working across the Metropolitan Police Service and had been tested in the Claimant's presence and found to be working correctly. This last point is not consistent with the findings we have made at paragraph 37. PS Cook confirmed at the meeting that the Claimant would remain on the "development plan" until there was no further need for it. He acknowledged that additional pressure on the Claimant could arise from remaining on a development plan (page 491I).

44. Following the case conference PS Cook remained in regular contact with the Claimant and occupational health, seeking progress reports on the Claimant's likely return date. On 13 October (page1030) he wrote to occupational health adviser Yoma Itoje seeking an update and informing her that he had sent the OCU Commander, Simon Messinger, a request in accordance with the Respondent's sickness policy, asking him to extend the Claimant's full pay rather than allowing it to reduce to half pay. Simon Messinger agreed to that request. On 20 October Ms Itoje replied after having had a telephone review with the Claimant. Her email (page 1032-3) refers to the ongoing software issue and notes that during the case conference on 12 September she had been advised that version 13 of the Dragon software would be available in December 2017. In fact the position was more nuanced. Catherine Dolding had explained at the meeting (page 491I) that even if Version 13 had been recommended it would not be approved if it was not compatible with the Respondent's systems at the time.

45. Ms Itoje's recommendation was that the Claimant refrain from AID duties and work only 5 hours in an office environment until she was assessed by the occupational health physician. She went on to say:

> **"From my clinical opinion my recommendation is that she refrains from AID duties and works only 5 hours in an office based environment for the time being until she is assessed by the OHP.**
>
> **Her sick note expires on 9th November 2017; therefore there is a possibility of a return to work on 10th November 2017.**
>
> **PLAN:**
>
> **As a way forward, I have arranged an urgent Occupational Health Physician's appointment on 15th November 2017 and I will be guided by the recommendations of the OHP".**

46. In light of that recommendation on 20 October PS Cook wrote to Simon Messinger, asking him to reconsider the decision to extend the Claimant's full pay beyond 183 days (page 491W).The basis for this request was his assertion that the Claimant already had IT equipment in place that supported her needs and his interpretation of the occupational health report by Ms Itoje as meaning that the Claimant was fit to return to work on 10 November on five

hours a day with no AID in an office based environment. In the Tribunal's view the occupational health report was somewhat ambiguous, but at its highest was suggesting that five hours a day with no AID was an interim arrangement until the Claimant had seen the occupational health physician.

47. On 24 October PS Cook issued the Claimant with a Management Action Notification requiring her to return to work on 10 November 2017 when her current sick note expired (page 491Y). The Claimant did not attend work on 10 November and was then required to attend a Stage 1 UPP (Unsatisfactory Performance Procedure) meeting on 27 November. A summary of the meeting was at page 492. The Claimant was again accompanied by Sue Palmer. The Claimant expressed the view at the meeting that there were a number of reasons for her absence for stress including her ongoing problems with adjustments to the technology she was using at work. PS Cook informed the Claimant at the meeting that her attendance was unsatisfactory and also informed her of his intention to issue a Written Improvement Notice ("WIN"). He did so despite the fact that all those present at the meeting were aware that the Claimant was scheduled to have a meeting with the occupational health physician Dr Karin Schuchert-West on 5 December. Despite knowing this PS Cook issued a WIN the day after the meeting, giving the Claimant until 4 December – five working days – in which to improve her attendance, with a requirement to maintain satisfactory attendance thereafter (page 496A). The improvement period stipulated was in fact shorter that the time limit for appealing against the WIN. The haste with which the Respondent acted at this stage of the process struck the Tribunal as wholly incompatible with the professed aims and purposes of a procedure designed to encourage improved attendance. The Claimant was very concerned that once the procedure reached Stage 3 it would be open to the Respondent to dismiss her, a particular concern for her given her family responsibilities. The manner in which the procedure was operated, which seems to the Tribunal to have been contrary to its spirit and purpose, was therefore detrimental to the Claimant at a time when she had recently been signed off work with an anxiety disorder and was due to see the occupational health physician within a matter of days.

48. At the end of the five working day period, on 4 December 2017, PS Cook wrote to the Claimant again informing her that as there had not been sufficient improvement she would be required to attend a Stage 2 meeting. The Claimant had not returned to work between the two communications. The letter makes it clear that PS Cook had consulted with DI Luke Williams as the Claimant's second line manager, in considering the situation. This unusual acceleration of the process was again very difficult to reconcile with its spirit and purpose and detrimental to the Claimant for the reasons cited in the previous paragraph. The ambiguous nature of Ms Itoje's conclusions meant was that there was at the very least some doubt about whether the Claimant was fit to return to work at this point. The Tribunal considered it remarkable that the despite that doubt PS Cook and DI Williams seemed to have decided to operate the process as speedily as possible.

49. In the meantime the Claimant had instructed Ms Palmer that she wished to appeal against the stage 1 WIN. Furthermore on 5 December she had attended the meeting with Dr Schuchert-West whose report was at page 829-830 and confirmed that the Claimant was not fit for her duties. Ms Palmer sent two emails to DI Williams on 5 December (page 498C). The first informed him that the Claimant wished to appeal the WIN and questioned whether DI Williams would be the appropriate person to hear the appeal (he would ordinarily have done so as the next stage line manager) in light of his role in the decision to move the process so quickly to the next stage. The second email informed him that that the Claimant had been signed off as unfit by both her GP and the occupational health physician and expressed concern that the UPP nevertheless appeared to be about to "plough on regardless".

