EMPLOYMENT TRIBUNALS

Claimant: **Ms A Baker**

Respondent: **House of Commons Commission**

Heard at: **London Central (remotely by CVP)**

On: **17 -19, 24 -28 January, 1 – 4 February 2022**

Before: **Employment Judge Brown**

Members: **Mr S Pearlman**
Mr T Cook

Appearances

For the Claimant: **In person**
For the Respondent: **Mr Perhar, Counsel**

JUDGMENT

The unanimous judgment of the Tribunal is:

1. **The Respondent failed to make a reasonable adjustment when it failed to prevent use of the Claimant's desk as a hot-desk on 20 September 2018, during the Claimant's short absence.**

2. **The Respondent victimised the Claimant and subjected her to discrimination arising from disability when it commenced disciplinary action against the Claimant for leaving a polite note on her desk asking staff to refrain from using her workspace/equipment as a hot desk on 27 September 2018;**

3. **Those 2 complaints were part of a series of linked acts, or a continuing state of affairs and were both presented in time.**

4. **The Claimant's complaints of victimisation in relation to:**

   4.1 Excluding the Claimant from collection/regular team meetings in front of others on 18 December 2017 and 5 February 2018; and

4.2 Mr Collins ignoring the Claimant when he had a locksmith unlock the cabinet in June 2018;

were presented out of time and did not form part of a continuing act or series of acts, the last of which was in time. It is not just and equitable to extend time for them.

4. The Claimant's other complaints of direct sex or disability discrimination, failure to make reasonable adjustments, sex or disability related harassment, victimisation and discrimination arising from disability fail and are dismissed.

REASONS

The Issues and the Hearing

1. By an ET1 presented on 15 January 2019, the Claimant brought complaints of direct sex and disability discrimination, sex and disability harassment, failure to make reasonable adjustments, disability related discrimination (s15 EqA 2010) and victimisation. The Respondent resists these complaints.

2. At the start of this Final Hearing, the Claimant asked the Tribunal to order the Respondent to disclose unredacted versions of redacted documents in the Bundle. She gave examples of redactions which appeared to relate specifically to her. The Tribunal ordered that the Respondent disclose the unredacted documents. It adjourned the hearing until the Respondent had done so.

3. When the Final Hearing resumed on 24 January 2022, the Claimant applied to strike out the Respondent's response. She said that the Respondent had conducted the proceeding in a scandalous, vexatious and unreasonable manner by failing to disclose unredacted documents, when the redactions were directly relevant and highly material – and favourable - to the Claimant's claims. She said that the Respondent was aware of the content of the redactions and had deliberately tried to mislead the Tribunal. The Respondent said that the redacted documents had come from the Claimant, as they had originally been disclosed to her by a Data Subject Access Request ("DSAR"). The Respondent's DSAR team had made the redactions, not the Respondent's solicitor conducting the Tribunal claim. Given that all the documents had been disclosed to the Claimant by an earlier DSAR process, the disclosure exercise had not been repeated during the Tribunal proceedings and the Respondent's solicitor was unaware that the redactions related to the Claimant. The Respondent's solicitor said that he had understood that the Claimant's October 2021 request for unredacted documents referred only to 5 specific documents which the parties had been discussing in correspondence. He directed the Tribunal to the relevant correspondence and said that those 5 documents had been disclosed.

4. The Tribunal did not strike out the Respondent's response. It said that the Respondent had been unreasonable in failing to carry out a separate disclosure exercise in relation to the Tribunal proceedings. However, the Tribunal accepted that the Respondent's legal representatives had not deliberately concealed the

redacted material – they were not aware that the material was relevant and should be disclosed. The Tribunal accepted that the Respondent's solicitor had understood that an earlier request for unredacted documents related only to 5 documents and that these had been disclosed. The Tribunal accepted the Respondent's assurances that, following disclosure of the unredacted documents, disclosure was complete. The Tribunal said that, in those circumstances, a fair hearing was still possible. The Tribunal would not entirely disregard the Respondent's unreasonable conduct, however. It would take into account the Respondent's unreasonable conduct of the proceedings where it was relevant to do so. It might take the conduct into account in deciding matters of credibility and in drawing inferences.

5. The issues in the claim were discussed at length with the parties at the start of the hearing and on 24 January 2021. The Claimant had the assistance of a pro bono counsel on 24 January 2021, who had redrafted the List of Issues for the Claimant and addressed the Tribunal on the Claimant's behalf. The issues were then agreed between the parties as follows:

Preliminary Issues - Disability

1. Did the Respondent have actual knowledge or constructive knowledge of the Claimant's physical impairment from 2005. The claimant relies on a musculoskeletal impairment.

Direct Discrimination, harassment because of disability/gender, failure to make reasonable adjustments

2. Did the Respondent treat the Claimant less favourably than others on the basis of her disability and/or sex pursuant to s.13 EqA. The Claimant relies on the following acts:

    a. HR failing to follow ACAS best practice in the conduct of the "Valuing Others" complaint (Grievance), and Disciplinary Procedures by:
        i. Moving the Claimant from her team during the grievance process;
        ii. sharing the appeal outcome with decision manager and appeal manager in the disciplinary process, thereby failing to maintain confidentiality of the grievance process;
        iii. permitting the respondents to contact their own witnesses rather than through the independent investigator, thereby failing to maintain confidentiality of the grievance process;
        iv. Starting the disciplinary process in March 2018 without carrying out a PHWS (Occupational Health) assessment to see what adjustments were necessary.

b. Less favourable treatment on the basis of raising a Grievance against senior (male) management by:
    i. – Adam Watrobksi humiliating her in a team meeting on 17 October 2017 by refusing to start the meeting until she left, and announcing that she shouldn't be there
    ii. Excluding her from team meetings on 17 October 2017 and 5 February 2018;
    iii. Being given a single repetitive temporary task (loading CDs into a computer in order to review files) in February 2018, in place of her substantive B2 role.
    iv. Being ignored by Mark Collings when he had a lock smith unlock the claimant's cabinets.

c. Adam Watrobski and Mark Collins failing to implement reasonable adjustments when the office move occurred in April 2016;

d. Adam Watrobski failing to act on recommendations from Occupational Health on and around 3 November 2017;

e. Adam Watrobski sharing the Claimant's medical information relating to her conditions without consent;

f. Mark Collins offensively and inappropriately referring to the Claimant's long-term condition on 28 July 2017 as "special needs";

g. Mark Collins/Adam Watrobski removing (or threatening to remove) the Claimant's B2 role on 10 and 12 October 2017 and 3 November 2017;

h. The Claimant sustaining an injury in the workplace following management's failure to secure her safe seating position from April 2016;

i. HR advising Ugbana Oyet and Donald Grant to start a disciplinary investigation on 6 March 2018 after the Claimant had submitted a (Valuing Others) Grievance complaint on 08 November 2017;

j. Mark Collins unreasonably relying on a job description from 2014 in order to discipline the Claimant for not undertaking Band C Database Manager tasks when she was in the B2 Collections Manager role.;

k. Mark Collins and Adam Watrobski removing B2 core duties from the Claimant by:
    a. Threatening job security on 10 October, 12 October and 3 November 2017 by saying that they were closing down the collection and would not need the role;

b. Preventing her completing her B2 objectives and development opportunities by:
   i. Placing her development opportunities with outside organisations on hold from September 2017; and
   ii. From November 2017 – February 2018, requiring her to work to the previous Band C job description; and
   iii. removing her B2 duties from February 2018 during grievance process,

l. Mark Collins and Adam Watrobski excluding the Claimant from collection/regular team meetings including publicly humiliating her in front of others on 17 October 2017; 18 December 2017 and 5 February 2018 by:
   i. saying at a meeting on 17.10.17 in front of other attendees, that the Claimant shouldn't be there, and refusing to start until she left; and
   ii. excluding the Claimant from team meetings on 18.12.17 and 5.2.18; and
   iii. MC publicly humiliating her by telling everyone in the meeting on 17.12.2017 that the Claimant was having an OH referral the next day.

m. Donald Grant commenting that the Claimant's personal reasonable adjustments would "open the flood gates" for requests from non-disabled persons;

n. Ugbana Oyet proceeding to ignore his own direction regarding the suitability of the Claimant to start temporary work and around 22 February 2018, requiring the Claimant to work on temporary repetitive tasks prior to completion of the Occupational Health assessment.;

o. The omission of HR to act on concerns raised at a meeting on 14 February 2018, where the Claimant raised concerns about her disability and the temporary tasks she had been assigned. The Claimant relies on the following omissions:

   i. not discussing with the Claimant's line management that she was stressed, or her concerns about the temporary tasks, and
   ii. not ensuring that Occupational Health carry out an assessment on both temporary tasks and stress.

p. Ugbana Oyet and/or Donald Grant criticising the Claimant for non-completion of temporary tasks without consideration of the impact of her condition, leading to a threat of Disciplinary action, on 7 March 2018;

q. Relevant managers failing to take reasonable actions to support the Claimant by:

i. Asking the Claimant to move counselling sessions when they clashed with team meetings where Karen Bovaird (Head of Advisory Services), Donald Grant and Ugbana Oyet all had actual knowledge of the Claimant's stress;
ii. Ugbana Oyet's unreasonable delay in authorising the Claimant's flexi leave on 17 May 2018.

r. Ugbana Oyet unreasonably supervising the Claimant's work by asking her to record and monitor her use of time from 12 April 2018 to 22 October 2018, where the Claimant was the only person undertaking this practice in the organisation;

s. Ugbana Oyet conducting the preliminary informal Disciplinary investigation without following ACAS best practice by:

i. not informing her who made the complaint against her;
ii. changing nature of allegation prior to providing the outcome; and
iii. not checking whether Mark Collins had approved the work.

t. Donald Grant denying the Claimant the right to be accompanied by a union representative during the informal investigation of an alleged complaint;

u. Ugbana Oyet requesting the Claimant to unlock private meetings;

v. Ugbana Oyet finding the Claimant to have committed act(s) of misconduct and giving her a first written warning;

3. If any of the above acts are found, has the Claimant proved from such facts a prima facie case of discrimination from which the Tribunal *could conclude* that the less favourable treatment had a causal connection to her disability and/or gender?

4. Did the same amount to detriment for the purposes of section 39(2)(d) EqA 2010?

5. If so, was the Claimant treated less favourably than a hypothetical comparator would have been in circumstances that were not materially different?

6. If so, was the reason for the Claimant's treatment because she had a disability and/or because of her gender?

Failure to make reasonable adjustments

7. For the purposes s.20(4) EA10 did the following physical features place the Claimant at a substantial disadvantage compared to non-disabled employees:
    a. from April 2016 – December 2017, the position of her workstation (i.e. not: at an inside position next to a wall or window, with cupboards behind her so people do not approach from all directions, away from overhead lights and from drafts caused by overhead venting);
    b. Between December 2017 – May 2018, the placement of desk so that people could pass behind as there was no wall or cupboards behind;
    c. From March 2018 – 10 April 2018, the placement of a computer processor unit at the front of Claimant's desk instead of providing a CD reader; and
    d. the Claimant's fixed and/or manually adjustable desk.

8. Was there a PCP that put the Claimant at a disadvantage in comparison to her non-disabled colleagues? The Claimant relies on the Respondent's Policy, Criterion, or Practice (PCP) of using her desk as a hot-desk during her absence, for the purposes of the requirement in s.20(3) EqA.
   Did that PCP place the Claimant at a disadvantage the claimant relies on the following:
9. 1) my medical conditions have returned and been exacerbated, with reduced neck mobility due to the RSI in my neck;

10. (2) overworked eye muscles due to the overuse of my eyes to compensate the lack of movement in my neck;

11. (3) lack of movement in all directions and limited strength in my right shoulder and dominant arm.

12. (4) I have been referred for multiple x-rays, MRI scan of the brain along with other tests.

13. (5) I have seen both House counsellors and DHB counsellors for my mental wellbeing and those meetings finished in September 2018.

14. (6) I have had multiple GP appointments, referrals to specialist consultants and physiotherapists.

15. (7) I have had nine workplace counselling sessions over the past nine months together with contacting the Health Assured for support to enable me to manage the extreme workplace stress inflicted on me daily by my discriminators and harassers.'

16. (8) Due to consistent management conscious bias about people with workplace adjustments I have suffered a second injury in the workplace in September 2018. (9) I have now been signed off work.

(10) I have been put through an unfair Disciplinary investigation in retaliation of taking out the VO investigation

17. If so, did the Respondent fail to take such steps are as it is reasonable to take to avoid the disadvantage caused by its PCPs for the purposes of the requirement in s.20 (3) by:
    iv. Failing to prevent use of the Claimant's desk as a hot-desk in August 2018 and on 20 September 2018, during the Claimant's absence for purposes of the requirement in s.20(3) EqA;
    v. Preventing the Claimant from attending counselling/support sessions when they clashed with team meetings.
    c. failed to make adjustments to her desk position for purposes of the requirement in s.20(4) EqA;
    d. failed to provide the following auxiliary aids for purposes of the requirement under s. 20(5) EqA (i.e. that where the Claimant 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):
        i. a fully adjustable sit-stand desk;
        ii. a blue-tooth headset as recommended by the November 2017 Occupational Health report;
        iii. a CD reader.

    e. Removed workplace adjustments after the office move of March 2016 until July 2017

18. <u>If the above is affirmative were those adjustments reasonable having regard to the size and resources of the Respondent.</u>
<u>18A. Did the Respondent know and could it reasonably have been expected to know that the Claimant was put at the substantial disadvantages by the PCPS or the failures to provide auxiliary aids?</u>

Harassment

19. Mark Collins saying, "he and Adam Watrobski were going to turn things back to how they were before I started in the team as it worked perfectly well with just the two of them".

20. Whether Ugbana Oyet sent harassing letters to the Claimant whilst she was on sick leave.

21. In so far as the acts identified at Paragraphs 2, 7, 19 and 20 above are proved, whether such conduct was:
    a. Unwanted;
    b. Related to either the Claimant's disability or gender;

c. Had the purpose or effect of violating the Claimant's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for her judged according to the Claimant's perception, the circumstances of the case and the issue of reasonableness within the meaning of s.26(4) EqA 2010.

Victimisation

22. Did the Claimant make a Protected Act. The Claimant relies on the grievances of 8 November 2017 and 23 March 2018 (the "Valuing Others complaint").

23. Was the Claimant subject to a detriment? The Claimant relies on the following:

    a. Mark Collins and Adam Watrobski excluding the Claimant from collection/regular team meetings on, 18 December 2017 and 5 February 2018;

    b. Adam Watrobski failing to safeguard the Claimant's confidential personal information on 16 November 2017 by replying to PHWS correspondence, copying colleagues, without adding the protective marking of confidential or restricted access;

    c. ;

    d. Adam Watrobski and/or Mark Collins turning the Claimant's B2 role into that of her previous role as Band C Database Manager on 3 November 2017 without any formal union or HR consultation;
    e. Mark Collins and Adam Watrobski removing the Claimant's B2 duties and objectives on 10 and 12 October 2017 and 3 November 2017 and thereafter:
        a. Threatening job security on 10 October, 12 October and 3 November 2017 by saying that they were closing down the collection and would not need the role;
        b. Preventing her completing her B2 objectives and development opportunities by:
            i. Placing her development opportunities with outside organisations on hold from September 2017; and
            ii. From November 2017 – February 2018, requiring her to work to the previous Band C job description; and
            iii. moving her out of B2 role from February 2018 during grievance process,

        .
    f. Ugbana Oyet and/or Donald Grant criticising the Claimant for non-completion of temporary tasks without consideration of the

impact of her condition, leading to a threat of Disciplinary action, on 6 March 2018;

g. David Hemmings upholding unfounded allegations during the Disciplinary Appeal hearing;

h. David Hemmings relying only on Mark Collins and Mary Jane Tsang's Interview Records in the Disciplinary Appeal hearing – whereas Claire Reed's Interview Record, which stated that the Disciplinary action was a "witch hunt" of the Claimant, was ignored as evidence;

i. Senior HR Advisors (Ian Meekums, Michelle Jones, and Kim McGrath) altering the notes of disciplinary meetings to add additional information into the Disciplinary hearing/appeal meeting notes *after* the meetings were held;

j. Ugbana Oyet concealing from Donald Grant that he had asked the Claimant to refrain from starting temporary tasks until the medical referral;

k. Ugbana Oyet unreasonably informally disciplining the Claimant for carrying out work that had been authorised by M Collins.;

l. Ugbana Oyet unreasonably conducting the preliminary informal Disciplinary investigation by:

    a. Not informing the Claimant who made complaint;
    b. Changing the nature of the allegation prior to the outcome; and
    c. Failing to check whether Mark Collins had approved the work;

m. Donald Grant denying the Claimant the right to be accompanied by a union representative during the informal investigation of an alleged complaint;

n. Ugbana Oyet failing to safeguard the Claimant's personal confidential information on 22 March 2018 contrary to the Respondent's organisational policies and procedures, by not locking the Disciplinary Meeting in his diary as private;

o. Ugbana Oyet unreasonably requiring the Claimant to provide a doctor's note in relation to the temporary task which the Claimant could not undertake at her computer on 23 March 2018;

p. Ugbana Oyet substituting a DSE assessment for a medical referral which was scheduled on 03 April 2018;

q. Ugbana Oyet unreasonably and excessively supervising the Claimant's work by asking her to record and monitor her use of time, hour by hour each day from 12 April 2018 to 22 October 2018;
r. Ugbana Oyet creating a new process to record time and motion activities which was in addition to the standard organisational practice of timekeeping, and which was not applied to anyone-else in the organisation;

s. Ugbana Oyet unreasonably had the Claimant undertake a repetitive singular activity (loading CDs into a computer to check and copy across files) which took precedence over her substantive Band B2 role/objectives, resulting in the Claimant being unable to complete her B2 role and objectives for reporting year 2017-18;

t. Ugbana Oyet questioning the Claimant as to her whereabouts when she was in private meetings;

u. Ugbana Oyet unreasonably investigating the Claimant's conduct and requiring her to attend a Disciplinary hearing on 10 April 2018;

v. Ugbana Oyet stating the Valuing Others Appeal outcome was clear on 05 September 2018 to the Claimant when the Claimant only had knowledge of the appeal outcome on 29 October 2018, indicating that he knew the appeal outcome before she did.;

w. The Respondents providing the Claimant with no work objectives during 1 April 2018-19 when this is an organisation requirement;

x. Ugbana Oyet excluding the Claimant as a member of his temporary team when holding discussions about making adequate arrangements for moving the Claimant's workplace adjustments from Millbank to Richmond House between 29 May 2018 and 31 May 2018;

y. The Respondent failing to make adequate arrangements for moving the Claimant's office equipment from Millbank to Richmond House between 29 May 2018 and 31 May 2018 by not discussing with the Claimant or confirming that the Claimant's equipment and cupboards would be relocated and reinstated in the new building;);

z. Donald Grant breaching the Claimant's medical data by passing on the Claimant's medical condition to Ugbana Oyet without written consent;

aa. Taking Disciplinary action against the Claimant for the polite note on her desk asking staff to refrain from using her workspace/equipment as a hot desk on 27 September 2018;

bb. Mark Collins ignoring the Claimant when he had a locksmith unlock the cabinet.

24. If affirmative were the detriments because the Claimant did the Protected Act.

Further and/or in the alternative:

Section 15 – Discrimination Arising from Disability

25. Was the Claimant treated unfavourably? The Claimant relies on the following as unfavourable treatment:

a. Ugbana Oyet and/or Donald Grant criticising the Claimant for non-completion of temporary tasks without consideration of the impact of her condition, leading to a threat of Disciplinary action, on 6 and 13 March 2018;

b. Ugbana Oyet patronising the claimant on 07/03/2018 by saying "I specifically asked you to commence tasks that can be completed at your current first floor desk location for example: (1) pick up a CD disk from desk (2) Open the disk and insert into the computer to identify their contents (3) if the disk is blank – it can be destroyed (4) ……(10)"

c.

d. Ugbana Oyet unreasonably requiring the Claimant to provide a doctor's note in relation to the temporary task which the Claimant could not undertake at her computer on 23 March 2018;

e. Ugbana Oyet unreasonably and excessively supervising the Claimant's work by asking her to record and monitor her use of time, hour by hour each day from 12 April 2018 to 22 October 2018;

f. Ugbana Oyet creating a new process to record time and motion activities which was in addition to the standard organisational practice of timekeeping, and which was not applied to anyone-else in the organisation;

g. Ugbana Oyet questioning the Claimant as to her whereabouts when she was in private meetings;

h. Ugbana Oyet unreasonably subjecting the claimant to a conduct disciplinary on 14/03/2018;

i. Taking further Disciplinary action against the Claimant for the polite note on her desk asking staff to refrain from using her workspace/equipment as a hot desk on 27/09/2018;

j. Being alleged by Ugbana Oyet during the disciplinary to have committed "fraud" and Ugbana Oyet requiring the Claimant to provide evidence of work carried out.

k. The Claimant been given a first written warning.

l. David Hemmings upholding previous "unfounded" allegations and the "founded" allegations during the Disciplinary Appeal Hearing.

26. If so, was the Claimant subjected to unfavourable treatment because of something arising in consequence of a disability? The Claimant relies on:
    a. Her inability to perform tasks without OH advice first;
    b. Her inability to carry out repetitive tasks
    c. Attending counselling meetings.

27. If so, is the Respondent able to show that its treatment of the Claimant was a proportionate means of achieving a legitimate aim? The Respondent relies on the following legitimate aims:

6. The Respondent conceded that the Claimant was a disabled person by reason of her musculoskeletal condition at the relevant times.

7. The Tribunal heard evidence from the Claimant. The Tribunal read a witness statement from the Claimant's mother. The Tribunal indicated that, as the statement was primarily relevant to remedy, the Tribunal would not take it into account unless specific parts were shown to be relevant. For the Respondents, the Tribunal heard evidence from Dr Mark Collins, Historian and Archivist, who was curator of the Respondent's Architectural Fabric Heritage Collection and the Claimant's line manager from April 2014 to November 2017; Adam Watrobski, Conservation Architect and Dr Collins' manager; Karen Bovaird, HR professional; Ugbana Oyet, Lead Electrical Engineer and the Claimant's line manager from November 2017; and Donald Grant, Director (Property, Planning and Design). Mr Grant was both Mr Watrobski and Mr Oyet's line managers.

8. The Tribunal read statements from Jonathan Lewsey, Decision Manager in the disciplinary procedure; and Patricia Mary Richards, Decision Manager in the appeals relating to the Claimant's Valuing Others ("VO") complaint (grievance). Those people were no longer employed by the Respondent. The Tribunal said that it would attach less weight to evidence where the witnesses had not attended to be cross examined. The Tribunal said that it would nevertheless take into account contemporaneous documentary evidence.

9. Both parties had prepared Bundles of documents for the Final Hearing. By agreement, the parties used the Claimant's electronic Bundle during the Hearing, because it was easier to navigate using PDF. The Tribunal also referred to the Bundle of redacted and unredacted documents prepared by the Respondent pursuant to the Tribunal's disclosure order. It referred to the Respondent's Hearing Bundle when it contained documents not in the Claimant's Bundle. Page references in the Reasons are to the Claimant's Bundle, unless otherwise stated.

10. The Tribunal timetabled the case at the outset and the timetable was broadly adhered to. Both parties made written and oral submissions. The Tribunal reserved its decision. It set a provisional remedy hearing date with the agreement of the parties.

Evidence and Findings of Primary Fact

11. The Tribunal was referred to a very large amount of detailed evidence in the Hearing Bundle, in the parties' witness statements and in written submissions. These reasons necessarily focus on the evidence which was most relevant to the issues in the claim.

Musculoskeletal Condition

12. The Claimant started work for the Respondent in 1991. In 2005 she started to experience musculoskeletal symptoms. From 2005 the Parliamentary Health and Wellbeing Service team recommended - and the Respondent provided - equipment for the Claimant to use at work. This equipment included an orthopaedic chair, specialist keyboard, mouse, number pad and reading/writing slope. The Claimant's orthopaedic chair was able to swivel, to reduce the need for the Claimant to twist her back or neck. The Parliamentary Health and Wellbeing Service was the Respondent's Occupational Health service.

13. A 17 October 2005 Workplace Safety Assessment conducted by an Occupational Health Adviser recorded that the Claimant had reported musculoskeletal symptoms, p684. That assessment noted that the Claimant moved her neck to the left in order to view clients entering the department. She was advised to move her chair, rather than her neck, when greeting clients.

