RM

EMPLOYMENT TRIBUNALS

Claimant:	**Mrs J Copley**
Respondent:	**Rochford District Council**
Heard at:	**East London Hearing Centre (in public)**
On:	**11-15 October 2021**
Before:	**Employment Judge Moor**
Members:	**Mr S Woodhouse** **Mr J Webb**
Representation	
Claimant:	in person
Respondent:	Ms L Robinson, counsel

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. **The claim for unfair dismissal is not well-founded and fails.**
2. **The claim for direct age discrimination fails.**
3. **The claim for direct disability discrimination fails.**
4. **The Respondent did not fail to make reasonable adjustments.**

REASONS

1. The Claimant claims unfair dismissal, direct age and/or disability discrimination and an alleged failure to make reasonable adjustments.

Issues

2. The parties agreed a List of Issues (to which we refer using the same numbering).
3. Since the List of Issues was drawn up, the Respondent admitted that the Claimant was a disabled person by reason of anxiety and depression from 8 July 2019 and that they knew or ought reasonably to have known this from 29 August 2019.

4. We agreed that we would hear issues relating to liability at this hearing and also Issues 4 and 5 ('Polkey' and contribution).

5. During the hearing the Claimant conceded that she could not succeed on issue 6(a), we did not therefore consider this issue.

6. In closing, the Claimant added a further issue to Issue 13, namely that it was a failure to make a reasonable adjustment not to extend the date for the disciplinary hearing. Counsel for the Respondent was able to deal with this on the evidence that had been heard and agreed that we should consider it as an issue in the case.

7. In order to comply with the legal principles, we added one further question to Issue 14, '*whether the Respondent knew or ought reasonably to have known of that disadvantage*'. We raised this with the parties in closing submissions and they were able to make submissions about it.

8. We thank the Claimant and Ms Robinson for the structured and courteous way in which they put their respective cases. It was a great help to us that they concentrated on the important evidence and their best points.

Preliminary matters

9. The parties exchanged statements prior to this hearing. On the morning of the first day, the Claimant produced a new statement, which she wished to rely on instead of the one she had exchanged. After having had a chance to read it and take instructions, the Respondent agreed.

10. Mr Paddon's statement was not challenged. We agreed to read his statement as evidence without the need for his attendance.

11. The Tribunal explained the hearing day to the Claimant. She did not need adjustments to it.

12. The hearing was a public hearing but, to ensure some social distancing, witnesses waiting to be called observed via video link from a different room.

Findings of Fact

13. Having heard the evidence of the Claimant; Ms Law, Assistant Director for Legal and Democratic; Ms Hutchings, Strategic Director, Mr Scrutton former Managing Director; Ms Sawood, acting HR business partner; and having read the agreed statement of Mr Paddon, lay trade union representative; and having read the documents referred to us, we make the following findings of fact.

14. The Respondent is a small district council employing approximately 120 staff.

15. The Claimant started her employment with the Respondent on 7 January 1991.

Grievance Policy and Procedure

16. The grievance policy so far as is relevant:

    16.1. allows for a '*collective grievance*' by several staff against a named individual;

    16.2. states 'g*enerally issues that are more than 3 months old cannot be raised*';

16.3. one of its principles is that the line manager should try to resolve a grievance informally at first;

16.4. states that matters relating to grievances should be handled as speedily as possible;

16.5. if a grievance is treated formally, then it set out a procedure for investigation and a hearing and appeal.

Disciplinary policy and procedure

17. The informal stage of the disciplinary procedure applies '*if conduct is unsatisfactory and minor in nature, the manager may issue a standards setting letter*'.

18. If a disciplinary hearing is required, then the Hearing officer must give the employee a minimum of 10 working days' notice.

19. Under the procedure, examples of **misconduct** include:

'*unreasonable or inappropriate language or behaviour towards colleagues…'*

'*not complying with the Council's equality and diversity policies, principles or ethics*.'

Examples of **gross misconduct** include:

'*deliberate acts of discrimination, harassment or bullying'*

a '*serious breach of the Officer's Code of Conduct*'.

20. We accept Ms Hutchings' evidence that the Officer's Code of Conduct includes a statement to the effect that the Respondent has a zero-tolerance approach towards racism. The Code was available on the staff intranet.

21. The Claimant was entitled to the statutory minimum notice of termination (unless guilty of gross misconduct). By the time she was dismissed this would have been 12 weeks' notice.

Background

22. The Claimant worked for many years as a PA without problem. There was a restructure and her role changed.

23. In 2017 the Claimant was off work from March to July 2017 for 5.5 months. Her sick notes in 2017 recorded the reason as anxiety and depression.

24. After that the Claimant continued to take medication for her anxiety and depression but it was not so significant as to stop her from working.

25. It was planned to move the Claimant to the role of Housing Options Support Officer on 9 March 2018. This move was delayed by a complaint about her behaviour. She was suspended and the complaint investigated. The Respondent dealt with the matter informally by a standard-setting letter of 18 May 2018, which reminded her among other matters '*to be mindful of opposing staff views*.'

26. The Claimant has alleged she was bullied in her previous role. She did not make a complaint about it at the time. It is not for us to decide.

27. As Housing Options Support Officer, the Claimant gave administrative support to Housing Options Officers and the Allocations officer. Work in the Housing Team was

busy and pressured. The Housing Officers at times had to deal with difficult situations and members of the public. They had to make difficult decisions about housing allocations and homelessness. They have been described as a 'robust' group of people.

28. The housing team included employees in their 50s; two in their early 40s; and one in their 20s. By the time the Claimant moved there she was 55 years of age.

29. Ms J Hurrell was the Claimant's manager. They were friends outside work.

30. Over time, 6 officers in the housing team became concerned and angry about the Claimant's behaviour. By June 2019 they decided to raise a collective grievance about it. In the grievance form they stated that they wanted the Claimant to be removed from the team. Attached to the form were statements of complaint from each of them about the Claimant's behaviour. The behaviour alleged was summarised by the Respondent as:

    30.1. Showing racist material to colleagues;

    30.2. Bullying comprising:

    30.3. spreading rumours/mistruths/'twisting" what colleagues said;

    30.4. undermining, manipulating and demeaning colleagues;

    30.5. wasting colleagues 'time with repetitive dialogue about the same issues and interrupting colleagues 'work unnecessarily;

    30.6. seeking excessive reassurance and praise.

31. In order fully to understand the gravity of the conduct complained of we read in detail those initial statements. The above summary is an accurate one. We set out the details of those statements below using the complainant's initials.