50. In his correspondence at the time (page 504-5) and in evidence to the Tribunal DI Williams professed himself to be confident that he would have been able to maintain the necessary separation between the two matters to enable him to hear the appeal fairly. The Tribunal had real concerns about this approach to procedural fairness. DI Williams could and should have recognised that he needed to be seen to have the requisite independence and objectivity and his assertion that he was able to keep a separation in his own mind was beside the point. He also maintained that the relevant procedure did not permit for any substitution of another officer. That is plainly not the case as Regulation 9(1) of the Police (Performance) Regulations 2012 provides that "A senior manager may appoint another person (a "nominated person") to carry out any of the functions of the line manager or second line manager in the Regulations" (page 853). It was unacceptable that DI Williams was either not aware or failed to take account of the fact that the carefully designed procedures set out in the Regulations did in fact contain safeguards to avoid the very situation in which he now found himself.

51. As regards the medical report from the occupational health physician he replied to Ms Palmer "The advice of medical professionals has been sought and considered during the process to date. It is important to remember that the advice provided is exactly that, advice". The Claimant's concern about the approach being adopted by the Respondent was articulated in the email from Ms Palmer on 14 December in which she says "With both her GP and the CMO saying she is unfit for work I am at a loss as to why both yourself and PS Cook feel putting added pressure on her to get back to work before being declared [fit] to return is the correct way forward for her or how this is supporting her in any way" (page 503). Those views were plainly justified. The Tribunal itself was greatly concerned about this approach to the management of a sick employee that seemed to imply that occupational health's view about an individual's fitness to work was advice that could be disregarded if it was incompatible with action that managers wished to take.

52. DI Williams did however agree to postpone the second stage UPP meeting until after the appeal was heard. The Stage 1 UPP appeal hearing was held on 21 December and the Claimant's appeal was not upheld. The decision was set out on pages 509-512 and summarised in the dismissal of appeal notice

on page 513 which states:

> **"The finding of unsatisfactory performance or attendance is unreasonable: this part of your appeal was dismissed. The rationale for this decision is as follows: the attendance management policy indicates attendance is unsatisfactory after 29 days. You have been off sick since 20 July 2017. This equates to over five months. Reasonably adjustments have been put in place by PS Cook namely: recoup plan and Dragon software. Your worry about returning to work is that PS Cook will commence performance management proceedings. Unsatisfactory performance is quite separate to unsatisfactory attendance and the mitigation you raised would be suited to that environment should these proceedings occur.**
>
> **Any of the relevant terms of the written improvement notice are unreasonable: this part of your appeal was dismissed. The rationale for this decision is as follows: The MPS expects its officers to be at work. You were specifically put on notice back in October 17 and that PS Cook intended you to return when he issued you with management action. Other than medical appointments I do not expect staff who are absent from work through sickness to have engagement preventing them from returning. You were given six days to return and reasonable adjustments were in place, namely: the Dragon software and a recoup plan of five hours per day and no AID."**

53. It is clear from the appeal outcome that the premise on which DI Williams based his decision not to uphold the appeal was that the Respondent had already made the adjustments to the Claimant's IT equipment that in conjunction with the "recoup" plan of five hours per day and no AID were sufficient to support the Claimant's performance and attendance at work. It is clear to the Tribunal that this was a false premise and that the adjustments made at that time had been ineffective to alleviate the disadvantage at which the Claimant was placed by her dyslexia as well as falling far short of the Access to Work recommendations. The outcome was also based on a reading of the advice of occupational health that was unsustainable. It was evidently DI Williams' position that regardless of the advice of occupational health, it was appropriate to manage the performance of a sick employee by requiring her to return to work. He alluded to advice from HR to the effect that a fit note certifying unfitness to work did not preclude UPP proceedings. There may be cases in which that is a sustainable approach, but in the Tribunal's view this was not such a case. He also alluded to the length of the Claimant's absence, seeming to suggest that length of absence was itself a justification for insisting on a return to work.

54. There is also a reference at page 509 to what DI Williams referred to as the Claimant's "welfare issues", which the Tribunal understood to be a reference to the fact that there were aspects of the Claimant's home life that contributed to her stress and mental ill health. The logic of DI Williams' position seemed to be that the Respondent did not need to take into consideration the totality of the Claimant's circumstances and their contribution to her absence, but could disregard factors that were personal rather than professional in deciding on the appropriate way in which to manage her absence. If DI Williams was taking this approach on the advice of HR that was a very surprising state of affairs. The Tribunal moreover did not comprehend the relevance of the

distinction that the Respondent appeared to be attempting to make between "medical issues" and "welfare issues".

55. The Tribunal notes that the report of 5 December (page 829) contained a number of recommendations and certified the Claimant as unfit for work. There were recommendations concerning the Claimant's working arrangements to accommodate her caring responsibilities and the report also reiterated that the Claimant would greatly benefit from having the dyslexia recommendations implemented, although the Respondent's position at the time was that Claimant had received an update from PS Cook on 30 November (page 499) informing her that there was no timescale in place for the upgrade of computers to Windows 8.1 and the upgrade of Dragon software accordingly. DI Williams' decision that the Claimant's appeal should not be upheld was based on the premise that the reasonable adjustments had already been put in place and her return to work required no further adjustment. The appeal outcome report also contained a material inaccuracy in that it suggested that the Claimant had had the Dragon software for more than a year at that point. The report also focused on one aspect of the Claimant's difficulties only – namely the Dragon software itself. It overlooked the problem with Text Help Read and Write, the unsuitability of the work environment and the fact that there were still elements of the Access to Work recommendations that had at that stage not been addressed at all, such as the simple requirement for five coloured overlays.