14. In April 2014, the Claimant was appointed to the role of Database Manager, Grade C, in the Respondent's Architecture and Heritage (A&H) Team. Her line manager in this role was Dr Mark Collins, Estates Archivist and Historian/ Curator of the Respondent's Architectural Fabric Heritage Collection.

15. A medical report, prepared by Dr Weyrich, Consultant Neurologist, on 4 September 2014, reported that a neurological examination of the Claimant was normal and that this pointed against an underlying nerve/central nervous problem, p203. Dr Weyrich said that the Claimant had been treated by her GP for right-sided rotator cuff problems earlier that year.

16. In early 2015 the Claimant and her team moved from their location in Tothill Street to 7 Millbank. On 17 March 2015, Maggie Mainland, an Occupational Health

Adviser, who is a nurse, wrote a note to the Claimant, saying, “Alison has a long standing musculoskeletal problem that has been effectively managed for ... many years. When she moved to 7 Millbank her requirements were discussed and agreed. I would appreciate your support if Alison could remain at her current workstation but certainly she would benefit from having a wall or her cupboard behind her to reduce the amount of twisting and turning.” P712. Dr Collins agreed in evidence that he discussed this with the Claimant at the time.

17. On 14 April 2015, the Claimant emailed Dr Collins and Mr Watrobski, thanking them for supporting her occupational requirements and ensuring that her workstation was suitable for her, p713.

Claimant’s Role and Job Evaluation Study 2016

18. In December 2016, a Job Evaluation Study was completed on the Claimant’s Band C Database Manager role by an external assessor, p428. The resulting “JEGS” report concluded that the role should be a B2 grade and recommended that the appropriate title for the role would be “Band B2 Collections Manager for the Architectural Fabric Collection”.

19. There were a number of disputes of fact regarding this regrading. The Claimant contended that the regrading was a promotion and that her job role no longer had any significant element of data inputting. The Claimant said that the JEGS report became her new job description. On 22 February 2017 Samiul Islam, an EPPS Administrator wrote to the Claimant saying, “I am writing to inform you that, with effect from 16 December 2016, your revised salary on promotion to Band B2, Collection Manager, Architectural Fabric Collection is £2,150.00 per annum.” P357.

20. The Tribunal accepted that this was a contractual document. However, it also accepted Mr Watrobski’s evidence that Samiul Islam was a payroll employee, dealing with payroll matters.

21. The Respondent contended that the regrading was “just that” – a regrade - and was not a promotion. It contended that the Claimant retained her old database manager job duties and that her Band C job description remained in her job description.

22. The Tribunal noted that the “job capsule” in the JEGS report, which described the B2 Collections Manager role said that 25% of the role comprised “Management of the Collection including overseeing the care, conservation, access and security of all objects in the collection both on and off the Parliamentary Estate and managing and co-ordinating all aspects of accessioning, cataloguing, documenting and maintaining the integrity and quality of the information base”, p432, 50% of the B2 role involved developing collections strategies, policies and procedures and the remaining 25% was stated to be provision of specialist advice and guidance.

23. However, on both parties’ evidence, the Tribunal found that, prior to October 2016, the Claimant had been largely engaged in recording and photographing

the items in the collection which were held in storage facilities. Further, on 12 October 2016, when Dr Collins forwarded the Claimant's job evaluation documents, he said, "The intention is to raise Alison from Grade C which clearly neither reflects her role as collections' care manager for Estates nor her many years' experience with collection management and the gaining of her Associateship of the Museums Association. As SE progresses towards R&R, Alison's skills will be ever more needed to manage the crucial task of arranging the recording, monitoring and care of the architectural fabric and decorative arts in the Palace, together with the decant and storage of many such items which will of course derive from the repair programme." P424.

24. The Claimant told the Tribunal that inputting information into the database was a task which she now merely supervised as a B Manager, rather than a task which she undertook herself. She drew the Tribunal's attention to the JEGS report which recorded that she was supervising seconded employees. However, on the evidence, the seconded employees who had been undertaking this task in 2016 were no longer available from about late 2017. On 15 March 2017 Dr Collins told the Claimant by email that Matthew, the seconded employee, was a "shared resource" and was not to be monopolised for data inputting by the Claimant, p481.

25. No new Band C Database Manager was appointed.

26. The Respondent's Pay Guidance Document provides at paragraph 56, "**Existing Jobs**. Requests for existing jobs to be re-assessed should come from the post holder's line manager. …. It should be noted that where jobs have changed significantly, they are in fact new jobs which have not been filled via the House policy of fair and open competition. In such instances the incumbent post holder does not have the right to be promoted in situ and the job should be trawled in the usual way." P2597. The Claimant's regraded job was not put out to competitive interview pursuant to this policy.

27. On all the evidence, the Tribunal found that the "B2 Collections Manager for the Architectural Fabric Collection" role was not an entirely new role, which had changed significantly from the old role – it was not put out to competitive interview. The Band C Database Manager role had been regraded and the Claimant's duties as a Database Manager still existed in the regraded job. No additional new role was created, in addition to the Band C Database Manager role. The Claimant was therefore still required to ensure data inputting, whether by herself or by using seconded employees, if they were available. As Dr Collins had described at the time of the regrading, her fundamental task was the "arranging the recording, monitoring and care of the architectural fabric and decorative arts in the Palace." The Claimant's old Band C job description therefore still applied to the regraded role, as supplemented by the JEGS job capsule. The JEGS job capsule was not determinative of her duties.

April 2016 Move

28. In April 2016, the Claimant's team was moved within their 7 Millbank building, in what was intended to be a temporary arrangement, prior to a further office move.

The Claimant, who, for many years had been placed at a desk at the end of a row and by a window or wall, was now placed at the end of a row, beside an aisle.

29. On 19 April 2016, the Claimant wrote a note to be placed on her HR file, p717. The note included the following, "On the 18th March, my line manager showed me the plans for our new workstation space for our team. I discussed my requirements and suggested the inner position, to align to the recommendations by PHWS, which gives me the wall and cupboards behind me, it avoids me twisting and turning from people approaching me from behind. This type of position had not changed in over 10 years of desk moves and has helped my symptoms. .....My line manager told me he had changed his mind on the afternoon of the 8th April and he was sitting on the inner seat. He told me there was nothing I can do about, he wasn't moving from the inner position and not interested in my requirements as he was not moving. I spoke to my countersigning manager and he said there was nowhere else for me to sit, so I would just have to get on with it and sit where I've now been put."

30. The Claimant did not send a copy of this note to Dr Collins or Mr Watrobski, so they did not have an opportunity to comment on it at the time.

31. The Claimant told the Tribunal that Dr Collins and Mr Watrobski decided that she should swap desks with Dr Collins. She said that Mr Watrobski had refused to change the arrangement, or to permit her to sit on another floor to maintain her position by the window. The Claimant told the Tribunal that she needed to sit by a wall/window and with a wall or cupboards behind her, to minimise the need for her to turn her head to talk to people who approached her desk.

32. Dr Collins and Mr Watrobski both told the Tribunal that Dr Collins had a detached retina which severely affected his sight and that he needed to sit beside a window for extra light. Mr Watrobski told the Tribunal that Dr Collins' job required a large amount of hard copy reading. The Tribunal accepted their evidence on this.

33. Dr Collins and Mr Watrobski both said that they understood the Claimant had a swivel chair and could use the swivel chair to turn, instead of moving her neck. They said that, logically, the Claimant would need to turn her head less when she was at the end of the bank of desks, by the main aisle, than at the opposite end of the bank, by the wall, away from the aisle.

34. The Claimant was asked about this in evidence. The Tribunal found that the Claimant did not give a coherent or convincing explanation as to why she would need to turn her neck less to greet visitors when she was sitting at the edge of a room.

35. Dr Collins told the Tribunal that he had explained to the Claimant that he needed to sit by the window and that the Claimant agreed that it was more important for her to sit at the end of a row than by a window.

36. He said that it would not have been practicable for the Claimant to move to another floor, because it was better for the Claimant and him to be in the same area, so they could work together properly.

37. In evidence, the Claimant was asked how many times, in a day, other people in the office would approach her, to talk to her. She did not answer this question directly, but said that any number of people could approach her in the open plan office.

38. Mr Watrobski told the Tribunal that, from his observation, the nature of the Claimant's work did not require people to approach her. She was out of the office regularly in 2016 - 2017, so there would have been even less need. He said, "On the whole, from my observation when she was at her desk, I don't believe I ever observed anyone approaching the Claimant".

39. On the evidence, the Tribunal accepted Mr Watrobski's evidence that other people very rarely approached the Claimant to speak to her at her desk in the office.

40. The Claimant told the Tribunal that her symptoms of RSI returned between 2016 and July 3017.

41. Dr Collins told the Tribunal that the Claimant did not raise the matter of her seating position, or any health problems related to it, again, between April 2016 and July 2017. There was no record of the Claimant having raised the matter again with Dr Collins, or having approached Occupational Health during this period.

42. The Tribunal accepted Mr Collins' evidence that, following him explaining his need to sit by the window in April 2016, the Claimant agreed to her new seating position; and did not raise the matter again with him until July 2017.

43. The Claimant put to Mr Watrobski that he had favoured Dr Collins because he was a man.

44. Mr Watrobski denied this. He said that he had made his decision on a common sense assessment at the time. He said that Dr Collins had ophthalmological problems – bilateral cataracts and retinal detachment and could only see out of one eye. He was aware of the Claimant's complaint about neck movements, but thought that that could be dealt with by her swivel chair and her end of desk position. He said that he had individuals who had competing needs in a very difficult situation, with limited space. The Tribunal will return to this is the decision section of this judgment, below.

July 2017 – Neck Symptoms and Incident Report

45. On 31 July 2017, the Claimant emailed Dr Collins with the title "Personal (workplace related injury)", saying, "am alerting you my RSI in my neck has returned as a result of not sitting in the correct workstation following the move in Apri1 2016. I have specialist workstation requirements which have been in place for 12 years and I made you and Adam aware of my requirements as part of every planned move. However, the decision was taken not to incorporate them into the move last April. I notified HR in April 2016, so they could record the outcome of

the above decision not to incorporate my specialist workstation requirements, this was added to my personal record. The Occupational Health team also recorded the outcome for their records. However, I have gone to the doctors this morning. They have confirmed my RSI in my neck has returned due to the incorrect position of my workstation (i.e. Being on the aisle together with sitting in constant draughts (surrounding windows open / fan on). I now have tendonitis in my back/shoulder contributing to the workplace injury." P721.

46. The Claimant submitted an "Incident Report" form in relation to "tendonitis in neck, shoulder and back," p722. Dr Collins commented on the form that special care had been taken to provide enough room between the chair and the cupboards behind, p724.

47. In the section of the form which required the underlying cause of the incident to be stated, Dr Collins wrote, "The member of staff has recurring health problems and has special needs, perhaps a desk could be provided near a window, as she has requested, p724.

48. A different version of the form contained further comments from Dr Collins as follows, "The member of staff has recurring minor health problems and special needs with regard to working conditions and insists on changes to her workstation. An assessment of the workstation and the overall health of the member of staff is to be requested from Occupational Health."p858.

49. The Claimant put to Dr Collins that, by saying she had "special needs", he was being offensive, by implying that she had a mental disability. Dr Collins said that he was referring to the Claimant's physical needs, which he said was clear from the full text of his comment.

50. The Tribunal accepted Dr Collins' evidence on this matter. On the full text of either version of the form, it was clear that he was referring to the Claimant's individual physical requirements. The Tribunal did not find that Dr Collins' use of the term "special needs" on this official form, which related to her physical environment and her requirements, was in any way pejorative.

51. The Claimant self-certified her absence in summer 2017, p739.

52. There did not appear to be any contemporaneous GP note or report available from this time, giving an opinion on the cause of the Claimant's neck or other musculoskeletal symptoms in 2017.

53. On 8 January 2018, a senior physiotherapist prepared a report, discharging the Claimant from treatment for a "rotator cuff tear", saying the Claimant had improved a lot over the last 3 months, p200.

54. On 29 August 2017 HR advised Dr Collins to refer the Claimant to Occupational Health. Dr Collins replied, saying that he had filled out "an occupational health incident report" and had contacted Karan Bovaird at HR, p727.

55. The Claimant completed a self-referral form to the Parliamentary Health and Wellbeing Service ("PHWS") on 5 September 2017, p734. Dr Collins completed a referral to the same PHWS service on 5 October 2017, p744.

October 2017 OH Referral and Physician Report

56. On 18 October 2017 Dr Ali Hashtroudi, Consultant Occupational Health Physician, provided a report on the Claimant musculoskeletal symptoms. He said, "…As I explained to her the shoulder pain is less likely to be related to work and quite often there is no explanation for this presentation. ...As for her neck, she refers to them as RSI, repetitive action being looking at different directions frequently when talking to people. This is not a common presentation I have come across before but clearly she remained symptom free when she was able to avoid repeated movement of her head." P751.

57. Dr Hashtroudi recommended that a workstation assessment be carried out and that the Claimant's colleagues talk to her from the front to minimise lateral head movement. He recommended that the Claimant should avoid overhead activities and "keeping her arm in an outstretched position". He said that the Claimant should "refrain from heavy moving and handling." Dr Hashtroudi said, "...she should be allowed to use her hands free cable when using mobile" p752.

58. Dr Hashtroudi advised that some of the medications he had advised the Claimant to take might make her drowsy for a while and that she might need flexibility in her work starting time and that she might need to avoid tasks which relied heavily on concentration, p752.

59. The Tribunal found that Dr Hashtroudi, a medical doctor and expert in occupational health matters, advised that the Claimant's shoulder pain was unlikely to be related to work and that, while the Claimant described her neck symptoms as RSI, this did not accord with Dr Hashtroudi's professional experience. Furthermore, Dr Hashtroudi advised that the Claimant should use a "hands free cable" when using her mobile phone. He did not specifically advise that a blue tooth headset be provided for the Claimant's mobile phone.

60. On 17 October 2017, the Claimant recorded in an email that, "...during our weekly team meeting yesterday Mark announced to everyone that I have my OH management referral this week." P753, p1020.

61. The Tribunal accepted the Claimant's evidence that this occurred. From the Claimant's description of the matter, Dr Collins did not refer to the detail of the referral or the nature of the Claimant's health condition.

62. On 2 November 2017 Dr Collins emailed the Claimant to say that he and Mr Watrobski would meet the Claimant on 3 November to discuss her PHWS assessment, p758. Mr Watrobski typed up notes of this meeting, Respondent's trial bundle , p2051 (p2242 PDF). The notes recorded that Dr Hashtroudi had seen the Claimant and that the next stage would be a workstation assessment, which would be attended by Dr Collins. The notes also said that Mr Watrobski expressed concern about the need for the Claimant to take medication and said

that, as a result, no business travel outside the estate was to be undertaken: The notes recorded that the Claimant replied that she was not on medication. The notes further said, "[The Claimant] has not been tending to the database duties to the detriment of the administration of AFC and the Emu Working Group; [the Claimant] said that management of the database is not on her job description. AW and MC disagreed and would look again at the job description. ... AW noted an excessive number of 'Private Appointments' on [the Claimant's] Outlook Calendar; it would become necessary to know what they were for, or remove them; [the Claimant] said that she was happy to do this."

November 2017 Workstation Assessment

63. Also on 3 November 2017 Maggie Mainland, Occupational Health Adviser, sent an occupational assessment of the Claimant's work to Dr Collins, copied to Mr Watrobski and Donald Grant. She noted that Dr Hashtroudi had recommended that a Display Screen Assessment (DSE) be carried out to identify areas which could be adjusted to minimize the Claimant's musculoskeletal symptoms. Ms Mainland said that, to minimise the Claimant's symptoms, the Claimant would benefit from:

" *A sit/stand fully adjustable desk
* Ideally the work desk should be positioned beside a wall or window
* Ideally there should be a wall or cupboard directly behind her
*The aisle behind should not be used as a thoroughfare
*Face to face for talking and desk position."

64. Ms Mainland also said that overhead venting should be switched off, windows should remain closed at all times and fluorescent lighting should be removed. Ms Mainland said 'From an ergonomic perspective the chair, keyboard, mouse and screens were all of a good ergonomic design and well positioned. ... A headset has been provided for use with Skype for business. The work mobile phone may contribute to some of Alison's signs and symptoms and I would recommend: - A Bluetooth connection to be supplied for the mobile." Ms Mainland advised that telecoms could assist ordering this, P760.

65. Ms Mainland also said, "Alison informed me that you had concerns regarding her doing "business travel" possibly due to medication that may have some side effects and you stopped Alison doing "business travel" - From a health perspective there is no reason why Alison cannot undertake this task and in my opinion feel that she is able to recommence "business travel". Alison is currently and has not been on any medication that could affect her at work." P760.

66. This assessment was carried out by Ms Mainland with only the Claimant present.

Claimant's 8 November 2017 Grievance

67. On 8 November 2017, the Claimant presented a formal grievance against her managers, Dr Collins and Mr Watrobski, though the Respondent's Valuing Others process, p1021. She said that they had failed to provide reasonable adjustments during the April 2016 office move, resulting in an RSI workplace injury and that

they had treated her unfavourably by failing to cooperate with putting reasonable adjustments in place. The Claimant also complained of bullying and harassment by them.

68. On 16 November 2017 Mr Watrobski emailed Ms Mainland, copying in Dr Collins and Mr Grant and HR advisers. He said that he had met the Claimant to discuss the report from the PHWS physician and that they had agreed that there should be a reassessment of the Claimant's workplace, arranged by Dr Collins, so that he would be fully involved in understanding the requirements. He said that the Claimant had arranged the assessment without his or Dr Collins' knowledge. Mr Watrobski made a number of observations on Ms Mainland's report. He said that it would be difficult, if not impossible, to adapt the current beam desking to accommodate a sit/stand desk. He said that the aisle behind the Claimant's desk was not used as a thoroughfare, but as access to one permanent workstation and one other. He said that face to face talking positions would be difficult to accommodate, but the best solution would be the Claimant's desk in an aisle position, so that visitors could approach from an oblique angle. The worst position would be at the end of the beam, next to the window, as this would require a 90 degree head movement to address visitors. Mr Watrobski said that the ceiling vents simply cooled the air, but did not supply fresh air and that the Claimant had – and could – arrange with the building manager to turn some of the vents off. He said that the overhead lighting was not florescent, but LED. He also said that the humidity had been measured and was well within guidelines. Mr Watrobski lastly said that, as Ms Mainland mentioned, the Claimant was free to order a Bluetooth connection for her mobile phone through telecoms.p769 -770.

69. Mr Watrobski did not mark this email confidential.

70. The Claimant put to Mr Watrobski that, in his 16 November 2017 email, he was questioning the validity of OH professional's advice, when he did not have the expertise to do so.

71. Mr Watrobski denied this. He said that he was raising the standard questions which the Claimant's line manager would have raised had he been at the assessment. M Watrobski said that he did have relevant architectural expertise and had raised architectural points. He also said that he did pursue the issue of the sit/stand desk and was told that the Respondent could only provide a manually operated one.

72. Mr Watrobski enquired about the availability of a sit/stand desk for the Claimant on 17 November 2017, p775. He was told that the beam desking could not be retrofitted with a single desk unit and that available sit/stand desk was manually operated, with a gas-strut balance, p33 unredacted documents. He was told that the effort involved in adjusting it would not be significant.

73. The Claimant put to Mr Watrobski that he failed to password-protect his 16 November 2017 email and therefore it was available to his diary secretary. She said that Mr Watrobski had done this to intimidate her. Mr Watrobski denied that he had intended to intimidate the Claimant. He accepted that he had not marked

the email confidential and said, "It was an error and I can only apologise. The email was sent late in the evening and it escaped me to do it."

74. The Tribunal accepted Mr Watrobski's evidence that his failure to mark the email confidential, or password protect it, was a genuine error. He appeared sincere in his apology to the Claimant and the Tribunal noted that the email was, indeed, sent late at night.

75. On 17 November 2017 Ms Mainland replied to Mr Watrobski, suggesting a meeting to discuss his points about the DSE assessment. She said that her recommendations reflected best practice, but that if the adjustments were not reasonable or manageable, that was Mr Watrobski's decision, p771.

Claimant's Job Tasks and Job Security

76. The Claimant told the Tribunal that Dr Collins and Mr Watrobski removed the Claimant's B2 duties and objectives on 10 and 12 October 2017 and 3 November 2017 and thereafter threatened her job security on 10 October, 12 October and 3 November 2017, by saying that they were closing down the collection and would not need the role.

77. The Claimant referred to her notes of discussions with Dr Collins on 10 & 12 October 2017, p1861 & 1862. In them, the Claimant recorded that Dr Collins said that the Claimant's work had got out of hand and that Mr Watrobski did not understand how there was so much work. Her notes recorded: "Mark: He told me that him and Adam had managed perfectly well before I started and they didn't see how it is causing so much work now. … Mark: …. you will not be having any one into help and we need to look at your job description as this isn't working and we just need to you add data to the database." P1861.

78. The Claimant's notes of 12 October 2017 record, p1862, "Mark: He told me Adam and him have decided, there will be no resources to assist me. I'm to stop promoting the collection and advertising there is a collection. I need to stop doing collection work and it needs to go back to where it was 3 years ago there less work to do.
However, it sounds as if he and Adam are closing down the collection and without a collection to manage there is no role for me."

79. The Claimant drew the Tribunal's attention to paragraph [40] of the Respondent's Grounds of Resistance, which stated that the decision was taken to close down the collection.

80. Dr Collins told the Tribunal that, both before and after the Claimant's regrading, she was engaged primarily on a project to catalogue and digitise the collection. The first part of this involved field-work such as visiting the collection sites, photographing and listing items, which involved some business travel. However, he said that, by October 2017, this phase of the project was complete, and it was then important to progress the digitisation of the collection, including inputting into the EMU database. He said that the Claimant had fallen behind with this task.

81. Dr Collins completely denied that he had threatened the Claimant's job security. In evidence, he told the Tribunal that he had asked the Claimant to concentrate on clearing the backlog on the database task. He said, "However, at no time did I or Mr Watrobski suggest we wanted to remove her from her role or close her collection completely." Dr Collins agreed, however, that he required the Claimant to undertake her previous band C job duties. He said that these duties were still part of her role and that the JEGS regrade had not removed her database management duties.

82. Mr Watrobski also denied that the architectural heritage collection was going to be closed. He said, "That is totally wrong, it was not my intention; I could not close down the collection – she performed very well in the role." He agreed, however, that management of the collection had since been moved to another department.

83. The Tribunal found that, even on the Claimant's notes of her exchanges with Dr Collins, he did not threaten to close down the collection. The Tribunal noted that, at the time, the Claimant made her own private note only that it "sounded as if" Dr Collins and Mr Watrobski were closing down the collection. On the Claimant's notes, Dr Collins asked her to concentrate on adding data to the database.

84. It was clear that the Claimant disagreed that data inputting was still part of her Band B2 role. On the Tribunal's findings of fact, however, data inputting was part of the Claimant's Band B role.

85. The Tribunal accepted Dr Collins' evidence that the Claimant had fallen behind with this task. His evidence was corroborated by the minutes of the EMU working group August 2017, which recorded that the multimedia records for 7,703 items in the architectural fabric collection had no titles or further information, which made searching for items difficult, p1775. The notes also recorded, "AF [architectural fabric] did not contribute", p1778. It was not in dispute that this was a reference to the Claimant having not attended that meeting.

86. The minutes of the Super User Meeting 13 November 2017 also recorded that Dr Collins had raised the question of the Claimant's engagement with the EMU user group. The notes recorded, "ET confirmed how many meetings AB attended and explained the importance of the Architectural Fabric team being represented in the development of the manual."p2188.

87. The Claimant told the Tribunal that Dr Collins and Mr Watrobski had placed her development opportunities with outside organisations on hold from September 2017. Dr Collins told the Tribunal that there was uncertainty as to whether travel might affect the Claimant's tendonitis/RSI. He said that, once it was confirmed by the DSE assessment in November 2017 that there was no health reason why she could not travel, Dr Collins and Mr Watrobski did not restrict the Claimant's business travel plans. Mr Watrobski pointed out that the Claimant had sent an email on 9 November 2017 detailing several upcoming outside visits relating to the collection, p548. The Tribunal noted that, from her email, the Claimant was due to make 5 visits to outside organisations in November and December 2017.