32. The incident triggering the formal grievance was when the Claimant sent an email to officers reminding them of the correct procedure for cancellation of a B&B booking. She told a colleague that MF (the senior officer) did not understand the procedures when she should have done. MF and other colleagues felt undermined by this email. When Ms Hurrell had raised this with the Claimant, she had told Ms Hurrell that CT agreed with her view about MF. On hearing about this CT said this was untrue, she was upset as it could have affected her working relationships.

33. AB and KS stated that the Claimant had complained about the performance of other members of the team (MF and CT).

34. Some complained about the way the Claimant raised concerns about their performance. For example, instead of simply informing a colleague that she had used the wrong form, the Claimant made 'a big deal of it' in the office, undermining her.

35. Several complained of the Claimant wanting private chats talk about other members of the team (including AB by coming into his office and closing his door which made him feel uncomfortable). Staff were worried that the Claimant would use their words against them.

36. Several stated that the Claimant had either complained about her pay grade or made comments about what officers were paid and the amount of work they did, which made them feel undervalued.

37. They complained that the Claimant would become excessively upset by minor criticism for example about the food she had ordered for a training event. She said she would not order food again and spoiled the atmosphere for the day. They complained she required constant reassurance.

38. They said that the Claimant would constantly complain of overwork in what was a busy office, yet she would interrupt conversations and talk over colleagues working.

39. KS complained that the Claimant had sent inappropriate text messages to KS that had been resolved after Ms Hurrell's intervention. But KS complained it had happened again and she had had to get the Union support to deal with it.

40. One colleague complained that the Claimant had lied about whether she had had training.

41. The staff complained that the Claimant had shared a racist picture after Megan Markle had announced her pregnancy. Some staff were particularly offended by this.

42. AB said that, while each incident he reported sounded trivial, there was a 'drip drip' effect. Some reported an impact on their enjoyment at work or their well-being. Some said they were losing sleep with the atmosphere created by the Claimant. Some said the atmosphere was very different when she was present.

Formal Process

43. The collective grievance was treated formally by the Respondent. Although the grievance procedure suggests an attempt at informal resolution as generally the first step, we accept that Ms Law decided that the grievance should be formally investigated because of the number of people complaining and the seriousness of their complaints and the significant impact upon the team.

44. Ms Law informed the Claimant about the grievance on 28 June 2019. She summarised the complaint (using the categories set out above) and enclosed the grievance form and attached statements. The Claimant was not suspended during the investigation but told she would be moved to work in a different area.

45. The Claimant started a lengthy sickness absence on 1 July 2019 with anxiety and depression. She was never sufficiently well to return to work. The grievance had upset her and triggered a significant bout of anxiety and depression. The Respondent accepts from this stage she was a disabled person under the Equality Act 2010.

46. The Claimant was kept informed about the progress of the grievance including that Ms Law was interviewing the complainants.

47. The Respondent informed the Claimant about the employee assistance programme for welfare support. They knew that she was supported by the regional Unison office and by Mr Paddon, a lay Unison official.

48. The Claimant was horrified to receive the grievance. She thought it portrayed her as some kind of monster. She informed the Respondent that she considered it to be a witch hunt designed to get her out. She did not recognise herself in the complaints. She considered the six staff had colluded together to make a false grievance.

Prior management of behavioural issues

49. Ms Hurrell had raised some individual issues with the Claimant about her behaviour in their 1:1s. From her handwritten notes and the evidence we find that she raised the following matters with her:

49.1. That the Claimant had taken to texting a colleague in non-working hours such as to cause her annoyance/upset.

49.2. That she had complained about her salary level to colleagues, which had made them feel undervalued. Ms Hurrell raised this with her and asked her not to talk about her salary level. The Claimant denied she had made such complaints.

49.3. That she had spoken to Ms Hurrell inappropriately in the open office about training.

49.4. Ms Hurrell raised with the Claimant that she had overreacted in response to the staff feedback about the Saxon Hall catering the Claimant had organised.

49.5. Ms Hurrell raised the problem with the email sent to CT and MF.

49.6. Ms Hurrell reminded the Claimant how stressful an environment it was for housing officers who might need space.

49.7. Ms Hurrell helped the Claimant with tactics to manage her workload. This was because Ms Hurrell had heard and had complaints about the Claimant complaining frequently about being busy.

50. Ms Hurrell did not pass on the more extensive complaints made by housing officers that they wished to keep in confidence. She did not make the Claimant aware that trends in her behaviour had begun to upset her colleagues. Ms Hurrell did not make it clear to the Claimant that the problem was larger than any single issue but about a breakdown in relationships. It was clear her conduct was becoming a more serious management concern, because Ms Hurrell sought her own manager's advice and HR advice about how to manage it. She did not give her an informal standard setting letter. Nor did she set objectives for her conduct in writing.

Ms Law's Investigation

51. Ms Law interviewed each complainant and the housing team manager between 8-12 July 2019. She asked questions designed to find out more about the matters complained of.

52. She found out about the racist material that had been shared. After Megan Markle had announced her pregnancy the Claimant had shown colleagues a picture of a group of golliwogs stating that it was the Royal Family several decades hence. This was about 8 months before the grievance. The Claimant also told a 'joke' about Serena Williams' minimal style of decoration being tyres and fruit, the aim was to liken her to a monkey. The Claimant recalled this was told at the same time as the picture was shown; one complainant thought it was in May 2019. Some staff were particularly offended by the material. AB tried to laugh it off but was privately uncomfortable. No one complained at the time to a manager. Ms Law heard from some complainants that they had not wished to challenge the Claimant because she was over-sensitive to criticism.

53. Ms Law asked about normal banter and whether it included a racist element. All denied that they would share such material: their 'banter' at work centred around love life, family and TV.

54. Some complainants explained that, because the Claimant referred frequently to having been bullied in the past, this put them on their guard for fear of also being accused. She had told them she was good friends with Ms Hurrell.

55. Some complainants gave more detail about criticism of other staff giving specific examples. CT said the Claimant moaned about other staff and criticised MF. She had made a big deal about the B&B form that had been filled in wrong. KS said the Claimant had thought there was a slap dash approach in the office and had criticised MF and CT. LP said, when alone, the Claimant would try to make her say bad things about other people. MF and AB said the Claimant would question why an allocation had been made when that was not her job. MF thought she tried to get others into trouble by emailing MF and Ms Hurrell when someone had not put something on the system. MF described this as divisive. She said the Claimant made her doubt her capabilities.