56. The dismissal of the Claimant's appeal against the first stage UPP meant that the Claimant was required to return to work on the "recoup plan" involving five hours work per day and no AID despite Dr Schuchert-West having certified her as unfit. The details of the plan were set out in an email from DI Williams to the Claimant on 22 December (page 1065) - she would remain in the same role, completing Merlins and risk assessments and using the same equipment that had been available to her previously. The Claimant was very concerned that this state of affairs would lead to further performance management and this perception added to her stress and anxiety. The Claimant also felt that PS Cook was treating her differently from her colleagues by emphasising her performance in risk assessment. She maintained that her colleagues often omitted to complete risk assessments thoroughly or at all but were not taken to task as a result. She wrote a strongly worded email to PS Cook on Christmas Day 2017 expressing these concerns (page 525). By that stage she also felt sufficiently desperate about her situation to write to the Commissioner, Cressida Dick on 31 December 2017 (page 530). The tone and content of these emails suggested that the Claimant was not at the time in good mental health. Despite this and despite her continued certified unfitness, she returned to work on 8 January on the recoup plan in the same role in the YOTS office as before her absence, using the same equipment as before. She was afraid that the attendance management process would continue if she did not resume work.

57. On 9 January she made a video recording of her attempts to work with the computer equipment in the YOTS office. The Tribunal viewed this evidence on

the second day of the hearing. There was 16 minutes of footage of the Claimant on her own in the YOTS office wearing a headset in a quiet room. The Claimant was speaking clearly but the software was failing to respond quickly. We were unable to see what she was writing but it was evident that the response was very slow. Mr Goodden, who uses dragon software, observed that it was not operating as it should. A second video showed that the software was very slow to load. A command to open Word responded by opening a different programme, CARMS, twice. The Claimant tried to open Word numerous times and eventually after five minutes it loaded, but failed to respond to commands. When she dictated "This is Tuesday 9 January 2018" it typed "They used the knife Tuesday 583". The Claimant's diction was perfectly clear, slow and precise with no grammatical errors.

58. The Claimant nevertheless continued to attend work. On 23 February 2018 she attended a second stage UPP meeting with DI Williams who decided that her attendance had improved and was now satisfactory. The Claimant continued to experience the same problems with her working conditions but there was no further attempt to improve the assistive technology provided to her. As observed earlier in this judgment, the Respondent started by treating the arrangements put in place as what it described at the time as an interim solution, but then almost immediately began to treat it as a final solution that incorporated all the adjustments that it was possible for the Respondent to make, with any inadequacies attributable to the Claimant herself. The Claimant continued to experience symptoms of mental ill health and Ms Palmer became sufficiently concerned by 22 March to suggest to PS Cook and DI Williams that she should have a further consultation with the CMO (page 585). By this stage the Claimant was being asked to undertake AID once again and Ms Palmer was concerned at her fitness to do so. DI Williams responded (page 585) that he was willing for the Claimant not to do AID if the CMO certified that she was not fit for AID duties.

59. The Claimant had a review appointment with the CMO, Major General Professor Alan Hawley CBE on 29 March. His report was unequivocal – the Claimant was not fit for work. He stated:

> **"<u>Background</u>**
>
> **Anita has a complex and multi-layered set of medical conditions. She is receiving treatment for these and awaiting further treatment for some of them. On the evidence of today she is certainly upset by her circumstances. I note that her GP and a specialist consultant have both assessed her as unfit for work. Indeed, I have seen her Fit Note issued by the GP. There may be some important reason for management overriding these recommendations. However, I agree with the medical opinion that she is unfit for work and would welcome the opportunity to understand the compelling operational reasons that require her to be at work.**
>
> **<u>Fitness for work and current capabilities</u>**
>
> **Currently she is unfit for work.**

Response to specific management questions

You asked four specific questions:
1. Anita cannot undertake AID at this time because she is unfit for work. When she is fit again, the question of AID can be addressed then;
2. in my opinion, Anita is unfit for work. I do not understand why she is at work given the previous medical advice;
3. as for Anita's capabilities, it is inappropriate to look at her capabilities at the moment. I do believe that she would benefit from a return to school based duties but this needs to be confirmed when she is seen again in OH; and
4. at this stage, Anita does not meet the requirement for ill health retirement.

Plan

Unfit for work
Covered by Equality Act 2010.
Refer back to OH May 2018.

60. This report led PS Cook to inform the Claimant on 4 April that she should report sick which the Claimant duly did. She submitted her second claim to the Tribunal on 1 May 2018. She did not return to work and took ill health retirement on 18 January 2019.

61. At the time that the Claimant reported sick on 4 April 2018 and at the time she submitted her second claim on 8 May 2018, the following recommended adjustments had not been put in place sufficiently or at all:

    a. A voice recorder. Despite a recommendation having been made in April 2017, a digital voice recorder was not ordered until January 2018 and only after the Claimant had repeatedly raised the fact that the recommendations made in the Access to Work Report had not been implemented. Furthermore, when the voice recorder was eventually delivered on 20 February 2018, it was not the one that Access to Work had recommended;
    b. Training. Access to Work had recommended seven half days of dyslexia strategy training, a half day's Dragon pro-access refresher training, including using the voice recorder with Dragon, and half a day of refresher training for text, health, read and write gold. What the Claimant was actually provided with was one day of training for the Dragon software by David Easton on 1 June 2017. As recorded earlier, the training had started late, the environment was unsuitable as it was noisy and the Claimant, who has difficulties with concentration, was thereby disadvantaged on the day of the training itself. Whilst the Claimant was provided with one further day of training by David Easton on 22 February 2018, she was by that point primarily working out of a different office (Walworth Road Police Station) and the computer on which she was supposed to be practising had remained in the YOT office so that in fact she was not able to practice on the computer every day and build up a file of voice files. The Claimant was not provided with any training for Text Help Read And Write although this was a

specific recommendation of the Access to Work Report;

c. Coloured overlay page fillers. Despite the fact that the provision of coloured overlay page fillers had also been recommended in April 2017, these were not ordered until 18 January 2018.
d. Noise cancelling headset. The Claimant was not provided with a noise cancelling headset throughout the period of her second claim. She had had to use some older headsets only those older sets worked with the XP system that operated on the desktop in the YOT office. These were not noise cancelling headsets.