88. The Claimant also told the Tribunal that, in a 121 meeting with Mr Oyet on 12 December 2017, he had encouraged her to undertake any development opportunities available, p1945. The Tribunal therefore concluded that Dr Collins and Mr Watrobski stopped the Claimant's outside visits briefly, but these resumed by 9 November 2017. The visits later stopped again when she was moved to temporary tasks away from her collections work, p1945.

89. The Claimant told the Tribunal that Mr Collins had drastically reduced her budget in 2017.

90. Dr Collins told the Tribunal that Barbara Brown, Senior Management Accountant, suggested that he reduce the Claimant's budget because the department was not spending it. He said that that was standard practice.

91. The Claimant, however, drew the Tribunal's attention to the notes of an interview with Barbara Brown, p1311. Ms Brown told the interviewer that it was Dr Collins who had suggested reducing the budget, because the collection would not be operating on the same scale in future, so that it would not be using such extensive funds, p1312. She said that the budget was for repairs and conservation of the collection.

92. The Tribunal decided that Dr Collins had suggested the budget cut, consistent with his belief that the Claimant needed to concentrate on cataloguing the collection in the database. The Claimant had previously travelled and photographed the items in the collection and needed a budget to do so, but that part of the work was over.

93. Once again, the Claimant clearly did not agree with Dr Collins's decision that she should concentrate on digitally recording and cataloguing the collection. She was resistant to his instructions to complete this outstanding task. Nevertheless, the Tribunal has found that this was part of her B2 role. It appeared that the Claimant's dissatisfaction about reduction of her budget and removal of her duties arose from her unwillingness to accept Dr Collins' guidance about the tasks she should prioritise.

Change of Managers November 2017

94. On 14 November 2017 Mr Grant emailed Ms Bovaird saying that Dr Collins and Mr Watrobski were concerned that their ongoing management of the Claimant may be perceived as bullying and harassment and that they were uncomfortable being in her presence without a witness, unredacted bundle p123. Ms Bovaird replied, saying that if Dr Collins and Mr Watrobski were dealing with the Claimant professionally, there should be no issue. She also said that the Claimant had not said that she was unwilling to work with either of them, p122.

95. On 16 November 2017 Mr Grant told Mr Watrobski and Dr Collins that he had made a temporary arrangement for the Claimant to be line managed by Mr Oyet, while the grievance process was ongoing. He said that Mr Oyet should take over responsibility for management of the Occupational Health assessment, p773.

96. The Claimant put to Mr Watrobski that he had challenged Ms Mainland's report on 16 November, despite being told that Mr Oyet would take responsibility for the occupational health discussions. Mr Watrobski told the Tribunal that it was likely that he had not seen this email when he sent his response to Ms Mainland later that day, as he had 1000s of unread emails in his inbox. The Tribunal considered that it was credible that Mr Watrobski had not read the email when his inbox was so overloaded.

97. The Claimant contended that she was moved, rather than Dr Collins and Mr Watrobski, because she was female. Ms Bovaird agreed in evidence that the Claimant was, as a matter of fact, female, but said that that was not the reason she was moved, rather than the two men. The Tribunal will return to this in the decision section of this judgment.

98. Mr Grant told the Tribunal that the Claimant had had a history of falling out with her managers and that here had a been a history of shifting the difficulties on to other managers. He said that, when Mr Oyet and he took over her line management, they were sent on an HR course directed at "managing the unmanageable." Mr Grant said that the Clamant had required more management than any other employee he had come across in his career.

99. On 29 November 2017, Mr Watrobski prepared a response to the Claimant's grievance. In it, he said that he was "not a professional manager…rather I manage a team of professionals" and that he "concludes that Alison needs a level of management and professional counselling which my team cannot provide" p1068.

18 December 2017 Team Meeting

100. It was not in dispute that Mr Grant had told the Claimant, when he moved her line management, that she would be able to continue to attend Architecture and Heritage Team meetings.

101. On 18 December 2017, the Claimant emailed Mr Grant saying, "For the past few weeks I have been unable to attend due to other meetings that clashed with the team meeting (relating to the current process) and physio where I worked from home. Today I was able to attend the team meeting. Mark came to the table where I was seated with Heather and stated, "We moved your line management to Ugbana; we are having a team meeting and you are not invited so we are moving tables", p1091.

102. On 20 December Mr Grant replied, apologising. He said that the new management arrangements were outside the Architecture and Heritage team and that he had not explained the arrangements in detail to Dr Collins. He said, "Mark assumed that you were not attending the team meetings during these arrangements. However I believe the report is due back and therefore current arrangements may not be in place for long." P1091.

103. In evidence, Dr Collins agreed that he moved the team meeting on 18 December 2017 to the other end of Portcullis House, away from the Claimant. He said that

the Claimant made clear, despite an explanation being given as to why she should not attend, that she would not leave. He told the Tribunal that this was disrupting the meeting and creating an awkward atmosphere.

104. The Tribunal found that Dr Collins moved his team meeting away from the Claimant to another part of the building, after the Claimant had already arrived and was sitting with another team member. The Tribunal will return to this in the decision section of the judgment, below.

105. Mr Grant was appointed as the deciding officer for the Claimant's Valuing Others grievance. He wrote to the Claimant on 5 January 2018, saying that the External Harassment Investigator had concluded preliminary enquiries and that Mr Grant had asked him to conduct a full investigation and produce a report. He said that the Claimant's further complaints, dated 28 November and 18 December 2017 would be included. The Claimant's further complaints were that Mr Watrobski had failed to keep his 16 November 2017 email – and therefore the Claimant's personal information - confidential, and that management was overbearing in relation to her work travel and work diary.

Private Appointments

106. On 5 January 2018 Mr Oyet emailed the Claimant saying, "I'm struggling to get an appointment in your diary as there are large blocks of "private appointment". Could you please update your diary and remove the large multiple hour blocks of private appointments. If they refer to time addressing particular tasks, please show them as such, we need to be as transparent as reasonable with our diaries in the spirit of working collaboratively with our colleagues." P1094.

107. The Claimant told the Tribunal that her managers were overbearing in their monitoring of her work diary. She said that she had legitimate private appointments relating to her grievance, counselling and meeting her Trade Union representative.

108. In cross examination Mr Oyet said, "None of it was overbearing – we attempted to book meetings and they were declined. As a manager I need to understand where staff are - we need to deliver outcomes and when that is not happening we need to monitor to ensure that staff are carrying out tasks."

109. The Claimant drew the Tribunal's attention to further questioning of her private appointments by Mr Oyet on 11 April 2018, p2077. Mr Oyet listed 8 private appointments in the Claimant's diary lasting between 3.5 hours and a whole day between 9 January and 12 March 2018. He asked the Claimant to provide clarity on what the appointments related to.

110. The Claimant told the Tribunal that she had only been asked to unlock her private appointments during the grievance process and that these requests were clearly linked to the grievance process. Mr Oyet said that the request to explain private appointments may have happened during the grievance process, but was not linked to it. He said that the Claimant had failed to do the work she had been

asked to do and the April 2018 request to explain the Claimant's appointments was about "delivery of tasks".

111. The Tribunal will return to this below.

5 February 2018 Meeting and Change in Job Tasks

112. On 9 January 2018 Mr Grant emailed the Claimant, saying that he had resolved the team meetings issue and that the Claimant would still receive invitations to team meetings, p1095.

113. However, on 17 January 2018, Mr Watrobski emailed Mr Grant and Ms Bovaird at HR, p1098. He said that the Claimant was now saying that the "private meetings" in her diary related to the current grievance process. He said that, since the first of those private meetings was in February 2017, with 40 hours of private meetings until November 2017, he assumed that the grievance had been planned long in advance. He said that he believed that the Claimant's aim was to achieve freedom from management and better resources. He said that the Claimant's practice of blanking out her diary for private appointments meant that no one knew what she was doing.

114. Mr Watrobksi said that he and Dr Collins had been caused mental stress by the grievance process, which would be exacerbated by the Claimant's proposed attendance at team meetings. He said, "We cannot work professionally with someone who cannot be trusted and for whom any form of management is construed as "bullying and harassment." On a practical level. [the Claimant] is being line managed by others and this relationship would be compromised were Mark and I to make any comment, not to mention the potential for an additional grievance to be lodged. I am no longer prepared to tolerate this and would therefore request that [the Claimant] please be instructed not to attend."

115. The Tribunal considered that this was Mr Watrobski's unvarnished view of the Claimant's grievance.

116. At a team meeting 5 February 2018, Mr Watrobski told the Claimant that she should not be there and that she was under different management, page 1101. The Claimant told the Tribunal that she was already sitting down when Mr Watrobski arrived, that he refused to sit down until she left and that she felt humiliated in front of the other attendees.

117. Mr Watrobski agreed that he had asked the Claimant to leave the team meeting on 5 February 2018. He denied that he had done so loudly, but said that he had told her directly and discretely that he did not think she should be there because her line management had changed.

118. Mr Watrobski said that he would not routinely exclude a hypothetical member of his team because they had made a Valuing Others complaint against him, but her complaint of "overbearing supervision" made clear that she had objections to his and Dr Collin's management. He said that he believed that the Claimant's continued attendance at meetings was likely to risk further complaints being

made. He also said that he was suspicious of the Claimant's motives for attending, as she had rarely attended the team meetings before raising the complaint.

119. Mr Watrobski told the Tribunal that responding to the Claimant's grievance cause him great stress and affected his mental health. Mr Watrobski's evidence on this appeared to be consistent with his 17 January email to Mr Grant.

120. It was clear that Mr Watrobski told the Claimant, when others were present, that she should not be at the meeting on 5 February 2018 and that he did not start the meeting until she left.

121. On 8 February 2018 Mr Grant told the Claimant that she would be working on different duties from 19 February 2018.

122. The Claimant cross examined Ms Bovaird about the decision to change her job tasks. Ms Bovaird told the Tribunal that the relationship between the Claimant and Dr Collins and Mr Watrobski had broken down. Ms Bovaird therefore asked Mr Grant to see who could be moved. Ms Bovaird said, "I asked him to look at who was moved – there was not an assumption that you moved, I asked him to look at the situation and who could reasonably be moved with minimal disruption to the business."

123. The Respondent's witnesses told the Tribunal that it was decided that it would be less disruptive to give the Claimant temporary tasks, than to remove the whole line management of the architectural fabric collection.

124. Mr Grant told the Tribunal that Dr Collins and Mr Watrobski suspected that the Claimant was seeking to add to her complaints and they did not want the Claimant to attend their meetings. He said it was untenable for the Claimant to attend the meetings and, "that was the point when we decided to ask the Claimant to concentrate on a small remit within her existing job."

125. Mr Grant set out his decision in an email on 12 February 2018, p790. "I explained that I had considered the situation of the recent contact with the A&H team and your questions around your role during your 121 with Ugbana carefully, taking into account the ongoing business needs together with advice from the HR Advisory Service. I had considered alternative work for each of the three individuals involved, and after reviewing all specialist roles and transferable skills, concluded that it would be most appropriate to pause the collections work and provide to you alternative temporary work of similar weighting. Coincidentally and fortunately, a suitable project had arisen which had become critical following the sudden decision to move from 7MB, and I have attached the Word version of the document that I provided during our meeting, describing the duties. This project requires identification of important information by someone very familiar with the estate and its background, organising them in preparation for contractors to scan. I suggested that you reviewed the document and would be pleased to hear any comments either electronically when you return on Monday, or if you wish, by meeting again on Tuesday to discuss any changes considered desirable, with a view to starting this critical project on Wednesday."

126. The Claimant replied to Mr Grant's email the same day, saying she had hoped for a more positive outcome and to be able to attend team meetings. She said that she needed to establish whether the temporary role would exacerbate her condition, which would take some time and so she could not start the tasks on Wednesday, p789.

127. Mr Grant replied further on 13 February, p788. He said that, given that the Claimant had to liaise with others, he was happy to delay the start of the work until 19 February, to allow the Claimant to establish the appropriate working environment. He asked the Claimant to liaise with Mr Oyet and Hannah, who was in charge of one of the new tasks. He said, however, that this should be straightforward given the standard office-based environment.

128. The Claimant drew the Tribunal's attention to her 2018-2019 performance management IPR (performance review) document for her Collections Manager role p511-517. Her tasks in it included, "Lead on the requirements for the Architectural Fabric Collection; As sole museum professional and subject matter expert" "Lead on the Engagement programme for the Architectural Fabric Collection". The Claimant said that, when she was taken off her permanent role as a museum professional, she was given temporary tasks not comparable to her grade and was therefore blocked from undertaking her substantive B2 work by management because she had raised a formal grievance.

129. Mr Oyet and Mr Grant denied that the Claimant's temporary tasks were not commensurate with her B2 role. They both told the Tribunal that the task was within her existing job description. Mr Grant said that the Claimants B2 role was a cataloguing role. They both said that it was reasonable to ask employees to concentrate on a particular part of their job description for a period of time.

130. My Oyet told the Tribunal that other colleagues, including Anna Baldwin, were doing this task too, as was he. He said that he could not see how it was victimisation as others were doing the same thing.

131. The Tribunal will return to all this evidence in the "decision" section of its judgment.

Stress Referral

132. The Claimant told Ms Bovaird in a meeting on 15 February 2018 that she felt more stressed than before about the grievance process, p794. On 20 February 2018 Mr Grant told Mr Oyet that stress should be mentioned in a referral of the Claimant to OH, p793. In the event, Mr Oyet did not do so. He told the Tribunal that he may have overlooked doing so. Mr Oyet drew the Tribunal's attention to extensive communications between the Claimant and Mr Oyet to agree the text of the OH referral document, for example, p795, and said that the Claimant had had ample opportunity to add stress to the referral, or to raise it with OH when she was assessed.

February 2018 New Tasks and Occupational Health Referral

133. The Claimant contacted Ms Bovaird in HR, saying that the move in her job duties was being put in place without a referral to Occupational Health, p793.

134. It was not in dispute that the temporary work had 2 parts: 1. A second floor Library role, which involved organising hard copy documents for external contractors to scan (p1108); and 2. A CD role, which involved putting CDs into the computer, looking at the documents stored on the CD and then moving those documents to the appropriate location on the Respondent's online shared drive (p1950). The aim of this latter task was to reduce the physical storage space needed when the team moved from 7 Millbank to Richmond House. The move was, at that time, planned for April 2018.

135. On 27 February 2018, the Claimant emailed Mr Oyet saying that she had compared both lists of temporary work with her IPR objectives and that the temporary role was not comparable to her B2 role. She thanked Mr Oyet for progressing a referral to OH and said that she wanted to ensure that the work was assessed by an OH doctor or medical professional before she started work, p795.

136. Mr Oyet replied that day, saying that he would send the referral to OH that afternoon. However, he also said that the temporary arrangements had started on 19 February and that the Clamant was required to undertake the elements of the role which she could complete safely, after doing her own risk assessment, p795.

137. The Tribunal noted that, again, the Claimant was complaining that the tasks she had been assigned were not commensurate with her grade.

138. Mr Oyet completed the OH referral, attaching 2 lists of the 2 activities the Claimant was being asked to undertake on a temporary basis, p799. He asked that both sets of activities be assessed.

139. In the referral form, Mr Oyet said of both activities, "As this is a temporary role, it is necessary to ensure any temporary new activities outside Alison's permanent role as Collections Manager are risk and impact assessed, prior to work commencing." P804.

140. The Claimant told the Tribunal that she had understood that Mr Oyet had therefore agreed that both tasks should be risk assessed before she started either of them. She said that she had autonomy in her role as collections manager and therefore decided to undertake activities which she believed she could do safely. These included policy drafting for her B2 collections manager role and attending working group meetings.

141. In evidence, Mr Oyet disagreed that the Claimant had autonomy to decide whether or not to undertake tasks at all, but said that she had autonomy to decide the way in which she would carry out the tasks she had been assigned.

142. Mr Oyet told the Tribunal that the OH referral was for the temporary role as a whole, encompassing both tasks, but that he believed that the Claimant could undertake the CD task before the full OH report was available. The Tribunal will return to this evidence in its decision, below.

143. Once the referral had been made, it became clear the OH could not assess the temporary work until the end of March 2018.

144. My Oyet told the Tribunal that he therefore arranged for a DSE assessment of the Claimant's workstation in the meantime, where she would be undertaking the CD role.

145. A trained DSE assessor undertook a Display Screen Equipment of the Claimant's workstation on 13 March 2018. The assessor moved a red box which the Claimant had said was taking up room.

146. It was not in dispute that the Claimant had told Mr Oyet that she was concerned that she could have to stretch to insert the CDs into the CD drive on her computer.

147. Mr Oyet had told the assessor about this concern before the DSE assessment.

148. The DSE assessor offered to move the Claimant's CPU (processor) from behind the monitors, but the Claimant said that she wanted this to be assessed by OH, p809. The DSE assessor said, "[The Claimant] has an appointment with [OH] early April. Her workstation is adequate at the moment … "p809.

149. On 7 March Mr Oyet emailed the Claimant, p1960

"Dear Alison, Could you please provide me with an account of what you have delivered of the tasks assigned to you since 19th February 2018, and your plan to deliver the remaining elements of the tasks by the end of March 2018? Both myself and Donald Grant have requested several times that you commence the tasks, I specifically asked you to commence tasks that can be completed at your current first floor desk location for example:
- Pick up a CD disk from desk.
- Open the disk and insert into computer to identify their contents.
- If the disk is blank — it can be destroyed.
- If it contains information of a type listed in the Report Type list in Section 6, it needs to be included in the Shared drive as per the hyperlink below. S:\AA Estates Archive
- Determine what type of information it is, and what building, area or service the 0&M Manual or H&S file relates to.
- Open the appropriate folder in the Shared drive on the computer and identify whether this information has already been downloaded.
- If the information already exists in the Shared Drive, simply label the CD using the naming convention in Section 4, and archive it using Iron Mountain…."

150. At the end of the email, Mr Oyet said that, if the Claimant failed to demonstrate by 8 March that she had delivered on the tasks, he would instigate disciplinary proceedings.

151. The Claimant told the Tribunal that she considered this email to be extremely patronising from a senior male manager at a time when she was waiting for reasonable adjustments. She said that the email was sent to further to humiliate and harass her.

152. She cross examined Mr Oyet about this. He said that, by the date of the email, the Claimant had still done no work. He said that she had raised concerns about the CDs being in a box which needed stretching, so he had taken 5-7 CDS out of the box, so there would be no need for stretching. He said that he set instructions out as simply as possible for the task to be completed. He said that there was no intention to patronize or harass the Claimant, but that he was giving clarity as to what was required. The Tribunal will return to this, below.

153. The Claimant had arranged to undertake counselling through the Respondent's counselling service during the grievance process, to support her due to feelings of stress.

154. The Claimant had been due to attend a Design Authority "DA" Team meeting on 13 March 2018. That morning she emailed Mr Grant saying that she would be unable to attend the DA meeting because of a clash with her counselling session, which she said was also important, p812.

155. Mr Grant replied, acknowledging that support during the investigation was important but saying, "However I do not think that the only time such support is available through the whole week is between 14.00 and 15.30 today, coinciding with a long-standing and important team meeting." He said that the Claimant's counselling should be rearranged, p811.

156. There was a dispute of fact between the parties as to how counselling meetings are scheduled by the Respondent's counselling service. The Claimant told the Tribunal that the service specifies the time when it can offer an appointment. Mr Grant said that he believed appointments would be made by mutual agreement. The Tribunal accepted Mr Grant's evidence that appointments could be made or changed by mutual consent – in the Tribunal's experience, medical and counselling appointments would normally be made by consent.

157. On 9 March 218 Mr Oyet sent an email to Mr Grant, attaching a list of what he said were examples of the Claimant refusing to follow reasonable management requests, p1967. He said that he intended to commence disciplinary action because the Claimant had refused to deliver the tasks he had asked her to do and had refused to confirm to Mr Oyet what she had been doing during working hours from 19 February. He said that his attempts to meet the Claimant had failed because she had declined every meeting, "claiming she needs HR/Union/GP advise...". P1967.

158. Mr Oyet set out a chronology of his interaction with the Claimant. He said that the Claimant had been asked to carry out EMU database work on 5 January 2018, but that she had said on 30 January that she wanted professional advice on whether to undertake the work because it was band C work and had been taken out of her role.

159. He then set out a chronology of the CD task – which he referred to as the scanning task:

"15.02.18 UJO proposes to meet A Baker on 20.02.2018 to help with new arrangement — she declines meeting.

19/02/2018 PHWS referral started

22.02.18 UJO rearranges and meets Alison and reiterates importance of starting scanning tasks and advises her to commence with desk based tasks on first floor pending PHWS assessment:
1. You will put on hold all previous Collections Manager work until end of March and focus on the new tasks as set out in Donald Grant's email.
2. You will review the management referral form and get back to me so it can be signed and issued.
3. You will contact Hannah Baldwin to discuss the scanning tasks that you can commence immediately. …

….

06.03.18 UJO writes to A Baker raising concern about lack of progress in particular on the desk based elements of the scanning tasks. Requests A Baker give account of what she is doing in work time. A Baker declines meeting UJO to discuss.

..

08.03.2018 A Baker still refuses to do any of the scanning tasks. UJO arranges DSE assessment for A Baker in addition to management referral. The desk based scanning tasks are:
0 Pick up a CD disk from desk.
0 Open the disk and insert into computer to identify their contents.
0 File contents in relevant folders and/or destroy CD disk.

A Baker reason for refusing to follow reasonable request from management: 14.02.2018 - I will need to speak to my GP; consultant and with PHSW colleagues. This will take time to arrange appointments; seek their medical /professional opinions in how the change of temporary role; and its associated activities relating to the role will impact me. I would also need assurance this temporary role will not exacerbate my existing condition; or could risk potential workplace injuries. As you will understand, this would mean I will not be starting next Monday.

23.02.2018 - I'm waiting for the information from Hannah

02.03.18 - I would not be able to currently undertake those tasks outlined. Otherwise we should wait the medical /management referral and its outcome before work starts.
08.03.2018 — I am unable to begin the task until the OH assessment has taken place.

160. The list attached to the email said, A Baker has consistently displayed unhelpful behaviour including :
* repeatedly declining meetings with temporary line manager as noted above repeatedly wanting HR/Union advice prior to meeting temporary line manager
* not being proactive in delivering the tasks assigned to her
* Is not collaborative, rather than working with others to find a solution, A Baker resists requests and suggestions. She makes no reasonable adjustments for others but always demands adjustments be made for her as per examples above.
* delaying and obstructing the management referral by insisting on including issues relating to ”calling out counter signing manager”, Bluetooth headset, pay band and temporary role.
*consistently displaying behaviour of indirect resistance to reasonable management requests and an avoidance of direct discussion to try and resolve issues quickly.” P1971.

161. On 12 March Mr Oyet informed HR that he intended to commence a formal disciplinary procedure against the Claimant on the grounds that she had refused to follow reasonable management requests and had refused to meet to find a way forward; and that the Claimant had refused to give an account of what she had delivered for the business during working hours since 19 February, p1974.

January – March 2018 Premier Moves Investigation

162. On 31 January 2018, the Claimant had arranged for Premier Moves, an outside company, to collect the Claimant from work, drive her to Islington to collect objects from the architectural fabric collection, drive her to the Park Royal Store to deposit the objects, and then deliver the Claimant back to Victoria Station, p1976. Dr Collins had countersigned this arrangement.

163. It appears that a complaint was made by one of the Claimant’s historic line managers, Ms Tsang, who had been present in Park Royal that day, that the Claimant had arranged private transport for herself back to London and had not worked the hours for which she had claimed.

164. It appears that Ms Tsang told Mr Grant that Premier Moves had complained about the Claimant.

165. On 8 February 2018 Mr Grant told the Claimant that Premier had complained about dropping the Claimant back to Victoria, p1920. The Claimant explained, in an email on 8 February, that it was standard practice for her to courier collection items between locations, p1920. She said that she had asked for a quote for this round trip. She provided all her supporting documents.

166. Mr Grant replied, saying that there would be a preliminary inquiry to establish the facts and only if the inquiry indicated it was necessary, would it become a formal investigation, p1932. He said that there was no disciplinary action at this stage.

167. Mr Grant contacted Premier Moves, who confirmed that they had not made a complaint.

168. Mr Grant nevertheless asked Mr Oyet to investigate.

169. In an email to HR on 7 February 2018 he said, about the Premier investigation, "I agree we need to make sure it is not being seen as a witch hunt." He also said that if the allegation was proven regarding misusing a resource, he would view the allegation as gross misconduct, unredacted bundle p185.