56. CT was very upset about her opinion of MF being misrepresented to Ms Hurrell. LP thought the trigger incident email was the Claimant trying to catch out MF and felt the email sent was also aimed at her. MF felt undermined by it.

57. CT referred to the Claimant wanting private chats and tried to get different answers from different people to try to back up what she was saying. KS described this as the Claimant trying to manipulate her to say things about other colleagues in the office, pushing her to say things or agree with her about colleagues. LP said the Claimant was quick to place blame. AB said that the Claimant would come into his office and say 'did you hear what x said' and make comments about other's workloads and how she felt they were not pulling their weight. (LP and CT mostly). She would do this one or twice a week for 10 to 25 minutes. He felt uncomfortable when she closed the door. AB recalled her trying to use words said by one person to implicate another person.

58. Staff gave more detail about the Claimant being oversensitive to criticism. CT, KS and LP recalled that, after MF had shut the Claimant down during a meeting, she would not let it drop. Some recalled that the Claimant hit the roof over the Saxon catering feedback.

59. CT said she had complained about her salary and pay scale and that it should be on the same scale as them which made her feel undervalued.

60. CT said the Claimant had complained on a daily basis about being too busy. KS found this annoying and described the Claimant going around everyone individually saying how busy she was. She and MF referred to being interrupted and not for urgent matters. LP did not appreciate the Claimant coming into her personal space. LP thought the Claimant had no concept of the pressures they were under.

61. Most staff referred to the difficult atmosphere when the Claimant was present. MF considered the team were not functioning well because of the Claimant. CT and LP said they would leave if the Claimant came back. Ms Hurrell considered that if the Claimant returned there would be no staff and that she would also leave. MF was currently looking for another job and said could not work with her again. All indicated that they had supported the Claimant at the start, ensured she was trained and given her a chance to improve.

62. Ms Law interviewed KS, AB and MF again on 23 July to follow up various factual queries. She looked at relevant documents, as identified in her report.

63. We accept that Ms Law sought to test the credibility of the complaint by cross-checking statements. She established that the same events were being described

using different language and that different examples were given revealing the same kind of behaviour. This made her consider the complaints credible.

64. In her questions of the Claimant's line manager, Ms Law sought to find out how she had managed the Claimant. She also looked at Ms Hurrell's 1:1 handwritten notes.

64.1. Ms Hurrell managed specific problems that she had seen or that colleagues allowed her to raise or were in public. She managed the Claimant over text messages that had become inappropriate at the weekend.

64.2. She managed the Claimant's frequently voiced complaints to the team that she was too busy by trying to help her with techniques to manage her workload, like a limited to do list.

64.3. In general terms she told the Claimant not to speak to individual team members about others because they would share it with her.

64.4. But in relation to other concerns that the team members had brought her, they had done so in confidence because they did not want to be accused of bullying, so she could not deal with those matters. She offered them coping strategies and support.

64.5. Ms Law saw two 1:1s in which complainants had expressed how they could no longer bear working with the Claimant.

64.6. Ms Hurrell had sought support from her own manager about how to manage the Claimant.

65. Ms Law did not interview Ashley George, who was not a member of the team but someone who visited the office regularly.

Occupational Health Report

66. Ms Law invited the Claimant to interview but the Claimant said she was too unwell to attend. The Respondent referred her to Occupational Health who provided a report on 28 August 2019.

67. The OH report referred to anxiety and depression and stated that presently the Claimant was not fit for work or to attend an interview. In answer to the Respondent's question, OH agreed that the Claimant was well enough to answer questions electronically and advised that '*she is given enough time to respond as she is still feeling unwell'.* OH reported that '*Jane is currently not fit for work as she informed me she is feeling very anxious, vulnerable and afraid. She does not feel she can return to her current work environment.*'

68. On 27 September Ms Amor of HR sent Ms Sawood of HR an email about the Claimant's sickness absence. They established that this period of absence was not linked to the last, so the Claimant was at stage 1 of the procedure. Ms Amor then said: '*Depending on the outcome of the grievance we might need some legal advice about how to manage as reintegration into team will be impossible and no current redeployment options.*' We accept Ms Sawood's evidence that this email concerned sickness absence and the OH advice set out above that the Claimant did not feel she could return to her work environment. It does not show a predetermined outcome but a discussion about obtaining legal advice, *depending* on the grievance outcome, because there were no redeployment options.

69. The Respondent accepts that from receipt of the OH report, it knew or ought to have known the Claimant was a disabled person under the Equality Act 2010.

Requests for extension

70. The first set of questions was sent to the Claimant by Ms Law on 17 September 2019. Initially she was given one week to respond. She was asked that this be extended to two weeks. This was because the regional trade union official had limited time. Ms Sawood agreed, taking the deadline to 1 October.

71. The Claimant wrote again on 17 September 2019 asking for more time to answer the questions because Mr Paddon, the lay trade union representative, was on holiday until 26 September. She said she felt stressed and vulnerable and needed his help as she did not feel strong enough to cope with it on her own. She wrote again on 18 September asking to extend to the end of 3 October.

72. Ms Amor of HR saw that an extension had already been given and gave the Claimant a further extension to 2 October. She did not extend to 3 October, as requested, because Ms Law had set aside time on 3 October to review the answers. She was concerned that if she did not do it that day there would be some time before she could do so because of her other commitments. This would have delayed the progress of the investigation and she wanted to be fair to all by dealing with it promptly. The Claimant met this deadline by giving detailed answers to the questions.

73. Ms Law had some follow-up questions where she considered the Claimant had not answered the question or had misunderstood it or there was further information she needed. She sent these on 9 October 2019 to be answered by 16 October 2019.

74. Mr Paddon attended the HR office on 11 October and said to Ms Sawood that the Claimant's counsellor thought she needed more time. Ms Sawood told him that she considered a week was reasonable to answer 10 questions, given that the Claimant had had more than 2 weeks to answer 44 questions. In the event the Claimant met the deadline with the support of Mr Paddon and answered fully the questions.

Claimant's response to the grievance

75. In her answers the Claimant admitted that she had shared the racist pictures and made the Serena Williams so-called 'joke' (though she could not remember the details). She stated that this was part of usual office banter and she was doing it against her better judgment to try to join in. She did not give any examples of racist material being shared.

76. In some cases the Claimant gave a different explanation for some of the complaints. She explained that the email was her attempt to inform the staff of the correct procedures. She said many others complained of being busy but she only complained of this on the odd occasion. She explained she had sought guidance about how to do her work and checked she was doing it right. She contended AB had asked her to shut his door. She admitted she had refused to organise the catering after the Saxon Hall problem but contended the staff had been abrasive about how bad the food was. She admitted Ms Hurrell had spoken to her afterwards about her reaction and she had apologised.