Submissions

62. We were grateful to both Counsel for their written and oral submissions. We refer to those and to the cases to which we were referred as necessary in our conclusions.

Conclusions on the issues

Definition of disability and knowledge of disability

63. The Claimant relies on the condition of dyslexia and the Respondent concedes that her dyslexia was a disability. Our conclusion following from our findings in paragraph 8 of this judgment is that the Respondent had knowledge of the Claimant's disability and its propensity to place her at a substantial disadvantage compared to persons who are not disabled, from the point of her diagnosis in 2004.

Reasonable adjustments/auxiliary aids – first claim

64. The period to which the first claim relates is the period October 2015 to 9 May 2017. The period to which the second claim relates is the period 10 May 2017 to 1 May 2018.

65. The Respondent conceded that as regards the first claim it had failed to make reasonable adjustments for the Claimant. It made no submission to the effect that any part of the Claimant's first reasonable adjustments claim was out of time. The Tribunal was satisfied that the failure to make adjustments was an omission that extended over the whole period leading to the first claim and that the claim had therefore been presented within the statutory time limit. The whole of the first claim therefore succeeds.

Reasonable adjustments/auxiliary aids – second claim

66. The Claimant also brought claims under s20(3) Equality Act that the Respondent had failed to make reasonable adjustments to avoid the substantial disadvantage at which she was placed by her disability and under s 20(5) Equality Act that the Respondent had failed to provide her with auxiliary aids where to do so would have avoided the disadvantage. It was not

entirely clear whether the Claimant brought her claims under sections 20(3) and 20 (5) in the alternative and the Tribunal notes that it would have been sufficient for her to succeed under either subsection. However we have addressed both subsections in our conclusions.

67. The Claimant's claims under s s20 Equality Act in the second claim rely on two PCPs:

    a. Requiring her to carry out the role of a police constable, entailing the completion of administrative work necessitating the use of a computer;
    b. The requirement that she must maintain a certain level of attendance at work in order not to be subject to the risk of disciplinary sanctions.

68. This formulation of the second PCP was suggested in written submissions by Ms Annand and is different from the formulation set out in the original agreed list of issues. Ms Chute did not however object to the revised formulation and the Tribunal considers that it is correct following the Court of Appeal's judgment in *Griffiths v The Secretary of State for Work and Pensions [2017] ICR 160*. There was no dispute on the part of the Respondent that both PCPs were applied to the Claimant.

The First PCP

69. As regards the First PCP, requiring her to carry out the role of a police constable, entailing the completion of administrative work necessitating the use of a computer, the Claimant claims that she was put at a substantial disadvantage because she worked significantly more slowly than her non-disabled colleagues and was placed under additional pressure at work as a result. The Respondent did not dispute that the Claimant was working slowly – on the contrary part of its concern about her work arose because the rate at which she was working was, in PS Cook's opinion unacceptably slow. PS Cook himself described the work being done by the Claimant in YOT office as involving a large amount of administrative work (p788). And although the UPP Stage 1 notification form did not expressly lead to a UPP process, the Claimant's slow rate of work by comparison with her colleagues was the first issue cited on the form. The Tribunal was not convinced by the account given by PS Cook – that it was the Claimant's inability to manage risk that was his main concern. The evidence suggested that her productivity, which was reduced because of her disability, was a material cause of his deciding to manage her in the way that he did.

70. The Claimant was conscious of what was expected of her and was aware that she was struggling to meet those expectations. She felt considerable pressure to generate the Merlin reports, which continued to be the main part of her work during the period to which the second claim relates and her struggle to do so efficiently and effectively made her anxious about whether she could meet the expectations of her role and hold on to her job. The Tribunal considered that the nature of the work involved in producing Merlin reports seemed particularly unsuited to an officer with dyslexia, involving as it did the

rapid assimilation and organisation of written material from a multiplicity of sources. The Claimant's perception was that by being given so many Merlin reports to do she was being set up to fail – a factor that would itself have been likely to increase her anxiety. As the occupational health reports made clear, her personal circumstances made these anxieties particularly acute as the Claimant had onerous domestic and financial responsibilities and was seriously concerned about losing her job. On the facts of this case the Claimant's dyslexia had a number of inter-related adverse consequences for her. The Tribunal concluded that by reason of her dyslexia the Claimant was at a substantial disadvantage compared to her non-disabled colleagues.

71. The adjustments/auxiliary aids sought by the Claimant were:

    a. a functioning computer installed with the updated versions of Dragon software and text help read and write software;
    b. a digital voice recorder;
    c. appropriate software training;
    d. coloured overlay page fillers;
    e. a noise cancelling headset;
    f. providing her with a suitable alternative role.

    As stated in paragraph 14 of these reasons the Respondent's position was that by June or July 2017, a matter of weeks after the first claim was submitted, it had given the Claimant access to version 9.5 of Dragon software and Text Help Read and Write software on the desktop computer in the YOTS office and hence that during the period to which the second claim related it had put in place such adjustments as were reasonable in the circumstances. Hence it submitted that, from the point at which she was supplied with Dragon version 9.5 on the desktop computer in the YOTS office the first PCP ceased to place the Claimant at a substantial disadvantage compared to her non-disabled colleagues and/or that she had been provided with auxiliary aids that alleviated the disadvantage.