170. The Claimant was never told who had made the original allegation against her. The Claimant was originally told that the complaint was about the Claimant being left back to Victoria, whereas in the final report Mr Oyet had referred to additional matters. She said that Mr Grant had not checked, at the outset, whether Dr Collins had approved the arrangement. She said that, if that had been checked, no investigation would have been necessary.

171. Mr Oyet told the Tribunal that a complaint had been made and that it was necessary to investigate the matter.

172. On 5 March 2018 Mr Oyet completed his investigation, p1977. He decided, of the 3 options available on the respondent's standard form, to resolve the matter informally through advice and guidance. The standard form said that a copy of the investigation report form should be kept for 6 months in the case of informal resolution. The other options were "Drop the matter (no further action)", or "formal investigation".

173. In his report, Mr Oyet said that Premier Moves had confirmed that, normally, Parliamentary staff would make their own way to the Premier Moves office by public transport, rather than being collected. He also said that it was suggested that the Claimant left the work site at 3pm, but that her timesheet recorded that she had worked until 5pm, p1978.

174. On 13 March 2018 Mr Oyet told the Claimant that the disciplinary investigation into the "Premier Moves matter" would not be taken further. He advised her that there had been a perceived misuse of service and that the Claimant should use public transport in future, save where the Claimant had discussed it with Mr Oyet. He said that a copy of the preliminary investigation report would remain on the Claimant's file for 6 months, p1975. Mr Oyet told the Tribunal that he thought that it was appropriate to give these words of guidance to the Claimant, in the circumstances.

March 2018 Commencement of Disciplinary Action

175. At a 121 meeting on 13 March, however, Mr Oyet told the Claimant that he would be commencing a formal disciplinary procedure relating to the Claimant's alleged refusal to follow management instructions, p1981.

176. Mr Oyet completed a preliminary investigation form, recommending that a formal disciplinary procedure be commenced, p1988. He recorded that, in a 121 meeting on 13 March 2018, he had asked the Claimant why she was refusing to follow reasonable management request to commence desk-based scanning work. He recorded that the Claimant had responded that it was based on doctor's advice not to change her task without occupational health (OH) assessment. Mr Oyet recorded that he had pointed out that the CD scanning task was computer based and was the same as her current task. Mr Oyet noted that he had told the Claimant that, unless she could produce a doctor's or other legitimate statement that she was only allowed to look at content on the computer which was collections management related - and should not look at any other content on the computer - he would consider her continued refusal to be unreasonable and would commence disciplinary procedure, p1988 - 1989.

177. It was therefore not in dispute that Mr Oyet asked the Claimant to provide a GP report to say that she could not do the CD work, p1982.

178. The Claimant told the Tribunal that stretching to insert CDs into her computer would exacerbate her musculoskeletal disorder. She described the CD task, which involved putting a CD into a hard drive and reading the contents of the CD, as a repetitive task. She told the Tribunal that her GP had advised her not to undertake new duties until they had been assessed by OH.

179. The Claimant was asked how long it would take to read a CD. She said that it might take up to 2 days. The Tribunal noted that, if that were the case, she would load a CD into the hard drive every 2 days.

180. My Oyet told the Tribunal that he had proposed, in March 2018, that the Claimant work on 7 CDs each day and that he left these on her desk.

181. On 21 March Mr Oyet told the Claimant that he had copied the contents of the CDs to SharePoint. He asked the Claimant to transfer the files to the appropriate folders. He said, "If you need any assistance please ask." P816.

182. The Claimant told the Tribunal that Mr Oyet transferring the contents of the CDs to SharePoint did not assist because the files could not be transferred from one to the other.

183. Mr Grant denied this –he said that the files could be transferred from SharePoint to the Respondent's shared drive and that there were engineers and other people who could have helped the Claimant if she did not know how.

184. The Tribunal noted that Mr Oyet had said in his 21 March email on the SharePoint, "If you need any assistance please ask". P816.

185. The Claimant replied on 23 March saying, "The management health referral route is the correct House process to follow in these particular circumstances. As you know, we have both facilitated the management referral process and the assessment is imminent." P817.

186. It appeared therefore that the Claimant had not explained, at the time, why copying documents to the SharePoint would not assist her to carry out the task. She had simply repeated her assertion that she would wait for an OH assessment of the task.

187. Mr Oyet told the Tribunal that the CD task was a desk-based task, at the Claimant's own workstation, which had been assessed by OH in November 2017 and found to be suitable for the Claimant's use. He said that there was no reason for him to believe that the Claimant could not carry out the CD scanning task at her workstation. He said that the Claimant had claimed that her GP had advised her not to undertake the work, despite the November 2017 OH assessment and, therefore, he believed it was reasonable to ask the Claimant to provide this GP advice.

188. P2925 House of Commons Managers' Guidance provides, "Disciplining an employee for a reason relating to his or her disability, for example, poor attendance or performance, is discrimination and will be unlawful unless there is a very good reason to justify the treatment. Disciplinary measures in these circumstances should only be taken after all possible reasonable adjustments have been made to try to improve the employee's attendance or performance."

OH Adviser Report 3 April 2018

189. On 3 April 2018 Ms Mainland, OH Adviser, produced a report on the Claimant's new temporary duties, p818. She said, of the CD task, "I understand from the description of this temporary desk-based role that it may be quite repetitive and that it requires loading CDs onto a drive and relocated [sic] them onto Share Point. With a few adjustments it may be that Alison could undertake this task on a temporary basis and possibly not for the long term. I would recommend that a small portable CD reader be supplied, this would allow more flexibility in its positioning and able to be moved when not in use. This would also prevent Alison from overstretching/reaching. …

On the provision of a portable CD reader then Alison could undertake this task. However, she should not do the same task for more than 4-5 hours a day and the task should be broken up so that there are not concentrated lengths of time working on the PC." P818 – 819.

190. Ms Mainland addressed her previous recommendation of a stand up - sit down desk, p819 – 820. She said, "I would still recommend this... However, the current desk provided is not likely and does not exacerbate her condition."

191. Ms Mainland reiterated her recommendation that a Bluetooth headset be provided for the Claimant.

192. Mr Grant told the Tribunal that the Claimant would not need to use a mobile telephone for her database work. He said that her mobile telephone ought to have come with a wired headset, which was a suitable alternative. The Claimant denied that she had been given a wired headset with her telephone.

193. The Tribunal found, as a fact, that the loading of the CDs as not a physically repetitive task. At most, the Claimant was required to load/unload CDs into the computer 7 times a day, or once an hour.

194. On 5 April 2018, the Claimant met Mr Grant. She told him that there was no progress to report on the temporary desk-based CD assignment until management had put in place reasonable adjustments, p824.

195. Mr Grant agreed to provide a portable CD reader for the Claimant, as it could also be used by others in the office, p829. The portable CD was provided by the Respondent to the Claimant on 10 April 2018

196. On 9 April 2018 Mr Grant emailed the Claimant, summarising their discussion at their 5 April 2018 meeting, p829. The email recorded their exchanges about the reasons the Claimant had given for not starting the desk-based CD task, and the adjustments she said she needed in order to do this. In evidence, the Claimant pointed out that Mr Grant had copied Mr Oyet into this email. She said that the information contained in it was private information about the Claimant's health and adjustments, which she had not consented to being shared. Mr Grant told the Tribunal that it had been necessary and appropriate to copy in Mr Oyet, the Claimant's direct line manager, when Mr Grant had conducted the 5 April 2018 meeting in his absence – Mr Grant had been covering Mr Oyet's line management duties while he was on leave. Mr Grant said that the email was a routine hand-back, following Mr Oyet's leave. The Tribunal will return to this in its decision, below.

Grievance and Disciplinary Processes Progress March and April 2018

197. On 21 March 2018, the Claimant added Mr Grant and Mr Oyet to her grievance about her managers failing to put into effect reasonable adjustments and bullying and harassing her, p1119. They continued to line manage the Claimant.

198. On 22 March 2018 Mr Oyet invited the Claimant to a formal disciplinary investigation meeting by sending an outlook invitation to her labelled 'RA:PD Disciplinary Investigation Meeting, p2065. Mr Oyet did not lock this as a private meeting and others who viewed his diary would have been able to see this personal information relating to the Claimant. The Claimant told the Tribunal that, in doing so, Mr Oyet breached House of Commons Staff Handbook Information security responsibilities, p2707.

199. Mr Oyet told the Tribunal that he believed that diary entry did not display any personal information about the Claimant and that other employees would not have been able to gain access to his diary. If they had, they would have been in breach of their own personal information duties in the event that they looked at the entry for the disciplinary meeting.

200. On 10 and 27 April 2018 the Claimant attended disciplinary investigation hearings.

Flexi Leave and Recording Working Hours April 2018

201. On 23 April 2018, the Claimant submitted a request for flexitime to Mr Oyet along with her weekly work sheets, p2134. On 17 May 2018 Mr Oyet emailed the Claimant saying he had overlooked her request and that she could arrange to take her flexi leave whenever she wished, p2134. The Claimant told the Tribunal that Mr Oyet did not overlook other employees' requests for flexi leave. Mr Oyet told the Tribunal that it was a genuine oversight on his part, which he had rectified as soon as he was aware of it.

202. On 12 April 2018 Mr Oyet instructed the Claimant to record her working times on a weekly schedule for the duration of his line management, p2084. The Claimant pointed out to the Tribunal that she was the only employee who was required to do this and that Mr Oyet had devised this system specifically for her.

203. Mr Oyet told the Tribunal that he had done this because the Claimant had not done any work from 19 February 2018.

Move to Richmond House

204. The Claimant told the Tribunal that, before the team's move to Richmond House, Mr Oyet did not talk to her about her reasonable adjustments, the move; or her cupboards. She said that she was the only employee whose desk was in the wrong position on the first day.

205. In was not in dispute that the move was managed by a specialist team. Mr Oyet told the Tribunal that the specialist team had held "Town Hall" meetings and had emailed all employees. He said that he had specifically arranged for the Claimant's sit/stand desk to be provided at Richmond House. This appeared to be corroborated by email correspondence between the Claimant and Mr Oyet in January 2018, pp784-5. It was not in dispute that the Claimant was provided with a sit/stand desk at Richmond House.

206. In May 2018 Dr Collins asked for a locksmith to open the Claimant's cupboards. The Claimant attended while the locksmith opened and Dr Collins, who was present throughout the process, ignored her. The Claimant told the Tribunal that she felt his conduct was intimidating. Dr Collins told the Tribunal that he wished to avoid any further allegations against him by the Claimant. The Tribunal will return to this later in its judgment.

Disciplinary Hearing and Outcome

207. On 18 May 2018 Mr Oyet completed a formal disciplinary report, p2138. In summary, Mr Oyet said that the Claimant had not provided a good reason for failing to carry out reasonable management instructions to carry out EMU work and the CD scanning task.

208. On 14 June 2018, the Claimant attended a disciplinary meeting conducted by Jonathan Lewsey, pp2457 – 2462.

209. Mr Lewsey did not take into account the Claimant's Valuing Others grievance, which was being conducted as a separate process.

210. On 26 June 2018 Mr Lewsey wrote to the Claimant, giving her a first written warning, pp2475 – 2477.

211. The Claimant told the Tribunal that Mr Lewsey had inappropriately applied her Band C job duties in coming to his decision.

212. In his outcome letter, Mr Lewsey said, "The Database Manager role (band C) clearly includes duties and responsibilities relating to the development, maintenance and use of the relevant database(s) held by the team. This role has always included some desk—based duties using a PC and you had previously undertaken PC-based work during the role. The role was reassessed using the JEGS process with help from Beamans and was re—evaluated and graded band 32 and re-titled Collections Manager. No new role was created and no new job description was created; the job description remains valid and relevant, supplemented by the 'job analysis form' information. The role still includes responsibility for "managing and coordinating all aspects of accessioning, cataloguing, documenting and maintaining the integrity and quality of the information base". Regardless of the temporary line management arrangements, it was reasonable for the managers involved to request and instruct you to undertake these tasks, even on a temporary basis for part of the working day. Both the database maintenance task and the scanning task (as described in the materials) are, in my view, tasks that can reasonably be expected within the scope of this role and the team's obligations." P2475.

213. Mr Lewsey did not address the Claimant's adjustments or Occupational Health referrals in his outcome letter.

214. The Tribunal found that Mr Lewsey did not simply reply on the Band C job description, but said that it remained relevant and was supplemented by the JEGS job analysis form information. He quoted from JEGS job analysis form.

215. The Claimant appealed the disciplinary hearing outcome.

216. The Claimant told the Tribunal that the Respondents' HR employees and Mr Oyet had amended the formal investigation meeting notes, pp 2107 – 2114 and p2115 – 2123. She contended that the notes were not always sent to the Claimant for her approval.

217. The Tribunal observed that there were very few such alterations – in her closing submissions, the Claimant pointed to 3 alterations in about 25 pages of notes.

218. Ms Bovaird told the Tribunal that it was not unusual for notes of meetings to go through different iterations.

Grievance Outcome

219. The Respondent's usual process for interviewing witnesses during a grievance procedure is for the complainant and respondent to the grievance to give potential witnesses' names to the grievance investigator, p1242.

220. On 17 July 2018, the grievance investigator into the Claimant's Valuing Other grievance produced a report upholding 4.5 out of 8 allegations, p1199. These decisions were appealed by both sides.

221. In the grievance investigation report, the grievance investigator noted that Mr Watrobski had personally approached a potential witness. The grievance investigator commented, "2.3.2. The Investigator was concerned to learn from one witness, PA, that he had been approached by AW requesting that PA act as a witness for him. Such conduct is inappropriate in the course of an investigation when such a request. from a senior manager. could be interpreted as an attempt to influence an aspect of the investigation. In the event the Investigator does not consider these actions had any material impact on the investigation." P1243.

222. The outcomes were:

1. That Mark and Adam misused their positions by denying you access to an appropriate desk location following the office relocation move in April 2016 **Partially upheld**
2. That Mark arranged for you to be excluded from House Collections Managers' meetings **Upheld**
3. That Mark threatened your job security by reducing the Collections Management budget **Upheld**
4. That Mark and Adam treated you inappropriately at their meeting on 3 November 2017 **Upheld**
5. That Adam, Mark and Donald failed to protect your personal information by sharing the fact of an Occupational Health review occurring and failing to ensure correct protective markings were placed on email correspondence **Not upheld**
6. That Mark and Adam separately excluded you from team meetings while you were temporarily working for another manager. **Upheld**
7. That Donald and Ugbana failed to appropriately manage your personal health and safety whilst you were working in a temporary role and put unreasonable pressure on you to start the role against Occupational Health advice. **Not upheld**
8. That Ugbana displayed overbearing supervision of you. **Not upheld**

The Claimant's Desk and Hot Desking

223. On 28 June 2018, the Claimant fell in the street and injured her knee. She was signed off work, sick, until 20 August 2018.

224. The Claimant told the Tribunal that, on 21 August 2018, she returned to work after her month's absence and found that all her equipment including her desk, chair and workstation had been drastically altered or moved. She said that she

took this to be a personal threat towards her and a complete violation of her identity. She said that, when she mentioned this to Mr Grant and Mr Oyet in an email, Mr Grant confirmed "The desk you sit at will have been used by people hot-desking" p862-863.

225. The Claimant told the Tribunal that it was difficult for her to readjust all her equipment to be suitable for her needs.

226. Mr Grant told the Tribunal that office space was at a premium – that there were fewer than 0.8 desks per person and that preserving the Claimant's desk for an extended period such as a month was not practicable. He said that the Claimant could easily ask for assistance to readjust her equipment.

227. The Claimant disputed the need for hot desking and said that there were other rooms available for staff to work in.

228. In an OH report dated 6 September 2018 Maggie Mainland recommended that the Claimant's desk not be used as a hot desk. She said that the Claimant "needs to have her own dedicated workstation that is set up correctly and should not be used as a hot desk as she has special equipment and a chair adjusted to suit her. Adjusting the chair is quite challenging currently given the shoulder injury and restricted movement." P886.

Grievance and Disciplinary Appeals

229. On 23 August 2018, the Claimant attended a grievance appeal review interview. The Claimant was asked questions about the whole grievance by T Gibbons, the external harassment investigator, and not just about the parts she was appealing.

230. On 5 September 2018, the Claimant attended a disciplinary appeal meeting chaired by David Hemmings, p2858.

231. On 6 September 2018 HR sent Mr D Hemmings the Preliminary investigation report; formal disciplinary report and disciplinary hearing notes, pp 2520; 2481 - 2482. This conflicted with the Respondent's Disciplinary Procedure in its Staff Handbook, which states that where internal appeals will be heard by the decision maker's manager and "prior to the meeting the manager hearing the appeal will review all relevant documentation and the reasons for the sanction or dismissal" p2725 para 11.1.

232. On 21 September 2018 Mr Hemmings wrote to the Claimant upholding Mr Lewsey's decision to give the Claimant a first written warning, p2529. In summary, he decided that the Claimant's line managers had a genuine belief that the Claimant failed to carry out reasonable management instructions on multiple occasions. He said that the upgrading of the Claimant's role had enhanced her responsibilities, rather than replacing her original duties. He found no evidence of reluctance by management to seek OH advice or consider reasonable adjustments and he decided that the Claimant's health concerns did not provide a justification for her to refuse instructions. Mr Hemmings decided that the penalty

of a first Written Warning was not too severe or disproportionate and that Mr Lewsey's decision had not been arbitrary or unfair.

233. Mr Hemmings' letter mentioned some of the allegations which had not been upheld at the original disciplinary hearing. Ms Bovaird agreed in evidence that this was unusual but said that it was not necessarily unfair because Mr Hemmings had not changed the outcome or given a warning in respect of these allegations.

234. On 17 September 2018 Mr Oyet wrote to the Claimant saying, "The consistent advice from HR has been you can have a 1-2-1 meeting during the appeal period as the VO [Valuing Others grievance] outcome was clear; so it is troubling if HR are giving different advice to you." P1348.

235. Mr Oyet also emailed Mr Grant on 19 September 2018, p1351, saying that the Claimant was refusing to meet him "even after I had explained to her that HR advice is that we can have a 1-2-1 irrespective of an appeal as the VO was conclusive."

236. The Tribunal found that, on Mr Oyet's own words, he was clearly referring to the original Valuing Others grievance outcome. He acknowledged that the appeal was ongoing in his 17 September email by saying "during the appeal period".

237. The Claimant placed a polite note on her desk saying that it should not be used for hot desking. She told the Tribunal that she did this to safeguard her adjustments.

238. On 20 September 2018, the Claimant returned to work after a 1 day absence to attend a medical appointment. She found that someone had altered her workplace adjusted chair, despite her polite notice, asking colleagues not to use her desk. She reported this as a workplace injury, pp901 - 903 and arranged for someone to re-adjust her chair.

239. On 27 September 2018 Mr Grant sent her an invitation to a formal disciplinary investigatory meeting, p2557. This included an allegation that the Claimant had unreasonably placed a note on her desk to prevent its use as a hot desk. "Placing notices on your desk advising that the desk should not be used as a hot desk after previously being advised that when not working in the office it could not be reserved exclusively during extended absence due to the pressure of office accommodation on the Estate."

240. In that letter Mr Grant included the following allegation ,"Refusal to meet line manager Ugbana Oyet for routine 121 management meetings on two occasions (5/09/2018 and 18/9/2018) even after HR advice that 121s can continue irrespective of the ongoing VO appeal. " The Tribunal found that these words indicated that the appeal was ongoing and the outcome was not yet known by mangers.

241. Mr Oyet told the Tribunal that he removed the allegation of the Claimant "unreasonably placing a note on her desk" from a revised disciplinary meeting invitation sent on 3 October 2018, p1095.1 Respondent's Core Bundle.. He said

that the allegation did not form part of Mr Oyet's subsequent investigation. The Tribunal noted that, in Mr Oyet's email to the Claimant on 3 October 2018, he said, The allegation about putting up notices at your work space has been omitted." P1095.1.

242. On the evidence, the Tribunal accepted that the Claimant was distressed by the commencement of disciplinary action against her on 27 September 2018. It also noted that Mr Oyet did not pursue the allegation in relation to the "note on her desk".

The Claimant's Absence from Work from October 2018 and Contact from Mr Oyet

243. The Claimant went off work, sick on 22 October 2018. On 23 October 2018, the Claimant emailed Karen Bovaird at Human Resources attaching a Fit Note and saying, "Please find a doctors fit note for me relating to workplace stress. In the circumstances, my Doctor has advised me to notify PHWS (OH) instead of my temporary line manage(r)ment to reduce any further impact of stress. I would be grateful if you could notify Ugbana Oyet of my absence." P926.

244. In a further email on 23 October to Ms Bovaird, p925, the Claimant did not consent to Mr Oyet knowing the reason for her absence.

245. The Claimant told the Tribunal that Mr Oyet should have known from her emails to HR, and should have been told, that her GP had advised that Mr Oyet should not contact her while she was off work, sick. She said that he had nevertheless continued to do so on numerous occasions. She said that this had caused her enormous stress.

246. The Respondent's Guidance for Managers on completing an Occupational Health Referral gives advice on when to refer an employee to OH. This includes, " - Mental health/stress issues if this is the reason given for absence (automatic referral) - Longer term absences - more than 4 calendar weeks (automatic referral), p2775.

247. The Claimant told the Tribunal that Mr Oyet should have automatically referred her to OH pursuant to this Guidance.

248. On 24 October 2018 Ms Bovaird emailed Mr Oyet, P927. She said,

"I received an email from Alison Baker yesterday submitting a one month fit note (dated 22/10/2018). She has been advised by her GP to pass this to Occupational Health/HR to avoid undue stress by making contact with any of her managers. I got her agreement to pass this information to you - she has not however given consent for you to know the reason for the absence (which she has the right to withhold).

As she is going to be off for at least one month — regular contact will need to be maintained with her. Equally I would suggest that you think about doing a referral to H&W to see if they can provide advice about her current absence, give advice

on the reason and what you can do to support her while off and to support her to return to work." P927.

249. Mr Oyet sent emails to the Claimant attaching an OH referral form for her approval on 6 November and 15 November, p930- 935. He asked that the Claimant to sign and return the form otherwise he said he would have to schedule a long term sickness meeting and continue with the disciplinary process.

250. One of the questions on Mr Oyet's draft OH referral was, "What form of contact would not negatively impact her sickness?" p928 – 929.

251. Between 6 November 2018 to 26 February 2019, Mr U Oyet sent several letters to the Claimant including: in November 2018 asking her to complete the OH referral form, pp 930, 925; in November and December 2018 inviting her to a rescheduled investigatory meeting and warning her that decisions could be made in her absence, p938, 940, 953, 957; on 14 December 2018 inviting the Claimant to a long term absence meeting, p959; on 28 December 2018 inviting the Claimant to a rescheduled long term absence meeting because of her failure to attend, p962; on 24 January 2019 inviting the Claimant to a rescheduled long term absence meeting because of her further failure to attend, p964.

252. The letters inviting the Claimant to long term absence meetings told the Claimant that the meetings would discuss supporting her return to work and reasonable adjustments.

253. The Claimant did not respond to the letters. She did not sign the Occupational Health referral forms and did not attend any of the meetings. She told the Tribunal that she was not at her home address during the period.

254. Mr Oyet told the Tribunal that he did not intend to harass the Claimant, but the referrals were part of the process for facilitating return to work from an absence of over one month. He said that it was necessary to write to the Claimant, because she was blocking Mr Oyet's calls, which were part of the Respondent's keep in touch requirements during sick leave.

255. On 26 November 2018 Mr Oyet wrote to the Claimant saying that he would be conducting a formal investigation into allegations of failure to comply with reasonable management requests and unprofessional behaviour. These did not include an allegation that the Claimant had asked employees not to use her desk as a hot desk, p938.

256. Mr Oyet told the Tribunal that he wrote to the Claimant concerning the disciplinary proceedings in December and January 2018 in accordance with the Respondent's Disciplinary Policy. Paragraph 2.5 of the Disciplinary Policy states, "where there are attendance or performance issues, and there are interactions between procedures set out in chapter 15 and chapter 17, it may be more appropriate to run these in parallel and for the processes to be adjusted if necessary." . Mr Oyet said that he decided to proceed with the disciplinary process as it had already been postponed times and the Claimant had been

informed that if she did not engage it would have to proceed in her absence, p954.