77. Otherwise, she essentially denied that she had been critical about colleagues or divisive. She denied she had misrepresented CT's views about MF to Ms Hurrell. She denied that she said she should be paid the same as the other officers. She denied

she had spoken in private about other members of staff. She denied she unnecessarily interrupted work.

78. She stated she was 'hurt and bewildered' by the accusation. That she had found it hard to integrate in the team, which was quite cliquey. She felt it was a 'hurtful collaboration' that made her feel bullied and traumatised.

79. The Claimant in her response to the grievance did not say anything to the effect that, now it had been pointed out to her, she saw that her conduct had had an impact and she would seek to improve.

80. Ms Law prepared an investigation report dated 15 November 2019. She sent the Claimant an outcome letter on 22 November 2019. She upheld the grievance on all three grounds of showing racist material to colleagues; bullying and 'spreading mistruths'.

81. Ms Law believed the 6 complainants and that the behaviour they described had the impact on them they alleged. She thought their accounts credible: they were not all 'singing from the same song sheet' by using the same words or phrases and each recalled events pertinent to them. She saw, from their accounts, a significant overlap in the kind of behaviour about which they complained, which built up a consistent whole picture of the Claimant's conduct. She thought their examples were specific. She did not think their accounts were' rehearsed'. She took into account, in believing them, that some complainants were genuinely upset when speaking to her

82. Ms Law considered that aspects of the behaviour met the definition of bullying because: it was divisive; it was intimidating in the sense that the complainants feared how their words would be used in other conversations; it was undermining of some members of staff in that the Claimant had criticised them to others; it was manipulative in that she twisted words; she interrupted and spoke over people; she overreacted badly to mild criticism herself and made it difficult therefore to raise issues with her. Ms Law also considered there was a subtle form of controlling behaviour in that the staff were fearful of complaining because she had talked about previously being bullied and they did not want to be accused of bullying her themselves.

83. Ms Law concluded that the Claimant had been dishonest (spoken 'mistruths') in informing Ms Hurrell that CT agreed with her views on the capabilities of MF when this was not the case; that she had misstated the nature of the training received and the extent of her friendship with Ms Hurrell.

84. Ms Law told us there was a zero-tolerance approach to racism at the Respondent. She thought the sharing of the racist pictures was therefore a disciplinary matter.

85. Ms Law denied to us that the Claimant's age had anything to do with why she upheld the grievance. We accept her evidence. There is nothing on the facts we have found upon which such an inference could be based. Ms Law investigated in good faith and genuinely a real and serious grievance. Ms Law denied that disability had anything to do with why she upheld the grievance and we accept this evidence. In answers to us, which we accept, she had considered but did not think that the behaviour described to her suggested mental ill health.

86. Ms Law informed the Claimant of the outcome by letter on 22 November 2019 also decided that there may be gross misconduct.

Disciplinary Investigation

87. Ms Law then undertook a disciplinary investigation. There was no point in interviewing the complainants again because the disciplinary investigation covered the same facts as the grievance investigation. But Ms Law sent the Claimant questions, allowing her to state anything further she wished to say now that the allegations of bullying, stating mistruths and showing racist material were disciplinary allegations. She sent those questions on 28 November 2019. The deadline for answering them was initially 5 December, later extended to 9 December 2019. The Claimant answered those questions in a detailed 42-page document.

88. On 13 December 2019, Ms Law informed the Claimant that she had decided there would be a disciplinary hearing. The allegations were (1) showing racist material; (2) bullying; (3) spreading mistruths.

89. By a letter of 19 December 2019, the Claimant was invited to the disciplinary hearing on 9 January 2020.

90. This was a prompt invitation, bearing in mind the Christmas and New Year break. We accept Ms Sawood's explanation that HR were trying to 'keep the ball rolling' because of the OH report that said '*the earlier the work situation is addressed and resolved by management the better for an early return to work*'.

91. Mr Paddon, a lay official, did not have his union's training to undertake disciplinary hearings. He told the Claimant that Ms Platts, Unison's Regional Official, would represent her. (In her statement the Claimant asserted that the Respondent stopped Mr Paddon from representing her. But she later clarified that this was her assumption and she accepted the Respondent's evidence that they had not done so.)

92. The Claimant responded by informing the Respondent that Unison's office was closed from 12.30 on 24 December to 2 January (not as she asserts in her statement for longer). She requested until 2 January to confirm whether or not she had witnesses. This was granted and she met this deadline.

93. As it turned out, Ms Platts, the regional official, was away until 6 January and had only 3 working days to prepare to represent the Claimant. Mr Haddon told Ms Platts that there had been another provisional date put in the Respondent's diary for the hearing in January 2020. Despite this, the Claimant and Ms Platts did not seek an adjournment for the hearing.

94. The Claimant raised a grievance: that her colleagues had bullied her and that her manager had failed to manage her by informing her of any problems. The Respondent considered that these issues were linked factually to the disciplinary issues and decided to deal with them at the same hearing.

95. Having heard detailed evidence of the contact between HR and the Claimant, we have concluded that HR kept in regular touch with the Claimant during her sickness absence. They offered her the support of the employee assistance programme on more than one occasion: she did not take up that offer although she knew it was the place she could seek support during her sickness absence. Both parties accept it would not have been appropriate for Ms Hurrell to keep in touch. The HR communications were professional but also made sure to remind the Claimant that she should contact them if she needed support. There was an absence review meeting at the appropriate time.

Disciplinary Hearing

96. Ms Hutchings conducted the disciplinary hearing.

97. The Claimant was too unwell to attend the disciplinary hearing and Ms Platts went on her behalf. Ms Hutchings checked she had instructions and was able to represent. Ms Platts confirmed this.

98. Ms Platts confirmed the only witness the Claimant wished to call was Ms Hurrell who was already going to attend.

99. Ms Platts had a good opportunity to challenge Ms Law on the nature of the investigation, to ask questions of Ms Hurrell about management. Ms Hutchings also asked questions about how Ms Law had tested truthfulness of the complainants. Ms Law showed a chart showing how she had cross-referred what each person had said in order to reach her conclusion on credibility.

100. Ms Hurrell corroborated some of the accounts by recalling what had been raised with her. Ms Hurrell described how she had tried to manage the issues. Ms Platts made the point that no standards setting letter had been sent and that she did not set clear objectives for expected behaviour in writing.