72. For the following reasons the Tribunal does not agree that the equipment supplied to the Claimant in June or July 2017 amounted to reasonable adjustments/the provision of auxiliary aids such that the substantial disadvantage at which she was placed by her dyslexia was alleviated:

    g. The solution offered to the Claimant was never intended to be permanent. As Jane Mann said at the time (page 434) it was offered as an interim solution until the Claimant could be given something more effective such as a functioning laptop. However from the point at which the desktop was set up in the YOTS office no further effort was made to source a functioning laptop for the Claimant, or indeed any other configuration of equipment. Having been told in January 2017 that she would have access to updated software by August 2017, she was then put off until December 2017 but even by the time she went on sick leave in April 2018 she had not been provided with any updated equipment or properly effective software and hardware combination.

h. The equipment in the YOTS office was not fit for purpose, not least because the computer on which the Claimant worked had insufficient memory for the proper running of the Text Help Read and Write software. The Respondent attempted to deflect the blame for the inadequate functioning of the equipment onto the Claimant, relying on the report from David Easton referred to above at paragraphs 32-35, but as we have found in paragraph 34 , the content of that report, which was in any event focused on the Claimant's use of Dragon 9.5 was difficult to reconcile with the chronology of events, Mr Easton's own observation that the computer had insufficient memory to support the Text Help Read and Write software and the video footage which the Tribunal viewed on the second day of the hearing. The efforts aimed at addressing the disadvantage were also undermined by the arrangements that accompanied the supply of the equipment – the office environment was noisy and the Claimant's other duties interfered with her having time to train the software to recognise her voice and speech patterns.

i. The Respondent provided the Tribunal with no evidence as to why this was the best that it could do – the onus, as Ms Annand submitted, being on the Respondent to show why it was not reasonable for it to provide the Claimant with more effective adjustments/auxiliary aids within the time period to which the second claim related (*Project Management Institute v Latif [2007 IRLR 579)*. Neither of its witnesses were in a position to assist the Tribunal on this question and it seemed to us that the Respondent merely asserted, without being able to prove, that this was the limit of the reasonable adjustments it could make within the constraints of the IT procurement system with which it was operating at the time. The Claimant's grievance outcome, quoted at paragraph 28 above described the situation at length and was highly critical, not of PS Cook himself, who was as frustrated by the system as the Claimant, but of the failure of the Respondent's suppliers to give appropriate consideration to the needs of users of assistive technology. Rightly in the Tribunal's view, the Respondent did not seek to argue that responsibility for the shortcomings of its IT suppliers could not be laid at its door. These shortcomings put the Respondent in a position in which it lamentably failed over a very long period of time in its duty to the Claimant to make reasonable adjustments to alleviate the disadvantage at which she was placed by her dyslexia or provide her with the appropriate auxiliary aids.

j. The equipment supplied fell considerably short of meeting the recommendations of the Access to Work Report. As set out above at paragraph 60, some elements, including the noise cancelling headphones, coloured overlays and digital voice recorder were either never supplied at all or were not delivered until early 2018, having been recommended in April 2017.The Respondent had no explanation for its failure to order these items earlier, or for its failure to meet the training

recommendations set out in the Access to Work report.

73. As regards an alternative role the Claimant considered that she should have been placed in a role involving a lower level of administrative work. The Respondent made no submissions as to why that would not have been possible other than PS Cook's explanation as to why he had not supported the Claimant's application for the Safer Schools role and his evidence in cross examination that no alternative role would have been considered until she had returned to work. Why that was the case was not made clear to the Tribunal and seemed to us to have been an inflexible position to take that was not consistent with the duty to make reasonable adjustments. As set out in paragraph 40, the Tribunal was unconvinced by the evidence that the true reason for PS Cook not having supported the Claimant's application for the Safer Schools role related to her ability to manage risk. The evidence suggests that what was on his mind was the rate at which she was working, which was in turn affected by the quality of the IT equipment supplied to her. The Claimant submitted that the Respondent, given its size and resources, ought to have been able to find a role for her that did not involve such a high level of administrative work and that that would been a reasonable adjustment. Although she did not give the Tribunal any examples of roles that she could have done and that were available at the relevant time, we are satisfied that finding a role for the Claimant that did not involve significant amounts of administrative work would have alleviated the disadvantage at which she was placed by her disability. That being the case, following *Latif*, the burden shifts to the Respondent to explain why no suitable alternative role was available or could not be offered. In the Tribunal's view the Respondent did not discharge the burden of showing why this adjustment was not reasonable in the particular circumstances of this case.

The Second PCP

74. As regards the second PCP, the requirement that she must maintain a certain level of attendance at work in order not to be subject to the risk of disciplinary sanctions, the Claimant submits that she was placed at a substantial disadvantage compared to her non-disabled colleagues because her dyslexia made her more susceptible to being subjected to management action. To alleviate the disadvantage the Claimant submitted that the Respondent should have made the following adjustments to its UPP:

    k. Adjusting it to account for the fact that her sickness absence was attributable to her disability;
    l. Disregarding disability-related absence
    m. Postponing the UPP process; and
    n. Exercising discretion in her favour under the UPP.