257. The Claimant brought her claim on 15 January 2019. She contacted ACAS on 21 December 2018 and the ACAS EC certificate was also issued on 21 December 2018, p24. The Claimant was represented by her Union until 5 March 2020, in particular by Kirk Porter, a representative and Branch Secretary of PCS.

Further Medical Evidence

258. The Claimant produced a medical report from her own GP dated 24 April 2020, after the events in question, p248. This was not a medical report from an independent expert. The Tribunal did not consider it to be reliable record of events, or the causes of the Claimant's symptoms. For example, the doctor said that the Claimant was "in constant pain following the workplace accident in July 2017". It was unclear which "accident" the GP was referring to; the doctor did not specify. The Tribunal noted that the Claimant had been treated by physiotherapy for 3 months for a rotator cuff tear (emphasis supplied) at the end of 2017, p200. However, the Claimant's "incident report" submitted to the Respondent in July 2017 complained of RSI or "tendonitis in neck, shoulder and back". The Claimant's GP did not acknowledge or address these two potentially different descriptions.

259. The GP report went on to say that the pain affected the movement and strength in the Claimant's shoulder, arm and hand and for months following this accident, "She was no longer able to lift her right arm had reduced strength in her right arm and no grip in her right hand. Alison was now no longer able to lift a kettle saucepan struggled to open a packets or jars and dropped things." The GP said that the Claimant was advised that physiotherapy would help, but only once the pain had gone, and that the Claimant attended some physiotherapy for her shoulder at the end of 2017.

260. These statements did not appear entirely consistent with the contemporaneous medical report from Dr Hashtroudi dated 18 October 2017 which did not support the Claimant's view that her symptoms were caused by anything in the workplace. "…As I explained to her the shoulder pain is less likely to be related to work and quite often there is no explanation for this presentation. ...As for her neck, she refers to them as RSI, repetitive action being looking at different directions frequently when talking to people. This is not a common presentation I have come across before..." P751. Dr Hashtroudi said that the Claimant reported to him that she had been working at a desk which she did not find conducive and had "ended up with severe neck pain and restricted movement. She also developed shoulder pain", p751. He also reported that the Claimant was already "seeing a physiotherapist".

261. Dr Hashtroudi advised that the Claimant should avoid overhead activities and "keeping her arm in an outstretched position". He said that the Claimant should "refrain from heavy moving and handling." Dr Hashtroudi said, "...she should be allowed to use her hands free cable when using mobile" p752. Dr Hashtroudi did not record, in October 2017, that the Claimant had been unable to lift her right

arm at all, or grip anything with her right hand. If that had been the case at the time, the Tribunal would have expected that to have been recorded prominently in the OH doctor's report.

262. Dr Hashtroudi's report painted a much less serious picture of the Claimant's condition in October 2017 than the GP's later report appeared to.

263. While the GP said the GP had received "recent OH medical reports" in 2017, there was only one OH medical report from an OH medical doctor – Dr Hashtroudi. The other OH reports at the time were from an OH assessor, who was not a doctor. It was not clear to the Tribunal that the GP had taken into account Dr Hashtroudi's OH medical report.

264. It was not clear to the Tribunal that the GP had formed an independent and objective opinion based on an independent review of all the relevant medical records. The Tribunal did not consider it to be a reliable medical report.

Allegation of Fraud

265. The Claimant contended that Mr Oyet had accused her of fraud in relation to her work. She cross examined Mr Oyet about this. Mr Oyet said that the Claimant's union representative had claimed that there was an accusation of fraud, but that Mr Oyet had never said that himself. Mr Oyet said that he was investigating the Claimant's work output over the relevant period. He referred to the notes of a formal investigation meeting on 10 April 2018, p2071.

266. The notes of the investigatory meeting recorded a discussion of the Claimant's attendance at work meetings and Mr Oyet saying that the Claimant should prioritise attending Design Authority meetings. The notes then recorded, "KG stated that he was concerned that there was a suggestion of fraud", p2071. KG was Ken Gall, the Claimant's Trade Union representative.

267. The notes continued, "IM commented that the allegation as stipulated concerns work output over the period in question and that any assertion that there has been fraud may be determined by a future hearing if one is called…" p2071. IM was the HR representative at the meeting.

268. From the notes of the meeting, the Tribunal concluded that Mr Oyet did not accuse the Claimant of fraud; her union representative expressed concern that fraud was being alleged and the HR representative replied that the allegation, as then formulated, concerned the Claimant's work output. There was no allegation of fraud made by Mr Oyet.

IPR objectives 2018 – 2019

269. The Claimant contended that Mr Oyet had not given her IPR Objectives for 2018 – 2019. It appeared from the documents seen by the Tribunal that the Claimant did have IPR Objectives for 2018 – 2019, p511.

Relevant Law

Discrimination

270. By *s39(2)(c)&(d) Equality Act 2010*, an employer must not discriminate against an employee by dismissing him or subjecting him to a detriment.

Direct Discrimination.

271. Direct discrimination is defined in *s13(1) EqA 2010:*
"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

272. Sex and disability are protected characteristics, *s4 EqA 2010.*

273. In case of direct discrimination, on the comparison made between the employee and others, "there must be no material difference relating to each case," *s23 Eq A 2010.*

Victimisation

274. By *27 Eq A 2010*,
" (1) A person (A) victimises another person (B) if A subjects B to a detriment because—(*a*) B does a protected act, or (*b*) A believes that B has done, or may do, a protected act.
(2) Each of the following is a protected act—(*a*) bringing proceedings under this Act;(*b*) giving evidence or information in connection with proceedings under this A (*c*) doing any other thing for the purposes of or in connection with this Act; (*d*) making an allegation (whether or not express) that A or another person has contravened this Act."

275. There is no requirement for comparison in the same or nor materially different circumstances in the victimization provisions of the *EqA 2010.*

Causation

276. The ET must decide whether or not the alleged discriminator's reason for the impugned action was the relevant protected characteristic. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase "by reason that" requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?." Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified, para [77].

277. However, if the Tribunal is satisfied that the protected characteristic is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, *per* Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. "Significant" means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

278. In the case of victimisation, a distinction can be made between acts done because of the protected act and acts done because of the manner of performing the protected act, or some other feature which is properly separable from the making of the complaint, *Martin v Devonshires Solicitors* UKEAT/0086/10, [2011] ICR 352, [2011] EqLR 108 *HM Prison Service v Ibimidun* [2008] IRLR 940, EAT.

279. However, in *Martin v Devonshires,* Underhill P recognised that "Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases." Nevertheless he said, 'it would be extraordinary if these provisions gave employees absolute immunity in respect of anything said or done in the context of a protected complaint', [para 22]. Underhill P said that the Tribunal should ask whether the protected act had had a significant influence on the outcome, as in *Nagarajan*, [para 36].

Detriment

280. In order for a disadvantage to qualify as a "detriment", it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to "detriment". However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC [2003] UKHL 11.*

Harassment

281. *s26 Eq A* provides "
(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."

282. In *Richmond Pharmacology Ltd v Dhaliwal* [2009] IRLR 336 the EAT held that there are three elements of liability under the old provisions of s.3A RRA 1976: (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was "on

the grounds of" [now: "related to"] the claimant's race (or ethnic or national origins).

283. Under the *EqA,* the conduct must be for a reason which relates to a relevant protected characteristic, rather than on the grounds of race or other protected characteristic. The *EHRC Code of Practice on Employment (2011)* at paras 7.9 and 7.10 states:
[7.9] Unwanted conduct "related to" a particular characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.
[7.10] Protection from harassment also applies where a person is generally abusive to other workers but, in relation to a particular worker, the form of the unwanted conduct is determined by that worker's protected characteristic.
"A manager racially abuses a black worker. As a result of the racial abuse, the worker's white colleague is offended and could bring a claim of racial harassment. The unwanted conduct is related to the protected characteristic, but does not take place because of the protected characteristic."

284. In the *Dhaliwal* case, the EAT said that, in determining whether any "unwanted conduct" had the proscribed effect, a Tribunal applies both a subjective and an objective test. The Tribunal must first consider if the employee has actually felt, or perceived, his dignity to have been violated or an adverse environment to have been created. If this has been established, the Tribunal should go on to consider if it was reasonable for the employee to have perceived this. In approaching this issue, it is important to have regard to all the relevant circumstances, including the context of the conduct. A relevant question may be whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence: the same remark may have a different weight if evidently innocently intended, than if evidently intended to hurt (paragraph [15]).

285. The EAT also commented that "Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. Whilst it is very important that employers and tribunals are sensitive to the hurt that can be caused by offensive comments or conduct (which are related to protected characteristics), ".. it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase", paragraph [22]."

286. In *Land Registry v Grant* [2011] IRLR 748 at [47] Elias LJ said that words of the statutory definition of harassment , ".. are an important control to prevent trivial acts causing minor upsets being caught by the definition of harassment." In *GMBU v Henderson* [2015] 451 at [99], Simler J said, "..although isolated acts may be regarded as harassment, they must reach a degree of seriousness before doing so."

Burden of Proof

287. The shifting burden of proof applies to claims under the *Equality Act 2010, s136 EqA 2010.*

288. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.

289. In *Madarassy v Nomura International plc.* Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865 and confirmed that the burden of proof does not simply shift where M proves a difference in sex/disability and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58 Mummery LJ.

Discrimination Arising from Disability

290. *s 15 EqA 2010* provides:
"(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".

291. Simler P in *Pnaiser v NHS England* [2016] IRLR 170*, EAT*, at [31], gave the following guidance as to the correct approach to a claim under *EqA 2010 s 15:*
'(a) 'A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.
(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.
(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see *Nagarajan v London Regional Transport* [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises..
(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in *Hall*), the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that

causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in *Land Registry v Houghton* UKEAT/0149/14, [2015] All ER (D) 284 (Feb) a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) There is a difference between the two stages – the "because of" stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the "something arising in consequence" stage involving consideration of whether (as a matter of fact rather than belief) the "something" was a consequence of the disability.

(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the "something" leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.

(i) As Langstaff P held in *Weerasinghe*, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment."

292. When assessing whether the treatment in question was a proportionate means of achieving a legitimate aim, the principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: *Hardys & Hansons plc v Lax* [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60]. It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own objective assessment of whether the former outweigh the latter. There is no 'range of reasonable response' test in this context: *Hardys & Hansons plc v Lax* [2005] IRLR 726, CA.

293. A PCP will not be proportionate unless it is necessary for the achievement of the objective and this will not usually be the case if there are less disadvantageous means available, *Homer* [2012] ICR 704.

Reasonable Adjustments

294. By *s39(5) EqA 2010* a duty to make adjustments applies to an employer. By *s21 EqA* a person who fails to comply with a duty on him to make adjustments in respect of a disabled person discriminates against the disabled person.

295. *s20(3) EqA 2010* provides that there is a requirement on an employer, where a provision, criterion or practice of the employer 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.

296. By s20(4) EqA, 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, the employer is required to take such steps as it is reasonable to have to take to avoid the disadvantage.

297. By s20(5), there is a requirement on an employer, 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.

298. *Para 20, Sch 8 EqA 2010* provides that an employer is not under a duty to make adjustments if the employer does not know and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at the substantial disadvantage.

Time Limits & Continuing Acts

299. By *s123 Equality Act 2010,* complaints of discrimination in relation to employment may not be brought after the end of

a. the period of three months starting with the date of the act to which the complaint relates or
b. such other period as the Employment Tribunal thinks just and equitable.

300. By *s123(3)* conduct extending over a period is treated to be done at the end of the period.

301. s140B EqA 2010 provides,

"**140 Extension of time limits to facilitate conciliation before institution of proceedings**

302. (1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 140A.

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period. ...".

303. In *Commissioner of Police of the Metropolis v Hendricks [*2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'.' Paragraph [52] of the judgment.

304. In *Owusu v London Fire and Civil Defence Authority* [1995] IRLR 574, the EAT held that an employer's repeated failure to upgrade an employee or to allow him to act up at a higher grade when the opportunity arose amounted to a prima facie case of a continuing act 'in the form of maintaining a practice which, when followed or applied, excluded [him] from regrading or opportunities to act up'. Mummery J stated that a succession of specific instances was capable of indicating the existence of a practice, thereby constituting a continuing act extending over a period. Whether those instances did in fact amount to a practice, as opposed to a series of one-off decisions depended on the evidence and the employer's explanations for the refusals.

305. Where a claim has been brought out of time the Employment Tribunal can extend time for its presentation where it is just and equitable to do so. In *Robertson v Bexley Community Centre T/a Leisure* Link [2003] IRLR 434 the Court of Appeal

stated that there is no presumption that an Employment Tribunal should extend time unless they can justify a failure to exercise the discretion. Quite the reverse; a Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule. In exercising their discretion to allow out of time claims to proceed, Tribunals may have regard to the checklist contained in s33 Limitation Act 1980 as considered by the EAT in *British Coal Corporation v Keeble & Others* [1997] IRLR 336. Factors which can be considered include the prejudice each party would suffer as a result of the decision reached, the circumstances of the case and, in particular, the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has cooperated with any requests of information, the promptness with which the Claimant acted once he or she knew of the facts giving rise to the course of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

Decision

306. The Tribunal took into account all its findings of fact, and the relevant law, when reaching its decision. For clarity, it has stated its conclusion on individual allegations separately.

307. The Tribunal found that the Claimant did a protected act when she made her Valuing Others grievance on 8 November 2017, p1027. Her allegations that Dr Collins and Mr Watrobski failed to provide reasonable adjustments during the April 2016 office move, and that they had treated her unfavourably by failing to cooperate with reasonable adjustments, were allegations (whether or not express) that they had contravened the Equality Act, within the meaning of s27(1)(d) of that Act. The Claimant also complained of harassment by them, which was an allegation of a breach of *s26 EqA.*

308. The Tribunal found that the Respondent knew that the Claimant was a disabled person at all relevant times. The Respondent has admitted that the Claimant was a disabled person by reason of her musculoskeletal symptoms. Since 2005 the Respondent's OH service had advised managers that the Claimant had musculoskeletal symptoms. On 17 March 2015 Ms Mainland advised that the Claimant had long standing musculoskeletal symptoms. The Respondent has not argued that the Claimant's symptoms worsened over the years. The Tribunal concluded that the Respondent was well aware of the Claimant's disability.

309. **Issue: Adam Watrobski and Mark Collins failing to implement reasonable adjustments when the office move occurred in April 2016**;

310. **Relied on as Direct Sex and Disability Discrimination and Disability and Sex Related Harassment**

311. **Also relied on as a Failure to Make a Reasonable Adjustment as follows: from April 2016 – December 2017, the position of her workstation (i.e. not: at an inside position next to a wall or window, with cupboards behind her**

so people do not approach from all directions, away from overhead lights and from drafts caused by overhead venting);

312. **The substantial disadvantages relied on are:**
(1) my medical conditions have returned and been exacerbated, with reduced neck mobility due to the RSI in my neck;
(2) overworked eye muscles due to the overuse of my eyes to compensate the lack of movement in my neck;
(3) lack of movement in all directions and limited strength in my right shoulder and dominant arm.
(4) I have been referred for multiple x-rays, MRI scan of the brain along with other tests.
(5) I have seen both House counsellors and DHB counsellors for my mental wellbeing and those meetings finished in September 2018.
(6) I have had multiple GP appointments, referrals to specialist consultants and physiotherapists.
(7) I have had nine workplace counselling sessions over the past nine months together with contacting the Health Assured for support to enable me to manage the extreme workplace stress inflicted on me daily by my discriminators and harassers'..
(8) Due to consistent management conscious bias about people with workplace adjustments I have suffered a second injury in the workplace in September 2018.
(9) I have now been signed off work.
(10) I have been put through an unfair Disciplinary investigation in retaliation of taking out the VO investigation.

313. The Tribunal did not find that the Claimant suffered a substantial – or any - disadvantage - as a result of being required to sit at one end of a row of desks, beside the aisle in the middle of the room, rather than at the other end of that row, beside a wall or window.

314. That was the only operative change of which the Claimant complained in April 2016. In the aisle position she still had cupboards behind her, so that was not in issue. Further, the Claimant did not allege in evidence that the overhead lights and venting were somehow different at one end of the row, rather than the other.

315. The Claimant contended that she was required to twist and turn her neck when people approached her from behind, when she sat at a desk adjacent to the middle aisle.

316. However, the Tribunal found, as a fact, that other people very rarely approached the Claimant to speak to her at her desk in the office.

317. In addition, the Claimant could not describe to the Tribunal why she might need to turn her neck to greet people more when sitting near the middle of a room, rather than at the end of a row by a wall when, logically, she would always have to turn to the side as people approached along the row.

318. The Tribunal noted that, on 18 October 2017, Dr Ali Hashtroudi, Consultant Occupational Health Physician, advised, “her the shoulder pain is less likely to be related to work and quite often there is no explanation for this presentation. ..As for her neck, she refers to them as RSI, repetitive action being looking at different directions frequently when talking to people. This is not a common presentation I have come across before but clearly she remained symptom free when she was able to avoid repeated movement of her head.” P751.

319. Dr Hashtroudi, a reliable medical expert in occupational health, did not support the Claimant’s belief that she shoulder pain was related to work, and doubted that RSI in her neck was likely to be caused by moving her head to talk to people coming from different directions, even if she did this “frequently”.

320. In any event, the Claimant a swivel chair, which she could use to move her body in different directions, as noted in the 2005 report, p684.

321. On all these findings: the fact that the Claimant was rarely approached at all; the fact that the Claimant’s symptoms were unlikely to be related to work, even if she had to move her head frequently (which she did not); the fact that the Claimant had a swivel chair, which allowed her to move in different directions anyway; and the fact that the Claimant could not explain to the Tribunal why she would have to move her neck more when by the aisle rather than at the edge of a room, the Tribunal found that there was no substantial disadvantage to the Claimant in sitting adjacent to the aisle, rather than by the wall/window.

322. In any event, the Tribunal found that the Respondent had shown that it was not a reasonable adjustment to move the Claimant to the window. The Respondent had limited accommodation and Mr Collins had a constant need, because of his own sight disability, to sit by the window for light, as his job entailed heavy reading of documents. The Claimant was part of Mr Collins’ team, so they needed to sit together to work together, and it was simply not practicable for them both to sit in the same chair by the window.

323. Moreover, the Tribunal found that the Respondent could not have known that the Claimant was put at a substantial disadvantage by sitting adjacent to the aisle. Between April 2016 and July 2017 the Claimant agreed, after discussion in April 2016, to sit in the aisle position. She did not raise the matter again until July 2017. Thereafter, when she complained and was referred to Dr Hashtroudi, Dr Hashtroudi doubted her description of the cause of her pain symptoms.

324. The Claimant’s claim for failure to make reasonable adjustments in this regard fails.

325. Regarding the Claimant’s direct discrimination complaint, the Claimant alleged that Mr Watrobski had favoured Dr Collins because he was a man.

326. The Tribunal accepted Mr Watrobski’s evidence that his decision that Dr Collins, rather than the Claimant, should sit by the window, was made on a common sense assessment at the time. It accepted his evidence that Dr Collins needed to sit by the window because he had bilateral cataracts and retinal detachment and

could only see out of one eye. It accepted that Mr Watrobski thought the Claimant's complaint about neck movements could be dealt with by her swivel chair and her end of desk position. Mr Watrobski's evidence was logical and the Tribunal found him to be a convincing witness.

327. The Tribunal therefore accepted that the reason Mr Watrobski did not permit the Claimant to sit by the window was he considered that Dr Collins had an unavoidable need to sit by window, but the Claimant did not– this was nothing to do with sex. The Tribunal also found that Mr Watrobski would have treated a non-disabled comparator who was in the same circumstances as the Claimant in exactly the same way. There was no less favourable treatment of the Claimant because of her disability.

328. Further, the Tribunal found that the failure to allow the Claimant to sit by the window was not harassment. It was not related to sex, so it was not sex harassment. It was related to Dr Collins' and the Claimant's disabilities, but was its purpose or effect was not to create the proscribed environment under *226 EqA.*

329. On the facts, Mr Watrobski's purpose was clearly not to violate the Claimant's dignity or create the prohibited environment – he was simply making a decision about how best to allocate resources on his honest assessment. The Claimant may have actually felt, or perceived, her dignity to have been violated, or an adverse environment to have been created. However, it was not reasonable for her to have perceived this. Applying *Dhaliwal*, it should reasonably have been apparent that the conduct was not intended to cause offence. Dr Collins explained to the Claimant his need to sit by the window, which was a rational reason. The Tribunal noted that, in the same period, Dr Collins and Mr Watrobski supported the Claimant's post being regraded around the same time, indicating that they wished to treat her equitably.

330. **Issue: Mark Collins and Adam Watrobski removing B2 core duties from the Claimant by:**

Threatening job security on 10 October, 12 October and 3 November 2017 by saying that they were closing down the collection and would not need the role;

331. **Relied on as direct sex and disability discrimination and disability and sex-related harassment**

332. **Adam Watrobski and/or Mark Collins turning the Claimant's B2 role into that of her previous role as Band C Database Manager on 3 November 2017 without any formal union or HR consultation;**

333. **Relied on as victimisation**

334. The Tribunal has found, on the facts, that Dr Collins and Mr Watrobski did not say that they were closing down the Claimant's Architectural Heritage collection. It has found that, contrary to the Claimant's contentions, data inputting was part

of the Claimant's Band B role. The Tribunal accepted Dr Collins' evidence that the Claimant had fallen behind with the task of digitally recording the collection, by data inputting, and that he therefore asked her to concentrate on it.

335. The Tribunal found that his actions in this regard were nothing to do with sex or disability; they were entirely done because the data inputting needed to be completed. Dr Collins would have treated anyone in the Claimant's B2 role in same way. This was not direct sex or disability discrimination, or disability- or sex-related harassment.

336. Data inputting tasks were part of the Claimant's B2 role. The Claimant was wrong in her belief that they were no longer part of her job description. No Union or HR consultation was needed to instruct her to carry out these tasks. Dr Collins and Mr Watrobski had told the Claimant to concentrate on her data inputting tasks long before her protected act. There was no victimisation in this regard.

Preventing her completing her B2 objectives and development opportunities by:

From November 2017 – February 2018, requiring her to work to the previous Band C job description

337. The Claimant fundamentally disagreed with Mr Collins about the work she should be doing. She viewed the data inputting tasks as part of her "previous" Band C job description. The Claimant wanted to do other job duties in her Band C job description; Dr Collins was her manager and had good reason for requiring the Claimant to do the data inputting task, which was part of her B2 role. None of this was anything to do with sex or disability.

338. The Tribunal decided that Dr Collins had suggested the budget cut, consistent with his belief that the Claimant needed to concentrate on cataloguing the collection in the database. The Claimant had previously travelled and photographed the items in the collection and needed a budget to do so, but that part of the work was over. This was nothing to do with disability or sex and was therefore not direct sex or disability discrimination, or disability- or sex-related harassment.

339. The Claimant's protected act was on 8 November. Anything done by the Respondent before 8 November was not victimisation. Victimisation regarding work duties is considered further below.

Placing her development opportunities with outside organisations on hold from September 2017.

340. The Claimant was required to concentrate on data inputting, rather than museum tasks.

341. The Tribunal also accepted Dr Collins' evidence that there was uncertainty as to whether travel might affect the Claimant's tendonitis/RSI. It accepted his evidence that, once it was confirmed by the DSE assessment in November 2017

that there was no health reason why she could not travel, Dr Collins and Mr Watrobski did not restrict the Claimant's business travel plans. The Claimant was suffering symptoms of pain at the time and had been referred to Occupational Health in autumn 2017. The DSE assessment in November 2017 did then advise that the Claimant was able to travel, p760. Thereafter, the Claimant's 9 November 2017 email showed that the Claimant was due to make 5 visits to outside organisations in November and December 2017, p548. In a 121 meeting on 12 December 2017, Mr Oyet also encouraged her to undertake any development opportunities available, p1945.

342. The Tribunal has already concluded that Dr Collins and Mr Watrobski stopped the Claimant's outside visits briefly, but these resumed by 9 November 2017. The visits later stopped again when she was moved to temporary tasks away from her collections work, p1945.

343. Dr Collins and Mr Watrobski permitted the Claimant to undertake development opportunities away from the Respondent's offices immediately they received advice saying that the Claimant was fit to travel. That corroborated Dr Collins' evidence that the reason why the Claimant's travel had previously been restricted was uncertainty as to whether she was able to travel because of her health conditions.