101. Ms Platts also made her points in argument about whether the conduct alleged met the test of bullying. Ms Platts argued that the bullying allegations were in fact of low-level conduct of a minor nature. She argued that it could be regarded as a personality conflict, where the staff simply did not like the Claimant. She acknowledged that the team clearly could not work with the Claimant and that there was 'an awful effect on the team' but contended that it was wrong to view the matter as misconduct. She argued that the behaviour alleged was not deliberate but about a lack of awareness and being 'socially inept' and that the Claimant could be regarded as 'highly strung' rather than a bully. It was too subtle to be malicious. She emphasised that it appeared to be a clash of personalities. She doubted that the Claimant could go back into the team, but to blame her was unfair. She also pointed to management failings.

102. Ms Platts submitted that the racist material should have been raised at the time and it was outside the grievance time limit. She pointed out that the Claimant had readily admitted the matter and acknowledged it as an error of judgment.

103. In answer to a question about whether there was a clean disciplinary record, the standards setting letter of May 2018 was produced.

Reasons for dismissal

104. Ms Hutchings reached the decision to dismiss the Claimant for gross misconduct. She spent a good deal of time considering her decision and set out her reasoning in a long dismissal letter to which we refer.

105. She decided that the sharing of the racist material was gross misconduct. She took into account, in the Claimant's favour, that she had admitted the conduct and that it was an error of judgement. But Ms Hutchings noted that the Claimant had sought to excuse the behaviour by referring to a toxic environment that Ms Hutchings did not accept on the facts existed. She was of the view that racism in any form was not acceptable in the Council. She agreed with Ms Law's findings that there was no evidence others had shared racist material in their banter.

106. On the issue of bullying, Ms Hutchings accepted the complainants' accounts as credible for essentially the same reasons as Ms Law. She acknowledged that there was some low-level behaviour like the repetitive dialogue; not taking account people's personal space and seeking excessive reassurance and praise. She acknowledged, if it was only this behaviour, she might well have taken a different view. But she

decided that there was also conduct here that met the definition of bullying. In particular, she identified divisive conduct including taking team members to one side and questioning them about the team and asking them whether someone agreed with her view about other staff members' capabilities. She concluded the Claimant's references to being bullied in the past and leading others to think she had an influential relationship with Ms Hurrell was seen and felt by the complainants as passive-aggressive behaviour with an underlying threat that inhibited their interactions with her and which was intimidating and made the staff fearful. She identified conduct she concluded was undermining of team members. She thought it subtle, manipulative controlling conduct. She decided these elements were serious. She considered the Claimant ought to have known her conduct was unwelcome and had a significant emotional impact on the team. She considered the behaviour deliberate: the Claimant's flat denial of the worst aspects of the behaviour caused her to reach this conclusion: in her view, a person who had unwittingly created the problem would have acknowledged the distress and sought to make amends. Ms Hutchings took into account the 'standards setting letter'. This, too, informed her opinion that the Claimant should have been more aware of how her behaviour might have impacted on others.

107. In respect of 'spreading mistruths', Ms Hutchings saw this as part of the bullying allegation. She decided the Claimant was not truthful following the incident of the email with Ms Hurrell about CT's opinion of MF, and in relation to the training and that she had misrepresented the extent of her friendship with Ms Hurrell. She found the statements of the complainants to be compelling.

108. In deciding sanction Ms Hutchings took into account the Claimant's long service, but considered that the seriousness of the conduct outweighed this.

109. We are clear that, in dismissing, Ms Hutchings did not take into account the Claimant's age. The Claimant suggests that the Respondent would have found another way to terminate her contract, for example by a settlement agreement, but that this was going to be expensive because of her age and length of service. We reject that this was part of Ms Hutchings' reason for dismissal: she dismissed because she had found gross misconduct. The contract allowed her to do so. The dismissal is not so surprising that we draw the inference that age or the expense of settlement had anything to do with it.

110. Equally we reject on the facts that the Claimant's disability had anything to do with Ms Hutchings' reasons for dismissal. Ms Hutchings did not rely on it expressly or unwittingly. There is nothing in the facts that leads us to draw such an inference.

Grievance Outcome

111. Ms Hutchings concluded that Ms Hurrell had raised issues when possible but much of what was reported to her was in confidence and it was only once the grievance became formal that this changed. It was appropriate to deal with it formally because serious. She rejected the second part of the grievance essentially because she preferred accounts of the complainants.

Appeal

112. Mr Scrutton held an appeal by telephone conference, which the Claimant attended with her union representative on 1 April 2020.

113. While usually a review mechanism, Mr Scrutton allowed leeway at the appeal for the Claimant to state what she wished to add, given that she had not been at the original hearing personally.

114. The Claimant provided several character witness statements from people who had worked with her before, who did not recognise her conduct in the allegations against her. Mr George, Ms Worthington, Mr Howlett gave a statements. Mr George, who visited the housing team regularly, stated that he had not witnessed the Claimant being racist and had not personally witnessed any behaviour that could be described as bullying.

115. Mr Scrutton upheld the decision. He considered Ms Hutchings had reached her decision on a sound basis and nothing in the new information he had heard led him to conclude there should be a different outcome. His view was that the character witnesses did not speak to the Claimant's behaviour in the Housing Options Team and Mr George was only a visitor to the team.

116. On the racism issue he told us of his view that public servants should uphold the highest of standards. He was not persuaded that it was out of time because the grievance policy stated that the time limit was 'generally', therefore a guideline and in exceptional circumstances it would be appropriate to deal with matters raised out of time.

Law

Unfair Dismissal

117. A dismissal for conduct is a potentially fair reason for dismissal under section 98(1)and (2) of the Employment Rights Act 1996.

118. We then consider section 98(4) of the Employment Rights Act 1996 which provides:

> *'…the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) —depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.'*

119. In order to apply section 98(4) in a conduct case, the Tribunal considers:

119.1. whether the Respondent genuinely believed in the misconduct; and

119.2. whether that belief was based on reasonable grounds after a reasonable investigation.

119.3. whether a fair procedure was following including giving the employee a chance to state her case, knowing the allegations against her, and a chance to be accompanied at any hearing, and a right to appeal the decision.

119.4. whether the sanction was a reasonable response to the conduct found.

120. On the question of sanction, we remind ourselves that there is often a range of reasonable responses by an employer to an employee's conduct and our function is to consider whether this Respondent's decision fell within that range, Iceland Frozen Foods v Jones [1982] IRLR 439.