75. The Respondent did not submit that it had not applied the second PCP to the Claimant, but it did submit that the Claimant was not placed at a particular disadvantage by it. This submission seemed to be based in part on the premise that by the time of the instigation of the UPP, the Respondent had put

reasonable adjustments in place so that any particular disadvantage to the Claimant had been ameliorated. We do not accept that submission, for the reasons set out above in relation to the First PCP. It was the Claimant's case that in circumstances in which her dyslexia was causing her to struggle with her workload, pressure to perform caused her to become stressed and anxious and ultimately to be signed off work for a considerable period of time.

76. The Tribunal accepts that at the time of the Claimant's period of ill health in July 2017 there were other factors that had caused the Claimant to become unwell, including her home circumstances and the experience of attending the scene of the Grenfell Tower fire. But the effect of the Claimant's dyslexia on her ability to do the work assigned to her in combination with the failure of the Respondent to make reasonable adjustments to alleviate those effects, remained a considerable source of stress and anxiety to the Claimant throughout the period leading to her sickness absence. It does not matter that there were other matters in the mix and nor does it matter that the relative effects of each of these stressors cannot be separated out or measured. It is enough for the duty to make reasonable adjustments to arise that the Claimant's dyslexia made her more susceptible to being subjected to a UPP. This was either because she was not performing her role to a sufficiently high standard as a result of her dyslexia and the inadequate measures put in place to support her, or because the stress associated with trying to perform caused her to be unwell and absent from work. The Tribunal found that the Claimant was in these circumstances clearly at a substantial disadvantage compared to her non-disabled colleagues. She was more likely to be performance managed at work or absent from work because of the stress associated with having to try to perform at work whilst disabled by dyslexia. She was thus also more likely to become embroiled in management processes that were in themselves stressful because they had the potential to lead to dismissal.

77. None of the adjustments suggested by the Claimant were made by the Respondent. The Respondent made no meaningful submissions as to why it had not done so. The Respondent’s submission was simply that reasonable adjustments have been made to UPP in the Claimant's case, in particular at a stage 2 UPP meeting held on 23 February 2018, DI Williams concluded that the Claimant's attendance at work was now satisfactory, with the result that she was not given the Final Written Improvement Notice. In the Tribunal’s view that did not amount to an adjustment of the process. It was simply a straightforward application of the process and given that the Claimant had been attending work regularly since the first stage UPP meeting the Respondent had no choice but to conclude that her attendance was now satisfactory.

78. The Tribunal accepts the submission that the adjustments to the UPP process suggested by the Claimant would have alleviated the disadvantage and in particular would have alleviated the invidious impact on the Claimant’s anxiety condition of believing that if she did not return to work while still unfit she might have lost her job. The Respondent confined itself to submitting that the Claimant’s ill health had to be managed, but it did not explain why the

adjustments suggested would not have been reasonable. Even if it had done so the difficulty for the Respondent was that not only did it apply its UPP to the Claimant without adjustment, but it also accelerated the process between stages 1 and 2 and effectively coerced the Claimant into returning to work when she was still certified unfit. This had the very opposite impact that reasonable adjustments would have had by amplifying the disadvantage at which the Claimant was placed.

79. In relation to both PCPs the Tribunal therefore concludes that the duty to make reasonable adjustments arose and the Respondent failed to make such adjustments as would have been reasonable in order to alleviate the disadvantage at which the Claimant was placed by the application of the PCPs. It also failed to provide the Claimant with auxiliary aids that would have alleviated the disadvantage. The burden was on the Respondent to show why the adjustments sought would not have been reasonable and it has failed to discharge that burden.

80. The Tribunal therefore concludes that the complaint in the second claim of failure to make reasonable adjustments under ss 20 and 21 Equality Act succeeds.

Discrimination arising from disability

81. The case of *Secretary of State for Justice and anor v Dunn EAT 0234/16* sets out the matters that must be established for a s15 Equality Act claim to succeed, that is that there must be: unfavourable treatment, that is caused by something that arises in consequence of the Claimant's disability and the alleged discriminator must be unable to show that the treatment complained of was a proportionate means of achieving a legitimate aim.

82. The Claimant claims that she was subject to unfavourable treatment consisting of: being issued with management action; the commencement and continuation of the UPP; the threat of proceeding to the next stage of the UPP if she went off sick again; being given unachievable / unrealistic tasks compared with her colleagues as set out in paragraph 31 of the details of complaint dated 1 May 2018; being set up to fail as set out in paragraph 31 of the details of complaint dated 1 May 2018; being pressurised to return to work despite being signed off sick as set out in paragraphs 32 to 38 of the Details of Complaint dated 1 May 2018 and not being offered a suitable alternative role.

83. The Claimant has established on the facts that she was subjected to management action; that a UPP process was commenced and continued to Stage 2 and that in the process it was made clear to her that further sickness absence would lead to further management action, bringing her closer to the possibility of dismissal. She has also established that she was put under pressure to return to work even though the medical evidence expressly stated that she was not fit to return and that she was not offered an alternative role. It was reasonable for the Claimant to perceive each of these management

interventions and the failure during the relevant period to identify a different role for her as unfavourable, given the impact on her health, the difficulties she had in meeting the Respondent's expectations and her perception that a UPP would potentially lead to her losing her employment. The Tribunal was also satisfied that the nature of the work given to the Claimant, which was largely administrative and involved processing significant amounts of information from multiple sources, was unsuited to her. Whether it was PS Cook's intention to set her up to fail is not a relevant consideration – she reasonably perceived the effect on her of being given work of this nature to be unfavourable and as she found the work so difficult (particularly in the absence of reasonable adjustments) she reasonably regarded herself as being set up to fail. The Tribunal was however unable to conclude on the facts presented to us that the Claimant was being treated less favourably than her colleagues in relation, in particular, to the requirement that she focus on improving her ability to perform risk assessments. The Claimant did not establish facts that showed that her colleagues were being subjected to less stringent management standards than those imposed on her.