344. This was nothing to do with the Claimant's sex. Any reduction on development opportunities because the Claimant was asked to concentrate on digitally recording the collection/data inputting was also clearly nothing to do with sex, or disability.

345. It was also not direct disability discrimination – a non-disabled comparator, who was suffering pain symptoms and had been referred to Occupational Health for advice would have been treated in the same way.

346. The Tribunal also found that the temporary pause in external development was not disability harassment, even considered together with other alleged acts. The Tribunal found that the pause did not have the purpose or effect of violating the Claimant's dignity or creating the prohibited environment. Applying *Dhaliwal,* there was a rational reason for the treatment and there was no evidence that it was designed to offend or upset. The Claimant may have considered that not permitting her to attend professional development opportunities violated her dignity or created the prohibited environment, but it was not reasonable for her to do so. The Tribunal took into account all the surrounding circumstances. The background was that the Claimant was resistant to carrying out her computer-based work anyway. She was therefore offended by not being permitted to develop her museum collection skills instead. She was not justified in this indignation and should have respected Dr Collins' instructions as to work priorities.

347. The restriction on external development opportunities in autumn 2017 was not an act of victimisation. It predated the protected act. The "reason why" was uncertainty about the effect of travel to external venues on the Claimant's

condition; or the requirement to concentrate on data inputting, at the Respondent's premises.

348. Later, when the visits stopped again, this was because the Claimant had been moved to temporary tasks away from her collections work, p1945. The "reason why", being the move, was not disability or sex-related, nor was it because she had done a protected act. The move itself is considered further below.

349. **Disability/Sex Harassment: Mark Collins saying, "he and Adam Watrobski were going to turn things back to how they were before I started in the team as it worked perfectly well with just the two of them".**

350. The Claimant relied on her notes of discussions with Dr Collins on 10 & 12 October 2017, p1861 & 1862. The Claimant recorded that Dr Collins said that the Claimant's work had got out of hand and that Mr Watrobski did not understand how there was so much work. Her notes recorded:, "Mark: He told me that him and Adam had managed perfectly well before I started and they didn't see how it is causing so much work now. … we need to look at your job description as this isn't working and we just need to you add data to the database." P1861. The Claimant's notes of 12 October 2017 record, p1862, "Mark: He told me Adam and him have decided.. I need to stop doing collection work and it needs to go back to where it was 3 years ago there less work to do."

351. On all the evidence, the Tribunal decided that Dr Collins' words reflected his instructions that the digital recording of the collection needed to be completed. He did not agree with the Claimant that other aspects of her work should take precedence. He was clearly instructing the Claimant not to do any other tasks, but to concentrate on the data inputting work which had fallen so behind. The Tribunal was satisfied that these instructions were nothing to do with sex or disability.

352. **Failing to act on OH recommendations on 3 November 2017;**

353. **Relied on as direct sex and disability discrimination and harassment and failure to make reasonable adjustments;**

354. **"Failure to Make Reasonable Adjustments: Between December 2017 – May 2018, the placement of desk so that people could pass behind as there was no wall or cupboards behind"**

355. **The Claimant's fixed desk; Failing to provide a fully adjustable sit-stand desk**

356. **Relied on as a failure to make reasonable adjustments**

357. The Tribunal accepted Dr Collins' and Mr Watrobski's evidence that they ensured a gap between the Claimant's desk and the cupboards behind, so that people could pass behind without disturbing the Claimant. There was no evidence that the passage behind the desk was used frequently.

358. The Tribunal did not find that this gap caused any substantial disadvantage to the Claimant – it was advantageous to her.

359. In any event, at the Tribunal hearing, it was apparent that the Claimant's real complaints about the OH recommendations November 2017 – May 2018 were:
    a. The Respondent's failure to provide the Claimant with a stand-up/sit down desk, rather than a fixed / manual desk, between 3 November 2017 and the further team move in May 2018.
    b. Its failure to provide a blue tooth headset.

360. The 3 November 2017 OH assessment did advise that the Claimant would "benefit from" a stand up sit down desk. It nevertheless advised that the existing workstation itself was suitable for the Claimant's needs, 'From an ergonomic perspective the chair, keyboard, mouse and screens were all of a good ergonomic design and well positioned." P760.

361. It advised, ".. A headset has been provided for use with Skype for business. The work mobile phone may contribute to some of Alison's signs and symptoms and I would recommend: - A Bluetooth connection to be supplied for the mobile." Ms Mainland, the OH adviser, advised that telecoms could assist ordering this, P760.

362. The Respondent did not provide a stand up sit down desk until the office move to Richmond House in May 2018. However, the Tribunal found that there was no substantial disadvantage caused to the Claimant by the fixed desk.

363. In her later report, on 3 April 2018, Ms Mainland addressed her previous recommendation of a stand-up / sit down desk, p819 – 820. She said, "I would still recommend this.. However, the current desk provided is not likely and does not exacerbate her condition." No duty to provide a standup-sit down desk therefore arose.

364. Even if a duty to make an adjustment had arisen, the Tribunal also found, in all the evidence, that it was not a reasonable adjustment to provide such a desk before the 2018 move to Richmond House. Before then, the only desk available was a manually adjustable desk and a stand-up sit down desk could not be fitted into the existing bank desking, p775 and p33 unredacted documents.

365. The reasonable adjustment complaint in relation to the fixed desk therefore fails.

366. The Tribunal accepted Mr Watrobski's evidence that his initial enquiries arising out of the 3 November 2017 report were standard questions which the Claimant's line manager would have raised, had he been at the assessment. Mr Watrobski had architectural expertise and had raised architectural and practical points about the feasibility of some adjustments in the physical space available. On 17 November 2017 Ms Mainland implicitly acknowledged that Mr Watrobski was entitled to explore the practicalities of her recommendations, when she said that the recommendations reflected best practice, but that it was Mr Watrobski's decision whether the adjustments were manageable, p771.

367. The failure to provide the stand-up / sit down desk was not related to sex or disability in any way – it was entirely caused by the impracticality of providing the desk before the office move.

368. On the broader allegation of a "failure to act" on OH recommendations, Mr Watrobski did pursue the issue of the sit/stand desk, p775, indicating that he was not resistant to providing one. He also agreed that the Claimant could obtain a Bluetooth headset herself, as Ms Mainland had suggested. He actively engaged with the OH recommendations, explaining which were and were not practicable, and why. On the facts, he did not "fail to act" on the OH recommendations. The sex and disability discrimination or harassment complaints in this regard must fail.

369. The Bluetooth headset is addressed further below.

370. **Adam Watrobski sharing the Claimant's medical information relating to her conditions without consent**

371. **Relied on as direct sex and disability discrimination and harassment and victimisation**

372. Mr Watrobski admitted that he failed to password-protect his 16 November 2017 email and therefore it was available to his diary secretary. The email contained some medical information about the Claimant.

373. The Tribunal accepted Mr Watrobski's evidence that he had not done this to intimidate the Claimant, but because "It was an error and I can only apologise. The email was sent late in the evening and it escaped me to do it." The Tribunal has found that Mr Watrobski's omission was a genuine error. He appeared sincere in his apology to the Claimant and the Tribunal noted that the email was, indeed, sent late at night.

374. On the facts, Mr Watrobski's error was clearly not related to the Claimant's sex in any way. It was not because of her protected act. While the error involved the Claimant's medical information, the error itself was not "related" to her disability – the disability was incidental - the error would have occurred irrespective of disability. The sex and disability discrimination or harassment complaints, as well as the victimisation complaint, in this regard, fail.

375. **Mark Collins offensively and inappropriately referring to the Claimant's long-term condition on 28 July 2017 as "special needs"**

376. **Relied on as direct sex and disability discrimination and harassment**

377. On the Claimant's 28 July 2017 incident form, which required the underlying cause of the incident to be stated, Dr Collins wrote, "The member of staff has recurring health problems and has special needs, perhaps a desk could be provided near a window, as she has requested, p724. A different version of the form contained further comments from Dr Collins as follows, "The member of staff has recurring minor health problems and special needs with regard to working

conditions and insists on changes to her workstation. An assessment of the workstation and the overall health of the member of staff is to be requested from Occupational Health."p858.

378. The Tribunal accepted Dr Collins' evidence that he was referring to the Claimant's physical needs, which was clear from the full text of his comment. The Tribunal did not find that Dr Collins' use of the term "special needs" on this official form, which related to her physical environment and her requirements, was in any way pejorative.

379. The Tribunal found that the words were nothing to do with sex. They did not amount to direct disability discrimination because the Tribunal was satisfied that Dr Collins would have used the same words for any person's particular workplace requirements, whether that person was disabled or not.

380. In any event, the words did not amount to a detriment, nor did they have the purpose or effect of violating dignity or creating the prohibited environment for the purposes of a harassment claim.

381. A reasonable person would have understood Dr Collins to be referring to particular requirements in the workplace and would not have misinterpreted the words as implying the Claimant had a mental disability. The Claimant's dignity could not reasonably have been violated by this statement, when it should have been clear that any offence was unintended. The Tribunal adopts the words at paragraph [22] in Dhaliwal, "Whilst it is very important that employers and tribunals are sensitive to the hurt that can be caused by offensive comments or conduct (which are related to protected characteristics), ".. it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase." The Tribunal noted that 28 July 2017 was very early in the chronology of events when there were no other incidents of disability discrimination, so this phrase was isolated.

382. **The Claimant sustaining an injury in the workplace following management's failure to secure her safe seating position from April 2016;**

383. This allegation fails on the facts. The Claimant did not sustain an injury in the workplace. The reliable medical evidence from Dr Hashtroudi indicated that, on the balance of probabilities, the Claimant's symptoms were not caused by anything in the workplace, or by turning her head in the way she described.

384. **Mark Collins and Adam Watrobski excluding the Claimant from collection/regular team meetings including publicly humiliating her in front of others on 17 October 2017; 18 December 2017 and 5 February 2018 by: saying at a meeting on 17.10.17 in front of other attendees, that the Claimant shouldn't be there, and refusing to start until she left; and excluding the Claimant from team meetings on 18.12.17 and 5.2.18; and MC publicly humiliating her by telling everyone in the meeting on 17.10.2017 that the Claimant was having an OH referral the next day.**

385. **Relied on as direct sex and disability discrimination and harassment and victimisation**

386. On 17 October 2017, the Claimant recorded in an email that, "..during our weekly team meeting yesterday Mark announced to everyone that I have my OH management referral this week." P753, p1020. The Tribunal accepted the Claimant's evidence that this occurred. From the Claimant's description of the matter, Dr Collins did not refer to the detail of the referral or the nature of the Claimant's health condition.

387. The Tribunal found that was no evidence that Dr Collins would have treated a male, or non-disabled comparator differently. For the purposes of a direct discrimination claim, the burden of proof did not shift to the Respondent. In relation to a harassment claim, the Tribunal decided that Dr Collins actions were not related to sex. They were related to disability in that the referral, which he referred to publicly, was in relation to her disability. However, the Tribunal was satisfied that the words did not have the purpose or effect of creating the prohibited environment. This was clearly a passing comment which did not refer to any detail of the Claimant's health condition. Taking into account all the circumstances, while the Claimant felt sufficiently uncomfortable to record the matter in an email, it was not reasonable for her to feel that her dignity had been violated or that an oppressive or humiliating environment had been created by this transient comment.

388. The Claimant clarified that the meetings from which she was excluded were on 18 December 2017 and 5 February 2018.

389. Mr Grant had told the Claimant, when he moved her line management, that she would be able to continue to attend Architecture and Heritage Team meetings.

390. When the Claimant attended at team meeting on 18 December 2017 Dr Collins came to the table where she was seated and said, "We moved your line management to Ugbana; we are having a team meeting and you are not invited so we are moving tables", p1091. Dr Collins agreed that he had moved the team away from the Claimant.

391. On 17 January 2018 Mr Watrobski emailed Mr Grant saying, that he and Dr Collins had been caused mental stress by the grievance process, which would be exacerbated by the Claimant's proposed attendance at team meetings. He said, "We cannot work professionally with someone who cannot be trusted and for whom any form of management is construed as "bullying and harassment." On a practical level. [the Claimant] is being line managed by others and this relationship would be compromised were Mark and I to make any comment, not to mention the potential for an additional grievance to be lodged. I am no longer prepared to tolerate this and would therefore request that [the Claimant] please be instructed not to attend." P1098

392. Later, on 5 February 2018, after Mr Grant had reiterated that the Claimant could attend meetings, Mr Watrobski refused to start a meeting when the Claimant attended.

393. There was evidence from Mr Watrobski's 17 January 2018 email that both he and Dr Collins wanted to exclude the Claimant from team meetings with them because she had submitted a grievance against them and their management.

394. Mr Watrobski told the Tribunal that he would not routinely exclude a hypothetical member of his team because they had made a Valuing Others complaint against him, but her complaint of "overbearing supervision" made clear that she had objections to his and Dr Collin's management.

395. However, the Tribunal decided that the Respondent had not shown that the fact that the Claimant's grievance was not part of the reason the Claimant was excluded from meetings. The nature, or manner, of the Claimant's protected act was not properly severable from the protected act itself. Indeed, the Claimant had complained that Dr Collins and Mr Watrobski had harassed her in their management of her – and that was the reason they objected to her attending meetings.

396. The Tribunal found that refusing to allow the Claimant to attend meetings, when Mr Grant had authorised the Claimant to attend, and when others were present in the meetings and witnessed the Claimant not being allowed to attend, amounted to a detriment. The Claimant reasonably felt publicly embarrassed and excluded. A reasonable person would feel that they had been disadvantaged by such a public exclusion. The meetings were also relevant to her work at the time and not attending them would be detrimental to her ability to carry out her duties.

397. However, the Tribunal did not find that the exclusion was also sex or disability discrimination. It was satisfied that Dr Collins and Mr Watrobski would have treated a male or non-disabled comparator who had presented the same grievance, in the same way.

398. Further the treatment was not related to sex or disability for the purposes of a harassment claim. The grievance itself related to disability, but the exclusion itself had no relation to the disability.

399. **HR failing to follow ACAS best practice in the conduct of the "Valuing Others" complaint (Grievance), and Disciplinary Procedures by: Moving the Claimant from her team during the grievance process;**

400. **Moving the Claimant out of her B2 role from February 2018 during grievance process**

401. **Ugbana Oyet unreasonably had the Claimant undertake a repetitive singular activity (loading CDs into a computer to check and copy across files) which took precedence over her substantive Band B2 role/objectives, resulting in the Claimant being unable to complete her B2 role and objectives for reporting year 2017-18**

402. **Relied on as direct sex and disability discrimination and harassment and victimisation**

403. On 8 February 2018 Mr Grant told the Claimant that she would be working on different duties from 19 February 2018. The immediate cause was Mr Watrobski and Dr Collins' unwillingness to work with the Claimant – because of her grievance. That might be victimisation.

404. However, the Tribunal found that moving the Claimant from her team to different duties did not amount to a detriment.

405. The Claimant drew the Tribunal's attention to her 2018-2019 performance management IPR (performance review) document for her Collections Manager role p511-517. Her objectives in it included, "Lead on the requirements for the Architectural Fabric Collection; As sole museum professional and subject matter expert" "Lead on the Engagement programme for the Architectural Fabric Collection". The Claimant contended that, when she was taken off her permanent role as a museum professional, she was given temporary tasks not comparable to her grade and was therefore blocked from undertaking her substantive B2 work by management because she had raised a formal grievance.

406. On the facts, the Claimant was already very unhappy about having been told to concentrate on the data inputting part of her B2 role. She already believed that the data inputting tasks would not assist her to attain her objectives in her 2018 – 2019 IPR. She wrongly believed that the data inputting tasks were not part of her B2 role; but she was not reasonable in this unhappiness, as the Tribunal has found. Cataloguing, through data inputting, was indeed part of her role as a museum collections manager.

407. Her new temporary tasks were similarly computer-based. They similarly involved the Claimant properly cataloguing information on the Respondent's systems. Given that the Claimant was already disgruntled about having to carry out such tasks, the Tribunal considered that a reasonable person, in the Claimant's position, would not consider themselves further disadvantaged by being given similar alternative tasks, albeit on a somewhat different subject area. This was particularly so when the tasks would be temporary only, while the grievance was completed. Other people in the department, including Mr Oyet, were also assigned to this temporary work – the Claimant was not singled out. There was no detriment. Put simply, the Claimant did not want to do her old tasks and she did not want to do these new ones either.

408. The Tribunal was satisfied that the reason the Claimant was moved, rather than Mr Watrobski and Dr Collins, was that it would be less disruptive to give the Claimant temporary tasks, than to remove the whole line management of the architectural fabric collection. That was not related to the Claimant' sex or disability.

409. The Claimant's direct sex and disability discrimination or harassment claims and her victimisation claim in this regard therefore fail.

410. **The omission of HR to act on concerns raised at a meeting on 14 February 2018, where the Claimant raised concerns about her disability and the**

temporary tasks she had been assigned. The Claimant relies on the following omissions i. not discussing with the Claimant's line management that she was stressed, or her concerns about the temporary tasks, and ii. not ensuring that Occupational Health carry out an assessment on both temporary tasks and stress.

411. **Relied on as Direct Sex and Disability Discrimination and Disability and Sex Related Harassment**

412. On the facts, HR did raise the Claimant's stress with Mr Grant, who passed the matter on to Mr Oyet and asked him to mention it in the Claimant's referral to Occupational Health, p793.

413. Mr Oyet did not. He admitted that he may have overlooked doing so. The Tribunal noted that Mr Grant had mentioned it in one bullet point in one email, out of many emails. There were many communications between the Claimant and Mr Oyet for the purpose of agreeing the text of the OH referral, for example, p795. During this correspondence, the Claimant did not prompt Mr Oyet to add stress to the referral. She did not raise stress with OH herself, when she was assessed. This suggested that adding stress to the OH referral was not at the forefront of the Claimant's, or Mr Oyet's, mind at the time.

414. If the matter had been raised again and Mr Oyet had still ignored it, the Tribunal would have been less inclined to believe the omission of stress from the OH referral had been an oversight on his part. However, there was still nothing to suggest that Mr Oyet's omission to include the Claimant's stress in the referral was because of her sex or disability; there was nothing to suggest that Mr Oyet would have treated a comparator differently.

415. The Tribunal accepted Mr Oyet's evidence that the failure to include stress in the OH referral was simply an oversight. This was a wholly non-discriminatory reason.

416. For the purposes of a harassment claim, the oversight was not "related to" sex in any way. Further, the Claimant did not rely on her stress as a disability at the relevant time, so the referral was not related to a stress disability. The referral to OH in relation to reasonable adjustments for the Claimant's musculoskeletal disability was the context for the omission, but the omission was not "related" to that disability.

417. This allegation of direct discrimination or harassment therefore fails.

418. **Relevant managers failing to take reasonable actions to support the Claimant by: Asking the Claimant to move counselling sessions when they clashed with team meetings where Karen Bovaird (Head of Advisory Services), Donald Grant and Ugbana Oyet all had actual knowledge of the Claimant's stress**

419. **Relied on as Direct Sex and Disability Discrimination and Disability and Sex Related Harassment**

420. **Failure to Make Reasonable Adjustments regarding "Preventing the Claimant from attending counselling/support sessions when they clashed with team meetings."**

421. On 13 March 2018, the Claimant emailed Mr Grant saying that she would be unable to attend a Design Authority Team meeting because of a clash with her counselling session, which she said was also important, p812. The Claimant had arranged counselling through the Respondent's counselling service because of her feelings of stress during the grievance. Mr Grant replied, acknowledging that support during the investigation was important but saying, "However I do not think that the only time such support is available through the whole week is between 14.00 and 15.30 today, coinciding with a long-standing and important team meeting." He said that the Claimant's counselling should be rearranged, p811.

422. The Tribunal accepted Mr Grant's evidence that appointments could be made or changed by mutual consent – it considered that medical and counselling appointments would normally be made by consent.

423. With regard to the direct discrimination claims, there was no evidence that Mr Grant would not have asked a male, or non-disabled, comparator to ensure that counselling sessions did not clash with long standing and important meetings. There was no difference in treatment between the Claimant and a comparator. For the purpose of a sex harassment claim, Mr Grant's request was not related to sex in any way. For the purpose of a disability harassment claim, the Claimant's disability was her musculoskeletal condition. The grievance was related to disability, but the grievance was simply the context for the counselling sessions. Mr Grant's request to rearrange a counselling session was not related to the musculoskeletal disability. Even if it had been, Mr Grant's request was clearly not intended to violate dignity or create the proscribed harassment environment. There was a good reason for the request. Clearly it was easier for one individual, the Claimant, to rearrange her session than to rearrange a whole team meeting. Even if the Claimant felt harassed, in all the circumstances, a reasonable person would not view asking the Claimant to rearrange one counselling session, for good reason, to have had the effect of creating the proscribed environment. The harassment claim also fails in this regard.

424. Regarding the reasonable adjustment claim, the Tribunal did not find that the Respondent had a provision, criterion or practice of preventing the Claimant from attending counselling sessions. She was asked to arrange one counselling session for a time which did not clash with other important meetings. The Tribunal considered that it was likely that counselling sessions could be rearranged, so there would be no conceivable substantial disadvantage to the Claimant. In any event, it was not clear how the Claimant was put at any substantial disadvantage in relation to her musculoskeletal disability by rearranging a counselling session, for her stress. Further, it was not a reasonable adjustment to permit the Claimant to attend counselling whatever the effect on her work activities. It was clearly much easier for a counselling session for one person to be rescheduled than work activities involving a team.

425. **Ugbana Oyet conducting the preliminary informal Disciplinary investigation without following ACAS best practice by: not informing her who made the complaint against her; changing nature of allegation prior to providing the outcome; and not checking whether Mark Collins had approved the work.**

426. **Ugbana Oyet unreasonably informally disciplining the Claimant for carrying out work which had been authorised by Dr Collins (victimisation)**

427. **Relied on as direct sex and disability or sex or disability related harassment and victimisation.**

428. This related to the Claimant's use of "Premier Moves".

429. The Tribunal took into account an email from Mr Grant to HR on 7 February 2018 in which he said, about the Premier investigation, "I agree we need to make sure it is not being seen as a witch hunt." He also said that if the allegation were proven regarding misusing a resource, he would view the allegation as gross misconduct, unredacted bundle p185. The Tribunal noted that this was one of the documents which had not originally been disclosed to the Claimant in these proceedings. The Tribunal could draw inferences from that fact.

430. The Tribunal inferred that Mr Grant was conscious that any disciplinary investigation against the Claimant could be perceived to be victimisation arising out of the Claimant's grievance.

431. The Claimant was never told who had made the original allegation against her. She was originally told that the complaint was about the Claimant being left back to Victoria, whereas, in his final report, Mr Oyet had referred to additional matters. The Claimant told the Tribunal that Mr Grant had not checked, at the outset, whether Dr Collins had approved the arrangement. She said that, if that had been checked, no investigation would have been necessary.

432. However, on all the evidence, the Tribunal accepted Mr Oyet's evidence that a complaint had been made and that it was necessary to investigate the matter informally. A complaint clearly had been made by someone else, not Mr Oyet. The Tribunal accepted that Mr Oyet would not simply have ignored it, whether the subject of the complaint was a man, or a non-disabled person.

433. Mr Oyet's 5 March 2018 investigation recommended, p1977, to resolve the matter informally through advice and guidance. The standard form said that a copy of the investigation report form should be kept for 6 months in the case of informal resolution. The other options were "Drop the matter (no further action)", or "formal investigation".

434. On the facts, there never was any formal investigation. No allegations were ever put formally to the Claimant. She was never invited to a formal disciplinary hearing.

435. The Tribunal found that the ACAS procedures did not apply to this informal investigation. There was no evidence that Mr Oyet would have applied broader "ACAS Guidance" differently to a male, or non-disabled comparator. Mr Oyet's actions were not related, in any way, to sex or disability.

436. Regarding victimisation, while Mr Grant was conscious of being seen to victimise the Claimant, the Tribunal was satisfied that Mr Oyet's actions had nothing to do with the Claimant's protected act. He simply informally investigated an allegation which had been made against the Claimant, and addressed it in an outcome report which gave a rational and supportable conclusion on the facts which he had found. He gave advice to the Claimant on the basis of this rational conclusion, which was not formal action. This was an extremely mild form of action. It was not detrimental.