121. On the question whether the conduct was gross misconduct the EAT in Sandwell and W Birmingham Hospitals NHS Trust v Westwood UKEAT/0032/09 held that gross misconduct must amount to a repudiation of the contract of employment, which is deliberate wrongdoing (wilful disobedience or contradiction of the contractual terms) or gross negligence ('very considerable negligence'). In Sandwell, the EAT decided the Tribunal had properly directed itself by finding that the undisputed conduct of the employee in that case '*could not reasonably be characterised as deliberate wrongdoing or gross negligence*'. Sandwell emphasises that, in relation to a dismissal for conduct described as gross misconduct, the Tribunal should consider whether the conduct could reasonably be determined as gross misconduct by the employer.

122. In Sainsbury's Supermarkets v Hitt [2003] ICR 111 reminds us to consider whether the employer's investigation was one a reasonable employer could have adopted bearing in mind there will be a range, with some employers adopting a more exacting approach than others. A reasonable investigation will vary according to the nature and seriousness of the alleged misconduct and whether there are facts in dispute. An employer investigating a matter reasonably is expected to act even-handedly.

123. If the Tribunal considers there was an unfair dismissal it can go on to consider the hypothetical question, what would have happened had a fair procedure taken place ('the Polkey question'). This is not an all or nothing question. We can decide whether there was a percentage chance of the Claimant leaving in any event or we can identify a date at which it was likely the Claimant might leave. We can have regard to factors beyond the misconduct alleged.

124. In considering remedy under the basic award the Tribunal can consider whether conduct prior to the dismissal was such that it is just and equitable (fair) to reduce the award. If so it will consider by how much expressed as a percentage.

125. Under the compensatory award the Tribunal can consider whether any conduct of the Claimant's caused or contributed to the dismissal and, if so, if it is fair to reduce the award to reflect that contribution.

126. In considering contribution to the dismissal the Tribunal looks at whether, on the evidence, the Claimant was guilty of blameworthy conduct.

Direct Discrimination

127. Under section 13 of the Equality Act 2010 in a direct discrimination claim, we must ask ourselves whether there was less favourable treatment because of the protected characteristic (here age or disability). The less favourable treatment must also, in the employment context, be dismissal or have subject the Claimant to a 'detriment', see section 39 of the Equality Act 2010.

128. We remind ourselves that it is rare for such discrimination to be admitted and we may have to consider what inferences we draw from the primary facts. We consider how a hypothetical comparator would have been treated in the same situation but without the protected characteristic. We also remind ourselves that the protected characteristic does not have to be the sole reason for the treatment: there is discrimination if it was a material influence. It can be useful in some cases to look at the reason for the treatment first.

Duty to Make Reasonable Adjustments

129. Under the Equality Act 2010, an employer may have a duty to make reasonable adjustments for a disabled employee. We must adopt a structured approach to such

a claim by asking the following questions that derive from the way the Equality Act 2010 frames the duty:

129.1. what was the practice, criterion or policy applied (this should be in general rather than just to the Claimant)?

129.2. did it place her at a substantial (in the sense of more than minor or trivial) disadvantage compared to a non-disabled person?

129.3. did the Respondent know of this disadvantage or could it reasonably have been expected to know?

129.4. if so, was there a reasonable step that could be taken to avoid the disadvantage and did the Respondent fail to take it?

129.5. when considering reasonableness we consider factors such as: the practical position; the effect on others; the size of the organisation; and the likely cost of the step.

Application of Facts and Law to Issues

Unfair Dismissal

Issues 1 and 2: What was the reason for the Claimant's dismissal? Was it a potentially fair reason?

130. It is accepted by all that conduct was the reason for dismissal. There was therefore a *potentially* fair reason for dismissal.

Issue 3: was the dismissal fair and reasonable in all the circumstances of the case?

(a) Did the Respondent Believe in the Guilt of the Claimant

131. We consider Ms Hutchings had a genuine believe in the conduct for which she dismissed the Claimant. We have found as a fact that she and Ms Law preferred the accounts of the complainants where there was a dispute. They found them to be credible.

(c) Was that belief based on a reasonable investigation?

132. We have no doubt that the investigation in this case was reasonable.

133. Ms Law was thorough in her approach by interviewing all complainants and asking appropriate questions of the Claimant. She carefully cross-referred the complainant's accounts to test credibility. She gave good reasons for preferring their accounts: that they did not appear to be rehearsed; that the same words were not used; that they gave similar examples of the same type of behaviour. She looked at relevant documents in the form of 1:1 notes.

134. We have considered whether it was reasonable for Ms Law both to investigate the grievance **and** the disciplinary allegations. Ms Law reached the conclusion that the grievance should be upheld after an investigation in which she spoke to all complainants and the Claimant. She concluded that there was potentially misconduct and then gave the Claimant an additional opportunity through the disciplinary investigation another opportunity to make a statement knowing now the allegations were disciplinary ones.

135. We consider that, while some employers may have handed on the disciplinary investigation to another manager, it was reasonable, given the facts were the same,

for Ms Law to continue the investigation because all she was doing was enabling the Claimant to state her case knowing the allegations against her. This was a key element of disciplinary fairness. She was not making the disciplinary decision herself and it was therefore reasonable, given she knew the detail, to undertake this step.

136. Equally, while there appears to have been no commissioning manager in this case: we do not consider that this made the process unreasonable. The key element for us is that different people investigated and decided upon the disciplinary allegations.

137. We do not consider the omission in interviewing Mr George initially rendered the investigation unreasonable. When the Claimant was represented by her union they did not refer to him at the disciplinary hearing even though they were asked about witnesses she wished to call. In any event, by the end of the process, his statement had been considered by Mr Scrutton. We must consider the matter overall. Before the decision was finalised, the Claimant had had an opportunity to identify him and provide his statement along with the other witnesses she provided statements for at the appeal. Mr Scrutton acted fairly by allowing this even though in general the appeal function at the council was to review the original decision.

(b) Was that belief based on reasonable grounds

138. We consider that the Respondent had reasonable grounds upon which to decide the conduct alleged against the Claimant had been committed. There were several complainants, giving detailed factual accounts that corroborated each other. Contrary to the Claimant's submissions, it was reasonable to decide this buttressed their credibility. Ms Law cross-checked accounts and she and Ms Hutchings both believed the lack of rehearsal in those accounts; the different words used; the fact that similar accounts of the same type of behaviour all supported the credibility of those accounts. The employer was faced, on the matters the Claimant disputed, with two different accounts. It was not unreasonable to prefer the complainants' accounts. This is our view even after the character witnesses had supported the Claimant at the appeal. There was still a crucial difference in account about specific incidents that had to be decided. The character witnesses were not present at those incidents and their evidence was therefore reasonably less weighty.