84. The Claimant submits that the 'something(s) arising' in connection with her disability were her sickness absence; and/or her inability to perform administrative tasks at work to the required standard without assistance from auxiliary aids; and/or her requirement for auxiliary aids. The Tribunal is satisfied that Claimant has established the 'something arising' on the facts of this case. We are also satisfied that there was a causal link between the 'something arising' and the unfavourable treatment.

85. We must therefore consider whether the manner in which the Claimant was treated was a proportionate means of achieving a legitimate aim. The Respondent again made no meaningful submissions on this issue. Ms Chute submitted simply that the justification defence should succeed on the basis that reasonable adjustments had been made and, in relation to the unfavourable treatment complained of and identified at paragraph 80 above, that the Claimant had not established that this amounted to unfavourable treatment – a submission that we reject for the reasons set out in paragraph 83. In her own submissions on the law Ms Chute accepted that the burden of establishing both a legitimate aim and proportionality is on the Respondent in a claim under s15, but made little attempt to explain to the Tribunal how either limb of the objective justification test had been satisfied in this case. The Respondent relied on the legitimate aim set out in paragraph 8.3 of its Grounds of Resistance. The Tribunal agrees that in principle employers are entitled to and must manage the sickness absence of their staff, particularly where services of critical importance are being provided to the public. It was evident that this objective was on DI Williams' mind during the UPP process and the Tribunal would in principle accept that the Respondent had a legitimate aim in managing the Claimant's ill health and attendance at work. But in a case in which we have found that the Respondent failed to make the adjustments required to enable the Claimant to perform her role effectively and, on the contrary, exacerbated the disadvantage at which she was placed by the manner in which it managed her sickness absence, the Respondent cannot hope to establish that the measures it took to manage her were

proportionate. Whilst the Respondent did not expressly seek to rely on the particular features of the Respondent's UPP procedure that were the focus of the decision of the EAT in *Buchanan v Commissioner of Police of the Metropolis [2017 ICR 184*, the Tribunal considers itself bound by the finding in that case that it is not the procedure itself that needs to be justified, but the particular manner in which, at each stage of the process, it is applied to an individual officer. The Respondent has failed to show that the treatment relied on as described in paragraph 83 was a proportionate means of achieving a legitimate aim.

86. The Tribunal therefore concludes that the complaint of discrimination arising from disability under s 15 Equality Act succeeds.

Harassment

87. The Claimant submits that the bringing and continuation of the Respondent's attendance management process amounted to unlawful harassment for a reason related to her disability. She has established on the facts that the process was brought and continued notwithstanding her continued ill health and operated in an unusually accelerated manner as described in paragraphs 47-52 above. The Tribunal accepts that this was unwanted conduct, related to her disability. The Claimant points to her communications sent during the course of the process as indicative of her response to the manner in which the UPP process was being operated: firstly her email to Ms Otoje at page 524 in which she expressed her concern that she would have a breakdown if she returned to work, and that the process was being used to bully her back to work, secondly an email to Ms Otoje at page 521-2, in which she expressed concern that if she was required to return without the correct support in place she would be set up to fail, that her sleep was being affected and she was in a state of constant worry and anxiety and thirdly a note on the back of her GP note at page 508-9 to the effect that she was only returning to work because of the UPP and the threat of dismissal.

88. The Respondent submitted that the UPP process was in fact stopped in February 2018, that the two officers were doing their best in difficult circumstances and that they had acted carefully after taking advice from HR. It also submitted that the policy would have been applied in this way whether or not the Claimant had been disabled. That was an incorrect application of the test of harassment, which does not require a consideration of how a comparator without the protected characteristic would be treated. Nor is it sufficient to consider what the purpose of the perpetrator was – it is enough if the unwanted conduct was related to the Claimant's disability, which it clearly was, as it was related to the management of her sickness absence, and that the effect of it was to violate the Claimant's dignity or create an intimidating, hostile, humiliating, offensive or degrading environment for her.

89. Subsection (4) of s 26 Equality Act requires the Tribunal to take into account: the perception of the Claimant, the other circumstances of the case and whether it was reasonable for the conduct to have the effect that the Claimant says that it had on her. In the Tribunal's judgment the Claimant reasonably

perceived that the environment created by the operation of the UPP in this particular case created a hostile and intimidating environment for her for three reasons: the fact that she was put under pressure to return to work when she was certified as unfit; the fact that the reasonable adjustments she required had not been implemented and she would therefore remain insufficiently supported when she did return to work and the fact that the operation of the policy had been accelerated. The Tribunal accepts that in many cases, if the policy was being properly and reasonably operated, the operation of an attendance management policy would not fall within the definition of harassment. The circumstances of this case were however exceptional and sufficient to bring the operation of the policy within the statutory definition.

90. The Tribunal therefore concludes that the complaint of unlawful harassment under s 26 Equality Act succeeds in this case.

Time limits

91. The Respondent again did not make any submissions on the question of whether or not the Claimant's second claims were brought in time, but as this is a jurisdictional issue we must address it. All matters that post-dated 3 December 2017 were in time. The Tribunal also accepted the Claimant's submission that the matters alluded to in her second claim were conduct extending over a period that should be treated as having been done at the end of that period. Thus the UPP process, which began on 24 October 2017, was continuing until at least 23 February 2018 when the Claimant reverted to Stage 1 of the process on the basis of her satisfactory attendance. The Respondent had still not provided the Claimant with a set of adjustments that met the reasonable adjustments duty at the time she went on sick leave on 4 April 2018. On that basis the claims under sections 15, 20 and 21 and 26 Equality Act were all brought within the statutory time limit.