437. These discrimination, harassment and victimisation allegations fail.

438. **Donald Grant denying the Claimant the right to be accompanied by a union representative during the informal investigation of an alleged complaint**

439. **Relied on as direct sex and disability or sex or disability related harassment and victimisation**

440. Mr Grant told the Claimant that there would be a preliminary inquiry to establish the facts and, only if the inquiry indicated it was necessary, would it become a formal investigation, p1932. He said that there was no disciplinary action at this stage. The Claimant did not have a right to be accompanied during this informal preliminary enquiry. The Tribunal was satisfied that the failure to allow the Claimant to be accompanied was not related to sex or disability in any way – she was simply not entitled to be accompanied. There was no evidence that Mr Grant would have offered the right to be accompanied by a Trade Union representative to someone who had not made a grievance, even if the grievance was in his mind at the time.

441. In any event, there was no detriment. The Tribunal considered that a reasonable person in an informal procedure would not consider themselves to be disadvantaged by not being given rights applicable to a formal disciplinary process. Part of the purpose of maintaining informality is to avoid the import and seriousness of formal procedures, for the benefit of the employee.

442. These allegations fail.

443. **Being given a single repetitive temporary task (loading CDs into a computer in order to review files) in February 2018, in place of her substantive B2 role after lodging a grievance (sex, disability discrimination and harassment).**

444. **Ugbana Oyet proceeding to ignore his own direction regarding the suitability of the Claimant to start temporary work and around 22 February 2018, requiring the Claimant to work on temporary repetitive tasks prior to completion of the Occupational Health assessment (sex, disability discrimination and harassment);**

445. **Ugbana Oyet concealing from Donald Grant that he had asked the Claimant to refrain from starting temporary tasks until the medical referral (victimisation);**

446. **From March 2018 – 10 April 2018, the placement of a computer processor unit at the front of Claimant's desk instead of providing a CD reader; (failure to make reasonable adjustments – substantial disadvantages all set out above, paragraph [286]; auxiliary aid required: CD reader);**

447. **Ugbana Oyet substituting a DSE assessment for a medical referral which was scheduled on 03 April 2018 (victimisation);**

448. **Ugbana Oyet patronising the claimant on 07/03/2018 by saying "I specifically asked you to commence tasks that can be completed at your current first floor desk location for example: (1) pick up a CD disk from desk (2) Open the disk and insert into the computer to identify their contents (3) if the disk is blank – it can be destroyed (4) ……(10)" (Discrimination Arising From Disability)**

449. **Ugbana Oyet unreasonably requiring the Claimant to provide a doctor's note in relation to the temporary task which the Claimant could not undertake at her computer on 23 March 2018; (victimisation and Discrimination Arising from Disability)**

450. **The something arising in consequence of disability relied on is:**

a. Her inability to perform tasks without OH advice first;
b. Her inability to carry out repetitive tasks

451. The Tribunal grouped these allegations together for convenience because they all related to the temporary tasks assigned to the Claimant, before a further OH assessment was carried out on 3 April 2018.

452. On the facts, the Claimant was originally given 2 temporary tasks: the "library task" and the "CD task". The library task was withdrawn promptly when the Claimant pointed out that it would require lifting, so it was the CD task which was in issue in the case.

453. The CD task required putting CDs into the computer, looking at the documents stored on the CD and then moving those documents to the appropriate location on the Respondent's online shared drive (p1950). The Claimant needed to process 5 - 7 CDs a day in this way. On the Claimant's evidence, as few as 1 CD every 2 days might be required, depending on how much information was on the CD. Mr Oyet left the CDs on the Claimant's desk. Later, in March 2018, when the Claimant objected to bending and stretching to load the CDs into her computer, Mr Oyet uploaded the CD contents onto a SharePoint.

454. The Claimant's workstation had been assessed by Ms Mainland in November 2017 and found to have been suitable for the Claimant.

455. Further, Dr Hashtroudi, the OH doctor, who had advised on what the Claimant could and could not do, had advised on 18 October 2017, that the Claimant should avoid overhead activities and "keeping her arm in an outstretched position". He said that the Claimant should "refrain from heavy moving and handling." p752.

456. The doctor's report had therefore advised that the Claimant should avoid "heavy" lifting. Objectively, CDs are not heavy. Further, the doctor's report did not advise against ANY stretching or bending – it advised against the Claimant keeping her arm in an outstretched position.

457. The Claimant described the CD task as 'repetitive". Loading and unloading up to 7 CDs into a computer Drive each day would involve doing this activity about once every hour. On any view, that was clearly not a repetitive task, but an infrequent one. The allegation that she was given a repetitive task was not factually correct.

458. When Ms Mainland reported again on 3 April 2018, on the Claimant's new temporary duties, p818, she said, of the CD task, "I understand from the description of this temporary desk based role that it may be quite repetitive and that it requires loading CDs onto a drive and relocated [sic] them onto Share Point. With a few adjustments it may be that Alison could undertake this task on a temporary basis and possibly not for the long term. I would recommend that a small portable CD reader be supplied, this would allow more flexibility in its positioning and able to be moved when not in use. This would also prevent Alison from overstretching/reaching. … On the provision of a portable CD reader then Alison could undertake this task. However, she should not do the same task for more than 4-5 hours a day and the task should be broken up so that there are not concentrated lengths of time working on the PC." P818 – 819.

459. The Tribunal noted that, in giving her opinion, Ms Mainland said that the task was "quite repetitive and that it requires loading CDs onto a drive". The Tribunal decided that the report was factually inaccurate. The CD task was not repetitive. Insofar as the Claimant relied on the report as evidence of that infrequent loading of CDs into a computer put her at a substantial disadvantage because of her disability, the Tribunal considered Ms Mainland's report to be unreliable.

460. The Claimant contended that she was unable to undertake tasks without OH advice first. The Tribunal rejected this on the facts. The Claimant had been asked to undertake tasks at a workstation which had already been assessed as suitable; and which an OH doctor had not warned should be avoided. Loading up to 7 CDs a day into a Drive was a trivial alternation, if any, to normal computer tasks. Infrequently leaning towards a computer processing unit must reasonably be part of working at a computer station. The Tribunal found that the desk-based CD tasks were well within the range of desk-based tasks which OH had already assessed as suitable for the Claimant, in light of her disability. She did not require

a further OH assessment of new computer-based tasks, where her computer workstation had already been so assessed.

461. The Claimant also contended that she was unable to carry out repetitive tasks. The Tribunal makes clear that the Claimant may have been unable to carry out repetitive tasks, but the loading of CDs into a computer was not one such task. Insofar as computer work itself (rather than loading CDs) might be repetitive, there was no dispute that the Claimant had always been provided with a suitable workstation, including a particular keyboard, mouse and chair, and had always been advised and permitted to take frequent breaks. That was not in issue in this case.

462. The facts known by Mr Oyet and the Respondent, therefore, were that Ms Mainland had already advised that the Claimant's workstation was suitable for her - there was no suggestion that the Claimant could not carry out computer work using the full computer unit, including the CD Drive. Further, the expert OH doctor had not advised against lifting light objects, or occasional bending and stretching. On the facts known by Mr Oyet, the CD task was entirely suitable for the Claimant.

463. On all these facts, the Tribunal concluded that the Respondent did not subject the Claimant to direct disability or sex discrimination by requiring her to carry out this task. There was no evidence that a man, or a non-disabled comparator in the same circumstances would have treated the Claimant any differently.

464. For the harassment claims, the Tribunal was also satisfied that the choice of task was not related to sex or disability in any way – the task was simply one which required to be done.

465. Further, in so far as the Claimant suggested that allocating a "repetitive" task to her was an act of victimisation, the Tribunal rejected this. The task was not detrimental, as it was well within the type of task which had already been assessed as suitable for the Claimant.

466. The Tribunal decided that the Respondent did not fail to make a reasonable adjustment by failing to provide a CD reader between February and April 2018. The Claimant was not put at any substantial disadvantage by the CD role. He workstation was suitable for her. The CD loading task was not repetitive. Dr Hashtroudi had not advised that occasional stretching, or light lifting, should be avoided. Insofar as Ms Mainland advised differently on 3 April 2018, her report was unreliable because it was based on the erroneous assertion that loading the CDs was a repetitive task. The Claimant's GP did not provide any contemporaneous report into this task, despite Mr Oyet asking for a GP note. The GP's later report, written well after the event, was not independent and was unreliable.

467. In any event, the Tribunal makes clear that, on the evidence, it finds that the Claimant did not <u>want</u> to do the CD task, rather than she could not do the CD task. Even when Mr Oyet uploaded the contents of the CDs onto SharePoint to assist her, the Claimant failed to do the task. The Tribunal noted that Mr Oyet had

said, in his 21 March email addressing the SharePoint, "If you need any assistance please ask". P816. The Claimant replied on 23 March saying, "The management health referral route is the correct House process to follow in these particular circumstances. As you know, we have both facilitated the management referral process and the assessment is imminent." P817. The Claimant told the Tribunal that copying documents to the SharePoint would not assist her to carry out the task. However, it was notable that she made no effort to explain, at the time, why this was the case. She did not take up Mr Oyet's offer of assistance.

468. The Claimant failed, at the time, to explain why Mr Oyet uploading the documents Sharepoint presented any true barrier to her work. It was clear to the Tribunal that the Claimant was being deliberately obstructive and uncooperative.

469. The Tribunal is reinforced in its conclusion that the Claimant was refusing to do the work, rather than she was unable to, pending an OH report, by the chronology of events set out by Mr Oyet in his email to Mr Grant on 9 March 2018, p1967 - 1971. In this careful and detailed email, he explained, in a logical and sensible manner, his reasons for deciding the Claimant should be able to carry out the CD tasks. The Tribunal also found Mr Oyet to be a most dispassionate and convincing witness at the Tribunal, when he addressed this issue.

470. The Respondent was not under a duty to provide a CD reader as an auxiliary aid for the Claimant between February and April 2018..

471. The Claimant alleged that Mr Oyet had ignored his own direction regarding the suitability of the Claimant to start temporary work and had also concealed this from Mr Grant.

472. In contending this, the Claimant relied on the words of the OH referral. In the referral, Mr Oyet said of both activities, "As this is a temporary role, it is necessary to ensure any temporary new activities outside Alison's permanent role as Collections Manager are risk and impact assessed, prior to work commencing." P804.

473. On all the facts, it was abundantly clear that Mr Oyet had required the Claimant, throughout February and March 2018, to carry out the CD role. A single sentence in the OH referral, which might have suggested otherwise, was inconsistent with all the other instructions Mr Oyet gave the Claimant in relation to the CD task. Against that background, whatever the OH referral said, the Tribunal accepted Mr Oyet's evidence that the OH referral was for the temporary role as a whole, encompassing both tasks, but that he considered that the Claimant could undertake the CD task before the full OH report was available. He did not ignore his own instruction and he did not mislead Mr Grant in this regard. Those allegations were incorrect on the facts.

474. Further, Mr Oyet did not, in fact, substitute a DSE assessment for a medical referral which was scheduled on 03 April 2018. He asked for a DSE assessment of the Claimant's CD computer-based tasks in the interim, because the OH assessment could not take place until April. As Mr Oyet told the Tribunal, the OH assessment addressed both temporary tasks, and not just the CD work. In the

meantime, the Claimant was being asked to undertake the computer-based CD tasks. While the Claimant said that this was an act of victimisation, the Tribunal considered that Mr Oyet's action was not a detriment. The OH assessment still took place and a reasonable employee would not object to a DSE assessment of their workstation, directed to ensuring that the place where they were then working was suitable for them.

475. The Claimant contended that Mr Oyet subjected her to discrimination arising from disability by requiring her, on 23 March 2018, to provide a GP certificate in relation to the CD temporary task. The Tribunal has rejected the "something arising from disability" contended for. It has rejected the Claimant's contention that she could not undertake this task without an OH referral and that this task was repetitive. The Claimant could carry out the task and did not require any adjustment for her disability. Mr Oyet perfectly reasonably required the Claimant to produce an alternative medical report, as the Claimant was claiming that her GP had advised that she could not do work at a workstation which had already been assessed as suitable. Mr Oyet's request for GP report was a proportionate means of ensuring a legitimate aim – that the Claimant do the work that she was being paid for.

476. The Claimant said that Mr Oyet had patronised her on 7 March 2018. She said that this arose from her disability because she needed an OH referral before she did the work. Mr Oyet's instructions related to the CD work. The Claimant did not need an OH referral for the CD work. In any event, the Tribunal accepted Mr Oyet's justification for the simple instructions he gave the Claimant. The Claimant had still done no work. Mr Oyet had already taken 5-7 CDS out of a box, so there would be no need to stretch in order to lift them from the box. He gave instructions as simply as possible for the task to be completed. He did not intend to patronize or harass the Claimant, but gave clarity as to what was required. Mr Oyet's instructions were, once more, a proportionate means of ensuring a legitimate aim – that the Claimant do the work for which she was being paid.

477. **ACAS best practice in the conduct of the Disciplinary procedures by starting the disciplinary process in March 2018 without carrying out a PHWS (Occupational Health) assessment to see what adjustments were necessary;**

478. **HR failing to follow HR advising Ugbana Oyet and Donald Grant to start a disciplinary investigation on 6 March 2018 after the Claimant had submitted a (Valuing Others) Grievance complaint on 08 November 2017;**

479. **Mark Collins unreasonably relying on a job description from 2014 in order to discipline the Claimant for not undertaking Band C Database Manager tasks when she was in the B2 Collections Manager role;**

480. **Ugbana Oyet and/or Donald Grant criticising the Claimant for non-completion of temporary tasks without consideration of the impact of her condition, leading to a threat of Disciplinary action, on 7 March 2018; (also relied on as victimisation and discrimination arising from disability)**

481. **All above relied on as sex and disability discrimination or harassment;**

482. **Ugbana Oyet unreasonably investigating the Claimant's conduct and requiring her to attend a Disciplinary hearing on 10 April 2018: relied on as victimisation**

483. **Ugbana Oyet unreasonably subjecting the claimant to a conduct disciplinary on 14/03/2018 (relied on as discrimination arising from disability);**

484. **Being alleged by Ugbana Oyet during the disciplinary to have committed "fraud" and Ugbana Oyet requiring the Claimant to provide evidence of work carried out (discrimination arising from disability).**

485. **Ugbana Oyet finding the Claimant to have committed act(s) of misconduct and giving her a first written warning; The Claimant being given a first written warning (sex and disability discrimination or harassment; discrimination arising from disability)**

486. While these complaints were expressed as many separate allegations, the Claimant essentially complained that she was disciplined for not carrying out the temporary tasks before the OH assessment on these tasks had been carried out.

487. On 12 March 2018 Mr Oyet informed HR that he intended to commence a formal disciplinary procedure against the Claimant on the grounds that she had refused to follow reasonable management requests and had refused to meet to find a way forward; and that the Claimant had refused to give an account of what she had delivered for the business during working hours since 19 February, p1974.

488. P2925 House of Commons Managers' Guidance provides, "Disciplining an employee for a reason relating to his or her disability, for example, poor attendance or performance, is discrimination and will be unlawful unless there is a very good reason to justify the treatment. Disciplinary measures in these circumstances should only be taken after all possible reasonable adjustments have been made to try to improve the employee's attendance or performance."

489. The Tribunal has already decided that, on the facts known by Mr Oyet, the CD task, at a workstation which had already been assessed, was suitable for the Claimant. There was no failure to follow ACAS best practice.

490. The Claimant contended that she had been working on other work, which was within her job description, so that it was unreasonable for Mr Oyet to discipline her.

491. The Tribunal accepted Mr Oyet's evidence that the Claimant had autonomy to decide the way in which she would carry out the tasks she had been assigned, not to decide to carry out different tasks than those assigned to her. This was obvious – Mr Oyet, as the Claimant's manager, was entitled to organise the work to be done and to allocate tasks to his subordinate employees. The Claimant was not entitled to reject the tasks allocated. The Tribunal found that Mr Oyet was reasonable to consider that the Claimant had failed to carry out his instructions

when she did not undertake the CD task. He was reasonable to commence disciplinary action into the Claimant's failure and to investigate it.

492. The Tribunal has already decided that the Claimant's failure to start the CD task did not arise from her disability. All reasonable adjustments had already been made; provision of a further auxiliary aid in the form of a CD reader was not a reasonable adjustment, as the Tribunal has found.

493. Disciplining her for failing to start that CD task, and giving her a first written warning, did not arise from her disability.

494. The only reason the Claimant was disciplined in this way was because she had not carried out Mr Oyet's instruction to do the CD task. Her sex, disability and her protected act were no part of the reason. The Tribunal found that anyone who refused to carry out a task, which they were capable of doing, would have been disciplined.

495. Further, the Tribunal found that the disciplinary sanction of a first written warning was a mild and proportionate sanction. Plainly, it was one of the less severe sanctions which could have been awarded and did not immediately threaten the Claimant's continued employment.

496. As a matter of fact, Mr Oyet did not allege that the Claimant had committed fraud. That was an inference asserted by her union representative in the disciplinary meeting, p2071. The HR representative at the meeting replied that the allegation, as then formulated, concerned the Claimant's work output.

497. For the purposes of her harassment complaints, her sex was not related to her being disciplined, either. Even if the disciplinary measures were related to her disability (which the Tribunal finds they were not), in all the circumstances, including the Claimant's perception, they did not have the purpose or effect of violating dignity or creating the prohibited environment. It would not be reasonable for disciplinary action for failure to follow a reasonable management instruction to have that effect, particularly when the sanction was only a first written warning. Mr Oyet made no allegation of fraud. On the contrary, it was reasonable for an employer to examine an employee's work output when they were being paid to work.

498. The Tribunal has already found that Mr Lewsey did not simply reply on the Band C job description in giving the first written warning. He said that the Band C remained relevant and was supplemented by the JEGS job analysis form information. He quoted from JEGS job analysis form. The Tribunal has also already found that Dr Collins was correct to consider that the Claimant's Band C duties were part of her Band B2 role. On the facts, the Respondent did not rely on a 2014 Band C job description when disciplining the Claimant.

499. **Donald Grant commenting that the Claimant's personal reasonable adjustments would "open the flood gates" for requests from non-disabled persons;**

500. **Relied on as sex & disability direct discrimination and failure to make reasonable adjustments**

501. The Tribunal found that Mr Grant did say to the Claimant that it would open the flood gates if she was provided with a Bluetooth headset.

502. In her 3 April 2018 report Ms Mainland reiterated her November 2017 recommendation that a Bluetooth headset be provided for the Claimant. " However, Dr Hashtroudi had said in his OH medical report, "..she should be allowed to use her hands free cable when using mobile" p752.

503. The Tribunal accepted Mr Grant's evidence that the Claimant would not need to use a mobile telephone when she was undertaking data inputting work at her computer. It was not in dispute that the Claimant had a Skype headset for her desk telephone when carrying out computer work.

504. The Tribunal concluded that the Claimant was not put at any substantial disadvantage by the failure to provide a Bluetooth headset for her mobile telephone when she was carrying out work at a computer from November 2017 and had a Skype headset for her desk phone. She did not need to use a mobile telephone when carrying out desk-based work. The Tribunal's conclusion on this was bolstered by Dr Hashtroudi's advice that a wired headset (not a Bluetooth headset) was adequate for the Claimant's needs. The Respondent was not under a duty to make a reasonable adjustment when there was no substantial disadvantage.

505. The Tribunal accepted Mr Grant's evidence that he believed that the Claimant would have been given a wired headset. It appeared that Dr Hashtroudi also believed the Claimant already had a wired headset, in that his report spoke about "her hands free cable". Even if the Claimant had not, in fact, been given such a wired headset, there was no evidence that Mr Grant would have provided a Bluetooth headset for a man, or a non-disabled person. Indeed, by saying that a Bluetooth headset would open the floodgates, it was evident that Mr Grant expected all employees to be given the same equipment, with no exceptions being made. There was no direct sex or disability discrimination.

506. **Ugbana Oyet unreasonably supervising the Claimant's work by asking her to record and monitor her use of time (hour by hour each day) from 12 April 2018 to 22 October 2018, where the Claimant was the only person undertaking this practice in the organisation.**

507. **Relied on as direct sex and/or disability discrimination/harassment, discrimination arising from disability and victimisation**

508. **Ugbana Oyet creating a new process to record time and motion activities which was in addition to the standard organisational practice of timekeeping, and which was not applied to anyone-else in the organisation;**

509. **Relied on as discrimination arising from disability and victimisation**

510. On 12 April 2018 Mr Oyet instructed the Claimant to record her working times on a weekly schedule for the duration of his line management, p2084. The Claimant pointed out to the Tribunal that she was the only employee who was required to do this and that Mr Oyet had devised this system specifically for her.

511. Mr Oyet told the Tribunal that he had done this because the Claimant had not done any work from 19 February 2018. The Tribunal accepted his evidence. It has found that the Claimant did not undertake the CD task which Mr Oyet gave her and she had no good reason for failing to do so. Her failure to carry out the work did not arise from her disability. The Tribunal accepted Mr Oyet's evidence that the Claimant had autonomy to organise the way in which she undertook tasks, not autonomy to decide to do other work.

512. There was no evidence that other employees were similarly failing to carry out the work which they had been instructed to undertake, but were not subject to monitoring.

513. Mr Oyet started to supervise the Claimant's work and time management because she, uniquely amongst employees, had not been producing work. This was the only reason. It was nothing to do with sex, disability, or her protected act.

514. **Ugbana Oyet requesting the Claimant to unlock private meetings**

515. **Ugbana Oyet questioning the Claimant as to her whereabouts when she was in private meetings;**

516. **Relied on as direct sex and/or disability discrimination, discrimination arising from disability and victimisation**

517. The Tribunal noted that Mr Oyet's 5 January 2018 email, wherein he said to the Claimant, "I'm struggling to get an appointment in your diary as there are large blocks of "private appointment". Could you please update your diary and remove the large multiple hour blocks of private appointments. If they refer to time addressing particular tasks, please show them as such, we need to be as transparent as reasonable with our diaries in the spirit of working collaboratively with our colleagues." P1094. The Tribunal considered that that email was reasonable and polite and gave his non-discriminatory reasons for requiring the Claimant to explain the large amounts of time in her diary blocked out for "private" meetings. The Claimant was paid t work for the Respondent, not to attend private meetings.

518. The Tribunal accepted Mr Oyet's evidence that, as a manager, he needed to understand where his staff were and to ensure that staff were carrying out the tasks assigned to them. On the evidence, the Claimant did have an excessive number of private appointments in her diary. For example, on 11 April 2018, p2077, Mr Oyet listed 8 private appointments in the Claimant's diary, each lasting between 3.5 hours and a whole day, between 9 January and 12 March 2018. This was a plainly excessive amount of time for an employee to take away from their work.

519. The Tribunal had no difficulty in finding that Mr Oyet's request that the Claimant state the reason for her excessive private appointments and his enquiry as to her whereabouts were nothing to do with her sex or disability or protected act. They were not because of something arising in consequence of disability. They were entirely because the Claimant was taking large amounts of time away from her duties and Mr Oyet, as a responsible manager, needed to ensure that the Claimant had a good reason for this.

520. **Not following ACAS best practice during the grievance procedure; permitting the respondents to contact their own witnesses rather than through the independent investigator, thereby failing to maintain confidentiality of the grievance process**

521. **Relied on as direct sex and disability discrimination/harassment**

522. Mr Watrobski personally approached a potential witness during the grievance investigation. It appears that the Respondent took remedial action, and no action against Mr Watrobski, in this regard. The Tribunal noted that the grievance investigator specifically addressed the matter in his report "2.3.2. The Investigator was concerned to learn from one witness, PA, that he had been approached by AW requesting that PA act as a witness for him. Such conduct is inappropriate in the course of an investigation when such a request. from a senior manager could be interpreted as an attempt to influence an aspect of the investigation. In the event the Investigator does not consider these actions had any material impact on the investigation." P1243. The Tribunal noted that the same grievance investigator upheld a number of the Claimant's grievances.

523. On the facts, the Respondent did not "permit" Mr Watrobski to approach witnesses – the independent investigator made clear that such action was not permitted. However, the Respondent also took no action against Mr Watrobski after he approached a witness. Nevertheless, it also appeared, on the facts, that the grievance investigator concluded that Mr Watrobski approaching a witness had had no impact on the grievance.

524. There was no evidence that the Respondent would have taken any remedial action in relation to a manager approaching a witness, if a male or non-disabled person had brought the grievance. The Tribunal concluded that the reason the Respondent took no further action in this regard was because the independent investigator felt that Mr Watrobski's actions had made no difference to the outcome. It was not necessary to take any further action. The Respondent's failure to act was not related to sex or disability in any way.