(e) Did the allegations [reasonably] warrant a finding of gross misconduct.

139. We then ask, as per Sandwell, whether it was reasonable for the Respondent to decide that the conduct amounted to gross misconduct.

Bullying

140. First, was it reasonable to conclude that the conduct amounted to the 'deliberate' bullying? This was the Respondent's own definition of gross misconduct and the definition applied by Ms Hutchings. It also meets the legal definition of gross misconduct because deliberate bullying would fundamentally break the employment contract.

141. Ms Hutchings reasonably distinguished the minor from the serious conduct. She acknowledged that the irritating conduct (like excessive dialogue, interruptions and seeking excessive reassurance) on its own it might not have been gross misconduct. We agree that this could reasonably be regarded as low-level behaviour that could have been avoided by earlier management intervention. But, and it is an important 'but', we agree with Ms Hutchings' reasoning that the second type of conduct was far more serious.

142. The Respondent had reached the conclusion on the facts that the Claimant was guilty of divisive, manipulative and coercive behaviour in particular by undermining colleagues; seeking opinions about colleagues in private conversations; being dishonest about CT's opinion of MF; and behaviour that inhibited colleagues from raising concerns. The Respondent concluded this latter was a subtle form of control by the Claimant by informing colleagues she had been bullied before and that she was friends with her manager, she was chilling the possibility of complaint. In our judgment it was reasonable to conclude that all of this more serious conduct was deliberate bullying. It was reasonable to conclude this was blameworthy behaviour and not a feature of personality as such: it was reasonable to conclude a person would know it to be wrong and if they had committed it, then they had done so deliberately. Overall we therefore find the Respondent's conclusion that this was gross misconduct to have been reasonable.

Racist Material (including Issue 3(f)

143. On the issue of sharing racist material, we have looked at the matter carefully.

144. While all racism is not acceptable, the Respondent's own procedure identifies that some failures to comply with the ethics and principles of its equality and diversity policy as misconduct (and not gross misconduct). We note, too, that no one complained of the behaviour at the time and it was arguable that this was a stale complaint. Against that background, we asked ourselves whether the conduct could be reasonably described, nevertheless, as gross misconduct. It was plainly offensive conduct: sharing material that was unarguably racist. The employer could reasonably conclude that it was not 'mild' as the Claimant had alleged because by sharing that kind of material a racist attitude was revealed. It was a breach of the Code of Conduct. It was reasonable too, for the Respondent to take into account that it served the public and expected particularly high standards of behaviour. For this reason it had a zero-tolerance approach to racism. There was also evidence that some complainants were particularly offended. Finally, the Claimant argued during the investigation that that she shared the material to fit in and others had done so too. This had not been accepted by the Respondent: they had investigated and rejected that there was a toxic atmosphere and that others had shared racist material. We have therefore concluded, that in those particular circumstances and for those reasons it was reasonable to conclude that the sharing of racist material was gross misconduct.

Was the Sanction within the Range of Reasonable Responses

145. We then went on to ask ourselves about sanction: whether dismissal was a reasonable response to the conduct found. Within this question we will consider Issue 3(d) whether it was unreasonable not to deal with the matter informally in the first instance and Issue 3(g) whether the dismissal was to avoid a large payment because the Claimant had 29 years' service and was over the age of 55.

146. We have rejected on the facts that the dismissal was to avoid a large payment or was to do with age or length of service.

147. We agree that it was reasonable to deal with the allegations formally because they were both serious allegations. It was reasonable to deal with the racist material allegation out of the usual time frame because it was serious.

148. We then went on to consider the competing arguments over the reasonableness of the sanction.

149. On the one hand the Claimant had received no opportunity to improve. Management and HR had not got to grips, as they might have done, earlier with the increasingly difficult problem of her conduct. Further, the Claimant's very long service was a mitigating factor, as was her admission about the racist material.

150. On the other hand, it was reasonable for the conduct to be found to be gross misconduct. It had had a serious impact on 6 colleagues. It was divisive and bullying. The relationships at work were seriously damaged, as the trade union representative had acknowledged. And the Claimant's denial of the behaviour made it difficult to see how standards could be set or how the relationship breakdown could be resolved.

151. In weighing up those arguments, we reached the judgment that dismissal was at the harsher end but still within the range of responses a reasonable employer could have taken to the misconduct found. We consider the seriousness of the conduct coupled with the breakdown in relationships, meant that some reasonable employers would not offer a second chance in such circumstances, despite the long service and other mitigating features.

152. It therefore follows that the Claimant was not unfairly dismissed.

Issue 4 Polkey

153. If we are wrong in our conclusion on unfair dismissal, we have gone on to consider one of the Polkey arguments. In our judgment, we consider that the Claimant could have been fairly dismissed, within the same time frame, for 'some other substantial reason' namely an irretrievable breakdown in relationships. The complainants' statements made it clear there was such a breakdown. The OH report anticipated the Claimant would not be able to return to her then role. And in her evidence to us the Claimant frankly admitted that, if she had not been dismissed, she could not see a way back to working in the housing team. The HR file note showed that there were no redeployment opportunities. The initial investigation revealed that the relationship breakdown could reasonably have been decided to be the Claimant's responsibility and 12 weeks' notice could have been lawfully and fairly given to her to terminate her contract. We consider that the chances of this happening are 100%: there being really no argument about it. The Council is small; the housing team in a dysfunctional state; the Claimant would have been the one to go.

Age Discrimination Claim

Issue 6(b) was the Claimant less favourably treated than a hypothetical comparator by being dismissed?

154. It follows from our findings of fact that the answer to Issue 6(b) is no. We have found that the Claimant's age was not a factor in the decision to dismiss. We consider a hypothetical comparator in the same circumstances as the Claimant but in her 20s or 30s or 40s would have been treated in exactly the same way. The direct age discrimination claim fails and we therefore do not need to decide Issues 7 and 8.

Disability Discrimination Claim

Issue 11 Was the Claimant less favourably treated than a hypothetical comparator by (a) being dismissed and (b) the Respondent's HR department failing to contact the Claimant every 2 weeks as per the sickness absence policy.

155. We have no doubt at all that a hypothetical comparator in the Claimant's situation who was not disabled would have been dismissed. The misconduct did not relate to her disability. Ms Hutchings did not take her disability into account in her reasons for dismissal. There is nothing in the facts of this case to draw an inference that she did so unwittingly.

156. We equally have no doubt that the Respondent here communicated with the Claimant supportively and appropriately during her sickness absence. It may not have been exactly every two weeks but the Claimant acknowledged that the purpose of the contact in the policy was for welfare. The Claimant knew who to contact (either the assistance programme or the HR department) for that support. The Respondent had communicated with her welfare in mind. We find therefore that the Claimant was not subject to any detriment by any failure to contact her every 2 weeks. No reasonable employee who had been contacted in the way she was would have thought herself placed at a disadvantage. She was not therefore discriminated against in relation to contact.

157. The direct disability discrimination claim therefore fails and we do not need to consider Issue 12.

Issue 13 Did the Respondent apply a provision, criterion or practice ('PCP') of requiring the Claimant to respond to questions within a deadline?

158. A PCP must be applied generally and not only to the Claimant. Thus the practice of setting questions, applied only to the Claimant, is not the appropriate PCP to consider. It seems to us the proper PCP here was the Respondent's practice and policy to ensure that its grievance and disciplinary procedures were conducted promptly.

Issue 14 Did any such PCP put the Claimant at a substantial disadvantage in comparison with those who were not disabled?

159. We agree that the practice of pursuing grievance and disciplinary procedures promptly put the Claimant to a comparative disadvantage. Her anxiety and depression meant she was too anxious and unwell to be interviewed. Further it meant she could not concentrate as well as a non-disabled person and did not have the strength that a non-disabled person would have had to deal with the grievance questions alone.

160. This disadvantage was substantial in the sense of being more than minor or trivial because it meant the Claimant needed support in the investigation and hearing and that took longer comparatively: a non-disabled person could dealt with the interview in person on one day and attended the disciplinary hearing without relying wholly on their representative.

Did the Respondent know or ought it reasonably to have known of this disadvantage.

161. We consider the Respondent knew or ought reasonably to have known of this disadvantage because the Claimant had informed them of her difficulty in concentrating and lack of strength in dealing with the grievance questions alone. And OH had advised she was not well enough to attend an interview and would need enough time to answer the questions. By 2 January, the Respondent also knew that the Claimant was still too unwell to attend the disciplinary hearing.

Did the Respondent fail to make reasonable adjustments to avoid the disadvantage

162. The Respondent had, of course, made an adjustment of allowing the Claimant to answer questions on paper instead of being interviewed. This was plainly a reasonable adjustment as it avoided one of the problems of the Claimant's disability: the inability to be interviewed. But the fact of making one adjustment does not mean necessarily that the duty has been met. The Claimant complains that the deadlines given did not avoid the disadvantage therefore should have been longer for the questions procedure to amount to a reasonable step.

Issue 13(a) the first deadline

163. In relation to the first set of investigation questions, the full context is that the Claimant asked for an extension of a week so that her regional trade union official could help. She received it. Thus, on what the Respondent knew at the time, extending the deadline to 1 October was reasonable because it enabled the Claimant to obtain the help she needed.

164. On 17 September the Claimant wrote again and explained her lay official would be away until 26 September and her further difficulties of stress and lack of strength without his support. She asked for an extension to 3 October and a further extension was given to 2 October.

165. We find that the further extension given was a reasonable adjustment. The context is that the Claimant's trade union help was both at regional and lay level. The lay official by 2 October would have had 9 days after his return to support the Claimant, 6 of which were working days. We consider this time given was sufficient to avoid the disadvantage the Claimant was under because it gave her a reasonably of time, after her lay official had returned to complete the work with him that she had begun with the regional official. It was a sufficient assessment of the time needed to avoid the disadvantage of not being able to do the work on her own. (The Respondent's assessment as to what was reasonable in any event turned out to be a good one: we have not heard any evidence that she ran out of time to complete the questions and she provided detailed answers to those questions within the time.)

166. Further, we consider the adjustment was reasonable when we look at all the other relevant factors. It was practically not reasonable to give it: Ms Law had kept the 3 October free from other commitments to work on the investigation. Further, the need to keep the grievance procedure on track was in fairness to those who had complained and a reasonable factor to take into account. Balancing all of those factors means we do not consider it a failure to make a reasonable adjustment that one of the days requested was not given.

Issue 13(b)

167. In relation to Issue 13(b), we consider that the Claimant's representative did ask for an extension of a week to answer the follow-up questions when he came to the HR office. His comment can only reasonably have been interpreted in that way.

168. We consider the Respondent reasonably ought to have had in mind the disadvantage created by the disability that the Claimant needed support to answer the questions. This was clear from her earlier letter.

169. The issue for us here is whether a week to provide written answers was a reasonable adjustment to avoid that disadvantage. We consider the week's deadline was a reasonable adjustment. We must concentrate on the practicalities. During the week, the Claimant had the support of her trade union lay representative to answer 10 follow-up questions. We agree with Ms Sawood's reasoning that it was

proportionately about the time the Claimant had needed at first. We conclude therefore that the time given to answer the questions avoided the disadvantage her disability placed her at. Again, it was reasonable for the Respondent to take into account the limited number of follow-up questions in setting the deadline. It was reasonable for the Respondent to take into account the need to keep progressing with the grievance in fairness to the complainants.

170. As it turned out the Claimant answered the questions fully in the time given.

Issue 13 (c) (added in closing submissions)

171. This additional issue is the Claimant's complaint that the time set for the disciplinary hearing was not a reasonable adjustment.

172. The difficulty for the Claimant here is that the difficulties she described to us were not known to the Respondent: that her Trade Union representative was away until 6 January and therefore had limited time to prepare. We do not consider they reasonably ought to have known them: it was up to the Claimant to keep them informed if the date of the disciplinary hearing was difficult to meet. Neither she nor the trade union asked for a postponement. The date was agreed. Ms Platts arrived at the hearing and made it clear she had instructions to represent the Claimant.

173. We have read the disciplinary hearing minutes carefully and consider that Ms Platts did a good job of representing the Claimant. She covered the key points persuasively and well.

174. While as a Tribunal we can see that the setting of the date was very prompt, given the intervening holiday, we cannot say it was unreasonable. It cannot have been nice for the Claimant to receive the invitation to the hearing just before the Christmas break. HR might want to reflect on this before making such arrangements in the future. But we cannot say that the setting of this date was a failure to make a reasonable adjustment for the disadvantages they knew about. They knew the Claimant needed support. From the Respondent's knowledge the Claimant had regional representation and this met her need.

175. We therefore conclude that there was no failure to make a reasonable adjustment in this case.

Employment Judge Moor

25 October 2021