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Employment Judge Morton
Date: 23 September 2019

Parkinson v Commissioner of Police of the Metropolis

List of issues (as agreed by the end of the hearing)

1. The Claimant brings claims of failure to make reasonable adjustments / provide auxiliary aids, discrimination arising from disability and harassment.

Definition of disabled - section 6

2. The Claimant claims she is disabled within the meaning of section 6 of the Equality Act by virtue of having dyslexia.

3. The Respondent concedes that the Claimant was disabled by reason of dyslexia during the relevant period (October 2015 to May 2018).

4. The only issue between the parties with regard to the definition of disability is the date of knowledge:

   (a) the Claimant contends that the Respondent was, or ought to have been, aware about her dyslexia from October 2004;

   (b) the Respondent contends that the relevant decision-maker (PS Cook, the Claimant's line manager) only became aware of the Claimant's dyslexia shortly after she had transferred to the youth offending team of Southwark under his line management in April 2016.

5. From what point did the Respondent have knowledge, or could it reasonably have been expected to have knowledge, of the Claimant's disability?

Reasonable adjustments - section 20 and 21

PCPs

6. It is accepted that the Respondent applied the following PCPs to the Claimant:

   (a) requiring her to carry out the role of a police constable, entailing the completion of administrative work necessitating the use of the computer (the '**First PCP**');

   (b) The requirement that she must maintain a certain level of attendance at work in order not to be subject to the risk of disciplinary sanctions (the '**Second PCP**').

7. Did either or both of the above PCPs place the Claimant at a substantial disadvantage compared with a non-disabled person? The Claimant claims that she was put at a substantial disadvantage in the following respects:

   (a) in respect of the First PCP, because she worked significantly more slowly and was placed under additional pressure;

   (b) in respect of the Second PCP, because UPP has brought her closer to the possibility of dismissal.

8. In respect of the First PCP, the Claimant claims that the following reasonable adjustments should have been made:

   (a) a functioning computer installed with the updated versions of Dragon software and text help read and write software;

   (b) a digital voice recorder;

   (c) appropriate software training;

   (d) coloured overlay page fillers;

   (e) a noise cancelling headset;

   (f) providing her with a suitable alternative role.

9. In respect of the Second PCP, the Claimant claims that the following reasonable adjustments should have been made:

   (a) adjusting UPP to account for the fact that her sickness absence related to her disability;

   (b) postponing UPP until her disability related health issues improved;

   (c) disregarding her disability related absence;

   (d) exercising discretion in her favour under UPP.

10. It is the Respondent's case that reasonable adjustments have been made to UPP in the Claimant's case. In particular at a stage 2 UPP meeting held on 23 February 2018, DI Williams concluded that the Claimant's attendance at work was now satisfactory, with the result that she was not given the Final Written Improvement Notice.

Auxiliary aids

11. By the provision of the following auxiliary aids, would the Claimant have been placed at a substantial disadvantage in comparison with persons who are not disabled:

   (a) a functioning computer installed with the updated versions of Dragon software and text help read and write software?

   (b) a digital voice recorder?

   (c) appropriate software training?

   (d) coloured overlay page fillers?

   (e) a noise cancelling headset?

12. If so, did the Respondent take such steps as it was reasonable to have to take to provide the auxiliary aid in question?

Discrimination arising from disability - section 15

13. The Claimant claims that she was subject to unfavourable treatment because of something arising in connection with her disability.

14. The 'something(s) arising' in connection with her disability were:

    (a) her sickness absence; and/or

    (b) her inability to perform administrative tasks at work to the required standard without assistance from auxiliary aids; and/or

    (c) her requirement for auxiliary aids.

15. The Claimant claims she was subject to the following 'unfavourable treatment':

    (a) being issued with management action;

    (b) the commencement and continuation of the UPP;

    (c) the threat of proceeding to the next stage of the UPP if she goes off sick again;

    (d) being given unachievable / unrealistic tasks compared with her colleagues as set out in paragraph 31 of the details of complaint dated 1 May 2018;

    (e) being set up to fail as set out in paragraph 31 of the details of complaint dated 1 May 2018;

    (f) pressuring the Claimant to return to work despite being signed off sick as set out in paragraphs 32 to 38 of the Details of Complaint dated 1 May 2018;

    (g) failing to offer the Claimant a suitable alternative role.

16. Did the above acts occur?

17. If so, what is unfavourable treatment?

18. If so, what is the treatment because of the 'something(s) arising in connection' with her disability, as referred to above (either individually or cumulatively)?

19. If so, can the Respondent show the treatment with a proportionate means of achieving a legitimate aim?

20. The Respondent relies on the legitimate aims set out in paragraph 8.3 of her Grounds of Resistance (submitted on 4 July 2018).

Harassment

21. The Claimant claims she was subject to unwanted conduct, in respect of the bringing and continuation of the Respondent's attendance management processes.

22. Did the Respondent bring and continue with the application of their attendance management policy?

23. If so, did this amount to unwanted conduct?

24. If so, was it related to disability?

25. If so, did the unwanted conduct have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

26. If so, was it reasonable for the conduct to have that effect, taking into account the Claimant's perception and the other circumstances of the case?

Time limits

27. Are the acts / omissions set out above in time?

28. If not, do the acts / omissions set out above amount to conduct extending over a period?

29. In respect of any acts / omissions which are out of time and / or which do not amount to conduct extending over a period, would it be just and equitable to extend time?