525. **Ugbana Oyet's unreasonable delay in authorising the Claimant's flexi leave on 17 May 2018.**

526. **Relied on as sex and disability discrimination or harassment**

527. On 23 April 2018, the Claimant submitted a request for flexitime to Mr Oyet along with her weekly work sheets, p2134. On 17 May 2018 Mr Oyet emailed the Claimant saying he had overlooked her request and that she could arrange to

take her flexi leave whenever she wished, p2134. The Claimant told the Tribunal that Mr Oyet did not overlook other employees' requests for flexi leave.

528. The Tribunal found, on the contemporaneous documents, that Mr Oyet genuinely overlooked the Claimant's flexi leave request and that he attempted to rectify his error as soon as he was aware of it. His actions were wholly unrelated to the Claimant's sex or disability and could not amount to sex or disability discrimination or harassment.

529. **David Hemmings upholding unfounded allegations during the Disciplinary Appeal hearing; (Also relied on as discrimination arising from disability)**

530. **David Hemmings relying only on Mark Collins and Mary Jane Tsang's Interview Records in the Disciplinary Appeal hearing – whereas Claire Reed's Interview Record, which stated that the Disciplinary action was a "witch hunt" of the Claimant, was ignored as evidence;**

531. **Senior HR Advisors (Ian Meekums, Michelle Jones, and Kim McGrath) altering the notes of disciplinary meetings to add additional information into the Disciplinary hearing/appeal meeting notes after the meetings were held;**

532. **All relied on as victimisation**

533. The Tribunal had regard to the full text of Mr Hemming's appeal decision. Mr Hemmings gave a reasoned decision for upholding the first written warning against the Claimant, p2529. The Tribunal has already found that the disciplinary allegations against the Claimant were reasonably brought. It accepted that Mr Hemmings had valid, non-victimising reasons for his decision, as set out in his outcome letter. It concluded that Mr Hemmings did not victimise the Claimant by upholding a reasonable decision against her.

534. The Tribunal has already found that the Claimant was not "unable to perform the CD tasks without OH advice"; it has found that the CD task was not repetitive. These were not "something arising in consequence of disability" for the purposes of the disciplinary allegations against the Claimant. Mr Hemmings did not uphold allegations because of "something arising in consequence of disability".

535. Mr Hemmings may have specifically referred to evidence from some witnesses in his conclusions and may not have referred to other evidence. The Tribunal did not infer that he had "ignored" other evidence. The Tribunal would not expect an appeal manager to mention every piece of evidence presented – such an approach would be burdensome and unwieldy. On all the evidence, Mr Hemmings had reasonable grounds for his decision. The Tribunal was satisfied that he did not victimise the Claimant by mentioning the evidence of some employees and not others.

536. Further, while Mr Hemmings mentioned some of the allegations which had not been upheld against the Claimant, the outcome remained a first written warning.

The Tribunal agreed with Ms Bovaird that the outcome had not been materially altered. It considered that there was no detriment to the Claimant in this regard.

537. The Claimant told the Tribunal that the Respondents' HR employees and Mr Oyet had amended the formal investigation meeting notes, pp 2107 – 2114 and p2115 – 2123.

538. There was no evidence that HR acted differently in other investigations. The Tribunal accepted Ms Bovaird's evidence that it was not unusual for notes to go through different iterations. In the Tribunal's experience, notes of meetings may be reviewed and added to, in order to reflect the full exchange at a meeting.

539. On the facts, the notes of the meetings were not significantly altered. On the whole of the notes, the Tribunal concluded that the changes did not alter the sense of the interview. The Tribunal concluded that there was no detriment to the Claimant in these few alterations.

540. The Respondent's HR department did not victimise the Claimant by altering notes of meetings.

541. **Ugbana Oyet failing to safeguard the Claimant's personal confidential information on 22 March 2018 contrary to the Respondent's organisational policies and procedures, by not locking the Disciplinary Meeting in his diary as private.**

542. **Relied on as victimisation**

543. On 22 March 2018 Mr Oyet invited the Claimant to a formal disciplinary investigation meeting by sending an Outlook invitation to her labelled 'RA:PD Disciplinary Investigation Meeting, p2065. Mr Oyet did not lock this as a private meeting. Others who viewed his diary would have been able to see this personal information relating to the Claimant. In doing so, Mr Oyet breached House of Commons Staff Handbook Information security responsibilities, p2707.

544. The Tribunal has already found that the disciplinary meeting itself was not related to the Claimant's protected act in any way. The Tribunal accepted that Mr Oyet believed that diary entry did not display any personal information about the Claimant and that other employees would not have been able to gain access to his diary because they would have been in breach of their own personal information duties if they looked at the entry for the disciplinary meeting.

545. In the light of Mr Oyet's genuine belief, his failure to lock the entry was nothing to do with the Claimant's protected act – it was because he genuinely thought he had done nothing wrong and the diary entry was secure.

546. **Ugbana Oyet stating the Valuing Others Appeal outcome was clear on 05 September 2018 to the Claimant when the Claimant only had knowledge of the appeal outcome on 29 October 2018, indicating that he knew the appeal outcome before she did.**

547. **Relied on as victimisation**

548. Mr Oyet did not know the appeal outcome before the Claimant. The Tribunal found as a fact that, on Mr Oyet's actual words, pp 1348 & 1351, he was clearly referring to the original Valuing Others grievance outcome, not the appeal outcome. He acknowledged that the appeal was ongoing in his 17 September email by saying "during the appeal period", p1348.

549. **Ugbana Oyet excluding the Claimant as a member of his temporary team when holding discussions about making adequate arrangements for moving the Claimant's workplace adjustments from Millbank to Richmond House between 29 May 2018 and 31 May 2018;**

550. **The Respondent failing to make adequate arrangements for moving the Claimant's office equipment from Millbank to Richmond House between 29 May 2018 and 31 May 2018 by not discussing with the Claimant or confirming that the Claimant's equipment and cupboards would be relocated and reinstated in the new building;**

551. **Relied on as victimisation**

552. On the facts, the move was managed by a specialist team, not by Mr Oyet. That team had held "Town Hall" meetings and had emailed all relevant employees about the move. Mr Oyet himself arranged for the Claimant's sit/stand desk to be provided at Richmond House.

553. The Tribunal decided that Mr Oyet did not exclude the Claimant from discussions about making adjustments during the relevant move.

554. The Claimant told the Tribunal that her desk was not in the right place following the move and that it had not been confirmed that all her and that all her equipment and cupboards would be precisely relocated. However, the Tribunal observed that this was clearly a large move and it would be surprising if it had been perfect in every respect. The Tribunal did not find that all other employees' equipment was moved precisely as they had asked. The Claimant could not possibly have known the details of all other employees' equipment. Mr Oyet had made efforts to ensure that the Claimant was provided with a specially adapted desk. On all the evidence, the Tribunal did not conclude that the Respondent had failed to make adequate arrangements for the Claimant, or that the Claimant had been singled out.

555. **Donald Grant breaching the Claimant's medical data by passing on the Claimant's medical condition to Ugbana Oyet without written consent.**

556. **Relied on as victimisation**

557. On 9 April 2018 Mr Grant emailed the Claimant, summarising their discussion at their 5 April 2018 meeting, p829. Mr Grant had copied Mr Oyet into this email, which contained information about the Claimant's health and adjustments, which she had not consented to being shared.

558. The Tribunal accepted Mr Grant's evidence that Mr Grant had been covering Mr Oyet's line management duties while he was on leave. The Tribunal accepted his evidence that the email was therefore a routine hand-back, following Mr Oyet's leave.

559. The Tribunal concluded that it was necessary and appropriate to copy Mr Oyet into the email, as he was the Claimant's direct line manager. Mr Oyet had been managing the Claimant's work and her adjustments. He plainly needed to know what had happened in this regard during his absence. The Tribunal found that copying in Mr Oyet was nothing to do with the Claimant's protected act.

560. **Mark Collins ignoring the Claimant when he had a locksmith unlock the cabinet.**

561. **Relied on as victimisation**

562. In May 2018 Dr Collins asked for a locksmith to open the Claimant's cupboards. The Claimant attended while the locksmith opened them and Dr Collins, who was present throughout the process, ignored her.

563. The Tribunal accepted the Claimant's evidence that she felt that his conduct was intimidating. Dr Collins told the Tribunal that he wished to avoid any further allegations against him by the Claimant. However, the Tribunal found that Dr Collins' complete silence during the opening of the cabinet would have been likely to be uncomfortable and embarrassing for the Claimant, particularly when Dr Collins was a more senior manager. The Tribunal considered that Dr Collins' failure, even to greet the Claimant briefly, was pointedly unfriendly. It decided that Dr Collins' silence was a detriment – a reasonable employee would consider themselves to be disadvantaged in the workplace when they were made so unwelcome.

564. The Tribunal concluded that Dr Collins' actions were, at least in part, because of the Claimant's protected act. The Claimant's previous complaints in her grievance were clearly in Dr Collins' mind.

565. Dr Collins victimised the Claimant by ignoring her when the locksmith opened her cabinet.

566. **HR failing to follow ACAS best practice in the conduct of the "Valuing Others" complaint (Grievance) by sharing the appeal outcome with decision manager, thereby failing to maintain confidentiality of the grievance process.**

567. **Relied on as sex or disability direct discrimination or harassment**

568. The Tribunal did not find that the Respondent's actions in this regard were related to sex or disability at all.

569. **The Respondents providing the Claimant with no work objectives during 1 April 2018-19 when this is an organisational requirement.**

570. **Relied on as victimisation**

571. The Claimant did have IPR Objectives for 2018 – 2019, p511.

572. **The Respondent failing to take such steps are as it is reasonable to take to avoid the disadvantage caused by its PCPs for the purposes of the requirement in s.20 (3) by: Failing to prevent use of the Claimant's desk as a hot-desk in August 2018 and on 20 September 2018, during the Claimant's absence for purposes of the requirement in s.20(3) EqA;**

573. **Relied on as a failure to make a reasonable adjustment**

574. The Claimant was signed off work, sick, from 28 June 2018 until 20 August 2018. When she returned to work after her month's absence, she found that all her equipment including her desk, chair and workstation had been drastically altered or moved. Mr Grant confirmed, "The desk you sit at will have been used by people hot-desking" p862-863. The Claimant told the Tribunal that it was difficult for her to readjust all her equipment to be suitable for her needs.

575. The Tribunal accepted Mr Grant's evidence that office space was at a premium – that there were fewer than 0.8 desks per person. Mr Grant appeared to have accurate knowledge of the ratio of staff to desk space.

576. The Tribunal also accepted that the Claimant could ask for assistance to readjust her equipment – she worked alongside others and Mr Oyet had previously told the Claimant to ask if she needed help. There were also DSE trained employees in the workplace.

577. In her later OH report dated 6 September 2018, Maggie Mainland recommended that the Claimant's desk not be used as a hot desk. She said that the Claimant "needs to have her own dedicated workstation that is set up correctly and should not be used as a hot desk as she has special equipment and a chair adjusted to suit her. Adjusting the chair is quite challenging currently given the shoulder injury and restricted movement." P886.

578. In September 2018, the Claimant left a polite note on her desk saying that it should not be used as a hot desk. On 27 September 2018 Mr Grant sent the Claimant an invitation to a formal disciplinary investigatory meeting, p2557. This included an allegation that the Claimant had unreasonably placed a note on her desk to prevent its use as a hot desk. "Placing notices on your desk advising that the desk should not be used as a hot desk after previously being advised that when not working in the office it could not be reserved exclusively during extended absence due to the pressure of office accommodation on the Estate."

579. The Tribunal decided that the Respondent had a practice of allowing hot desking on all desks. It accepted that the Claimant would have been put at a substantial disadvantage by this practice, in that her workstation and equipment had been

adapted for her needs, to prevent injury and discomfort, and other employees altered her equipment so that it was no longer safe for her to use. This exposed her to risk of injury. This was a more than minor disadvantage.

580. However, the Tribunal decided that the Respondent had shown that preventing hot desking for an extended period, such as a month, in August 2018 was not a reasonable adjustment. There were not enough desks for all employees. Keeping one desk empty for weeks at a time was not practicable given the constraints on space and the need for other employees to have places to work. On the other hand, the Claimant could relatively easily obtain assistance from colleagues, on her return to the office after extended leave, to reinstate her workspace.

581. However, on 20 September 2018, after returning to work after a 1 day absence, the Claimant returned to work to find that someone had altered her workplace adjusted chair despite her polite notice asking colleagues not to use her desk.

582. While the Tribunal has decided that keeping a desk free for an extended time was not a reasonable adjustment, it considered that asking employees not to use the Claimant's desk when she was away from it for shorter times was indeed reasonable, given that the Claimant would have had to readjust her equipment each time it was altered. Ms Mainland had also provided an OH report in September 2018, explaining that the Claimant needed her equipment to protect her health and had difficulty readjusting her own equipment. The Respondent knew of the disability and it knew that changing the Claimant's equipment put her at a substantial disadvantage.

583. The Respondent failed to make a reasonable adjustment when it failed to prevent use of the Claimant's desk as a hot-desk on 20 September 2018, during the Claimant's absence.

584. **Taking Disciplinary action against the Claimant for the polite note on her desk asking staff to refrain from using her workspace/equipment as a hot desk on 27 September 2018.**

585. **Relied on as victimisation and discrimination arising from disability. The Claimant relies on: Her inability to perform tasks without OH advice first; Her inability to carry out repetitive tasks; Attending counselling meetings; as the something arising in consequence of a disability.**

586. The Tribunal decided that the Claimant's September 2018 polite note arose, at least partly, out of Ms Mainland's OH assessment on 5 September 2018. It therefore arose out of the Claimant's need for OH assessment of her work. It also arose out the Claimant's adjustments and her desire to protect them. It was clearly something arising in consequence of her disability. The Tribunal was satisfied that the Respondent had had an opportunity to present all relevant evidence on this matter, even if the drafting of the list of issues was rather tortuous with regard to this allegation.

587. The Tribunal concluded that Mr Grant initiating disciplinary action against her for leaving the note was unfavourable treatment. Mr Grant included the allegation in

a formal letter and the Claimant was already subject to a first written warning. She would reasonably have considered that her continued employment was potentially prejudiced. She would reasonably have felt worried and threatened by the commencement of disciplinary action.

588. The Respondent has not shown that the initiation of disciplinary action was a proportionate means of achieving a legitimate aim.

589. Further, the initiation of disciplinary action was a detriment, for the same reasons as above.

590. Mr Grant was well aware of the Claimant's grievance, having initially been appointed as deciding officer for it. Mr Grant knew that the grievance alleged that the Respondent had failed to provide reasonable adjustments. This disciplinary action also related the Claimant's assertion of her need for reasonable adjustments. The Tribunal considered, on the facts, that the burden of proof shifted to the Respondent to show that the commencement of disciplinary action was not because the Claimant had done the protected act.

591. The Tribunal concluded that the Respondent did not show this. As stated, the Claimant's note related to her agreed reasonable adjustments. Disciplinary action was a heavy-handed and punitive response to the Claimant's note. While the Tribunal has decided that keeping a desk free for an extended time was not a reasonable adjustment, it considered that asking employees not to use the Claimant's desk when she was away from it for shorter times was indeed reasonable, given that the Claimant would have had to readjust her equipment each time it was altered. The Tribunal considered that Mr Grant had not provided a credible non-discriminatory explanation for commencing disciplinary action in response to the Claimant's reasonable request to preserve her reasonable adjustments.

592. **Whether Ugbana Oyet sent harassing letters to the Claimant whilst she was on sick leave**

593. **Relied on as sex or disability harassment.**

594. The Tribunal did not accept that Mr Oyet, or HR, did know, or should have known, that the Claimant's GP had advised that Mr Oyet should not contact the Claimant. Her email did not say this and she did not provide a Fit Note from her GP advising it. Mr Oyet asked OH to advise on the best way to contact the Claimant, but the Claimant did not cooperate with the OH referral and no such advice was ever received. The Tribunal concluded that Mr Oyet could not have known not to contact the Claimant. Indeed, he was advised by HR that he should maintain contact with her.

595. All Mr Oyet's communications with the Claimant during her sick leave from October 2018 were standard-form letters which addressed ongoing and necessary processes relating to the Claimant's employment. Many related to the terms of an Occupational Health Referral for the Claimant. Many invited her to meetings to discuss her absence and potential reasonable adjustments for her

return to work. The Tribunal considered that, objectively, the correspondence was not intended to harass the Claimant, but to manage her employment, her absence and her potential return to work. Many of Mr Oyet's letters were objectively intended to assist the Claimant, by understanding the reasons for her absence and making adjustments for her return.

596. The Tribunal was satisfied that the correspondence was not related to the Claimant's sex. There was nothing to link her sex with the correspondence. The fact that the letters were standard-form letters indicated that all employees, male or female, would be sent such letters.

597. The Tribunal found that at least some of the correspondence was related to the Claimant's disability; some letters related to OH referrals and reasonable adjustments.

598. The Tribunal found that the correspondence was not excessive. Mr Oyet sent follow-up letters when the Claimant had failed to respond to earlier correspondence, or failed to attend meetings to which she had been invited. The Claimant's failure to respond necessitated repeated attempts to make contact with her.

599. While the Tribunal accepted the Claimant's evidence that receiving Mr Oyet's correspondence during her sick leave caused her stress and distress, the Tribunal found that Mr Oyet did not harass her by sending the letters.

600. Even if the Claimant felt harassed, the Tribunal concluded that the letters did not have the purpose or effect of creating the proscribed environment, in all the circumstances. A reasonable person would not view standard-form letters, sent for good reason, to have had the effect of creating the proscribed environment. This harassment complaint fails.

601. **Time Limits**

602. The Tribunal therefore decided that Dr Collins and Mr Watrobski victimised the Claimant by excluding her from collection/regular team meetings in front of others on 18 December 2017 and 5 February 2018; and Mr Collins victimised her by ignoring her when he had a locksmith unlock her cabinet in June 2018.

603. It also decided that the Respondent failed to make a reasonable adjustment to exclude her desk from hot desking on 20 September 2018. It decided that Mr Grant victimised the Claimant and subjected her to discrimination arising from disability on 27 September 2018 when he commenced disciplinary action against her Claimant for leaving a polite note on her desk, asking staff to refrain from using her workspace/equipment as a hot desk.

604. The Claimant contacted ACAS on 21 December 2018 and the ACAS EC certificate was issued the same day. She presented her claim on 15 January 2019.

605. All the Claimant's successful complaints were brought more than 3 months after the relevant acts. The ACAS EC period did not assist. Accordingly, the Tribunal would not have jurisdiction to hear them unless they formed part of a continuing act, or series of acts, the last of which was in time, or the Tribunal extended time for them.

606. The Tribunal noted that the Claimant's line management changed from Dr Collins to Mr Oyet in November 2017. None of the Claimant's allegations of direct discrimination, harassment or victimisation specifically against Mr Oyet have succeeded.

607. Further, after the Claimant's job duties were changed in February 2018, Dr Collins and Mr Watrobski had no day-to-day interaction with, or responsibility for, the Claimant's work at all. The Tribunal has found that that change of duties was not itself an act of discrimination or victimisation. Mr Oyet, who actively managed all aspects of the Claimant's work and occupational health referrals after February 2018, and who interacted with the Claimant on a very frequent basis, provided a non-discriminatory working environment for her, for a long period of time.

608. Dr Collins did victimise the Claimant again, in a similar way, by refusing to interact with her, in June 2018. The Tribunal decided that this was an isolated act, in the unique circumstances that the Claimant's cabinet needed to be opened by a locksmith. This event was not likely to be repeated in the course of the Claimant's work.

609. Mr Grant's act of victimisation was of a different nature to Mr Watrobski and Dr Collins' acts. Mr Grant had not refused to meet the Claimant, nor had he ignored her. Indeed, on the facts, he had been in active email communication with her and had conducted meetings with her in Mr Oyet's absence. Mr Grant's act of victimisation/discrimination arising from disability related to the Claimant's request to fellow employees not to use her desk. The failure to make a reasonable adjustment arose out of the same facts as Mr Grant's act of victimisation.

610. The Tribunal considered that there was no ongoing discriminatory state of affairs, of which Dr Collins' and Mr Watrobski's acts were a part, after February 2018. There was no ongoing interaction between the Claimant and the two men after February 2018.

611. Mr Grant's act, in September 2018, was of a different nature and was not linked to anything Dr Collins and Mr Watrobski had done.

612. The failure to make a reasonable adjustment in September 2018 was also not an act of victimisation and was not linked to anything Dr Collins and Mr Watrobski had done.

613. The complaints of victimisation against Dr Collins and Mr Watrobski were therefore brought out of time. The Tribunal did not extend time for them. It was not just and equitable to do so. The Claimant was assisted by a Union representative throughout the time when the acts occurred and at the start of the Tribunal proceedings. The Claimant was clearly aware of her employment rights.

She was clearly capable of asserting her rights – she presented a detailed grievance in November 2017, saying that her managers had not made reasonable adjustments for her disability. She had numerous private meetings with her union representative in early 2018 concerning her grievance. The Claimant was able to attend work regularly until 22 October 2018. That date was more than 3 months after her last allegation against Dr Collins.

614. The Claimant is clearly a very capable and intelligent person. She presented her case at the Tribunal with diligence and tenacity.

615. The Claimant could and should have presented her claim of victimisation related to Dr Collins and Mr Watrobski within the time limits. She has not shown that it would be just and equitable to extend time.

616. Accordingly, the Tribunal did not have jurisdiction to consider the Claimant's complaints of victimisation against Dr Collins and Mr Watrobski.

617. The Tribunal noted that the following complaints:

618. The Claimant's complaint that the Respondent victimised the Claimant and subjected her to discrimination arising from disability when it commenced disciplinary action against her Claimant for leaving a polite note on her desk asking staff to refrain from using her workspace/equipment as a hot desk on 27 September 2018;

619. The Respondent failed to make a reasonable adjustment when it failed to prevent use of the Claimant's desk as a hot-desk on 20 September 2018, during the Claimant's short absence;

were intimately factually linked. They both occurred in a short period in September 2018.

620. In relation to ACAS EC conciliation extension of time limits, day A and day B were both 21 December 2018. The Claimant presented her claim within 1 month of 21 December 2018, on 15 January 2019. Pursuant to *s140(4) EqA*, the time limit for presenting the Claimant's claim in respect of Mr Grant's act on 27 September 2018 would have expired during the period beginning with Day A and ending one month after Day B. By *s140(4),* the time limit therefore expired instead at the end of that period, on 20 January 2019.

621. The claim in respect of Mr Grant instituting disciplinary proceedings for the Claimant's polite note was therefore presented within that extended time limit.

622. The Tribunal also decided that the complaint that the Respondent failed to make a reasonable adjustment on 20 September 2018 was part of a continuing act, along with the act on 27 September. The facts of the acts were linked and amounted to a continuing state of affairs, whereby the Respondent failed to make a reasonable adjustment to protect the Claimant's adjustments for short periods of absence, and, indeed, threatened to discipline her for attempting to protect

them herself. The continuing act lasted until 3 October 2018 when Mr Oyet withdrew the misconduct allegation.

623. Even if those 2 complaints had not been in time, the Tribunal would have extended time for them because it was just and equitable to do so. The Claimant was off work, sick, with work-related stress from 22 October 2018. She was away from work for most of the primary 3 month limitation period. The Tribunal found that, given that the Claimant was too ill to work for this lengthy period, her ability to present a Tribunal claim was likely to have been significantly impaired during that period. The delay in presenting the claim was relatively short and there was little evidence of any prejudice to the Respondent - the relevant acts were documented at the time. The Claimant had shown that it would have been just and equitable to extend time for the acts on 20 and 27 September 2018.

624. Accordingly, the following complaints: The Claimant's complaint that the Respondent victimised the Claimant and subjected her to discrimination arising from disability when it commenced disciplinary action against her Claimant for leaving a polite note on her desk asking staff to refrain from using her workspace/equipment as a hot desk on 27 September 2018 and; The Respondent failed to make a reasonable adjustment when it failed to prevent use of the Claimant's desk as a hot-desk on 20 September 2018, during the Claimant's short absence; both succeed. All the Claimant's other complaints fail.

24 March 2022

_____

Employment Judge Brown

Sent to the parties on:

24/03/2022.

For the Tribunal: