EMPLOYMENT TRIBUNALS

Claimant: Ms P Augustin

Respondent: University Hospitals of Derby and Burton NHS Foundation Trust

Heard at: Midlands East Tribunal via Cloud Video Platform

On: 24, 27, 28, 29, 30 June and 1 July 2022

Before: Employment Judge M Brewer
Ms K McLeod
Mr A Blomefield

Representation

Claimant: Ms A Brown, Counsel
Respondent: Mr A Gibson, Solicitor

JUDGMENT

The unanimous judgment of the tribunal is that:

a. The claimant's claim for direct race discrimination fails and is dismissed
b. The claimant's claim for discrimination arising from disability fails and is dismissed
c. The claimant's claim for failure to make reasonable adjustments fails and is dismissed
d. The claimant's claim for harassment related to race fails and is dismissed
e. The claimant's claim for victimisation fails and is dismissed
f. The claimant's claim for unfair dismissal fails and is dismissed

REASONS

Introduction

1. Because of the way this hearing proceeded this introduction is of necessity rather longer than might otherwise be the case.

2. The claimant pursues a number of claims as follows:

    a. direct race discrimination,
    b. discrimination arising from disability,
    c. failure to make reasonable adjustments,
    d. harassment related to race,
    e. victimisation and
    f. unfair dismissal.

3. Those claims appear across two claim forms and the claims therein had been consolidated prior to this final hearing.

4. At this hearing he claimant was represented by Ms Brown of Counsel and the respondent was represented by Mr Gibson, Solicitor.

5. The claimant gave evidence on her own behalf. The respondent called the following witnesses, Sue Baxter, Jenny Haynes, Darren Riley, Steve Fowkes and Karen Jones.

6. The tribunal was presented with an agreed bundle of documents and witness statements from all of the above.

7. The tribunal had been told that the morning of day one of the hearing was set aside for reading and that the hearing would start at 2:00 PM. We were also told that the representatives would attend at 10:30 AM for ‘case management’ although in truth, it was unclear what case management was required.

8. On the morning of day one of the hearing Ms Brown sent an e-mail to the tribunal attaching what she refers to as a rebuttal statement and further documentation. She indicated that she was going to make an application to adduce the new witness statement and to have the new documents added to the bundle, a bundle which already ran to some 900 pages.

9. We pause to note that Ms Brown has been instructed in this matter since at least May 2020 as she appeared as the representative for the claimant at a preliminary hearing on 12 May 2020 and indeed in three subsequent preliminary hearings.

10. The final preliminary hearing took place before EJ Britton on 25 May 2021. He dealt with a number of matters not all of which need not detain us at this stage. What EJ Britton did do, which is material at this point, was order the claimant to

pay a deposit of £500 in respect of each of the following allegations as a condition of continuing those allegations

a. the allegations of disability discrimination after the respondent commenced its management for dismissal attendance process after the issue of the final grievance outcome and up to the claimant's dismissal, and
b. the claim for unfair dismissal.

11. The claimant paid both deposits, and those claims were heard by this tribunal.

12. EJ Britton also made a number of case management orders including that witness statements be exchanged on 25 March 2022.

13. In other words, the claimant was aware of what was in the respondent's witness statements towards the end of March 2022 but did not make her application to adduce new evidence until 9.00 AM the first day of the final hearing on 24 June 2022. No explanation was given as to the delay in making this application.

14. The tribunal met the representatives as scheduled at 10:30 AM on the first day of this hearing. The parties understood that the respondent would adduce its evidence first and also that the hearing would start at the beginning of day two rather than the afternoon of day one. The tribunal said that it would rule on that matter and asked the parties to return at 2:00 PM.

15. Whilst the tribunal had the representatives before us we discussed the list of issues which appears in the agreed bundle. Having discussed the list of issues, the tribunal was unclear about a number of things. In the tribunal's experience, given that both parties are professionally represented, we would have expected to see in a list of issues each allegation of discrimination being pursued including who it is alleged discriminated against the claimant, what the detriment, unfavourable treatment or less favourable treatment was and when it occurred. In the list of issues as presented in the bundle, although some allegations are dated, in many cases it is unclear who the claimant says discriminated against her and when. In some cases, it is difficult to understand what the treatment is which is being complained of.

16. We therefore asked Ms Brown to revisit the document and provide us with a definitive list of claims, who it is alleged discriminating against the claimant and when. Ms Brown seemed to have some difficulty understanding what we required but after some further explanation she agreed to go away and provide an amended document. What she provided is now attached to this judgement as the appendix cause it was clear to the tribunal that this was the best version or a list of issues we were going to get in this case but the tribunal considers it deficient in a number of ways and in reaching our judgement we have done the best we can to interpret what the claims are and, for example in relation to the failure to make reasonable adjustments claim, what the PCPs are.

17. Ms Brown made her application to adduce the new witness statement and to include further documents in the bundle on the morning of day one of the hearing.

18. The basis of the application was that the claimant wished to rebut some of the evidence of the respondent's witnesses to the effect that the claimant was not particularly interested in her job and wished to leave in order to start her own fitness business.

19. For the reasons set out below we rejected the application to adduce another witness statement, but we allowed the new documents to be added to the bundle given that they were not contentious.

20. The tribunal delivered its decision on the claimant's application in the afternoon of day one and we also agreed that the hearing would start on the morning of day two, but we required the claimant to give evidence first.

21. One other matter should be dealt with in relation to the first day of this hearing. I advised the parties on the morning of day one that when I was a practising solicitor, I had acted for one of the Trusts (Burton Hospitals) which had merged to form the respondent. It was made clear that I had not acted for this respondent and did not know any of the people involved, but nevertheless it was felt that this should be raised with the parties in case they had any objection to me sitting on this matter.

22. Both Ms Brown and Mr Gibson were clear that they were happy to proceed with the tribunal as constituted. The reason for referring to this is in part because it touches upon further applications below but also because we have now had sight of the claimant's appeal documentation which we will refer to further below.

23. The claimant commenced her evidence at 10:00 AM on day two of this hearing, 27 June 2022. The claimant had produced a list of issues and that list is attached to this judgement.

24. The claimant was put on oath, Ms Brown then took the claimant to her witness statement, confirmed the statement was hers and that it was true to the best of her knowledge and belief. At no point did Ms Brown indicate that she wished to ask supplementary questions of the claimant. This is relevant because later in the proceedings Ms Brown alleged that she was prevented from asking or was not allowed to ask supplementary questions. We shall return to that matter below.

25. Mr Gibson began to cross examine the claimant. He went through a number of the allegations of direct discrimination and when he dealt with allegation numbered A8 in the list of issues, the claimant started to refer to matters which were different to the evidence set out in her witness statement and I drew that to her attention. Ms Brown intervened at this point arguing that this new evidence was in the rebuttal statement. The point at issue is perhaps on the face of it not significant. The allegation concerns the fact that the claimant does not appear in a photograph taken at work, during a particular event which she alleges was direct race discrimination. In response to cross examination questions, she said that she was in fact a short distance away from where the

photograph was taken and could have been found and asked to join the group being photographed and argues that therefore she was deliberately excluded because of her race from the photograph. But her witness statement does not refer to the fact that she was present at the event when the photograph was taken. It says the photograph was scheduled to be taken when she was not present. We do not see how adducing a rebuttal statement would have made any difference to the point. The fact is that we had evidence from two sources about the same matter which were different, and it does not seem to us to matter whether that was a statement and oral evidence or two written statements. The fact remains that both could not be correct and we saw no problem in drawing that to the claimant's attention for her to comment upon.

26. Cross examination of the claimant was completed at 2:50 PM. We then took a break, and the respondent began to give its evidence. The first witness to be called was Sue Baxter.

27. At this stage it is important to understand that allegation A1 contains a list of 14 contracts which the claimant says she worked on as a contract buyer and her first allegation of direct race discrimination is that this work had been undertaken previously by staff paid at a higher grade, but the claimant was required to do the work at her then grade which was band 3.

28. Ms Brown asked Ms Baxter about this in respect of which there was no difficulty, however, she started each of her questions with the words or words similar to "it was the claimant's evidence that…". I interrupted Ms Brown and said that the question was not objectionable in itself but it was inappropriate to say to a witness that the claimant had given evidence to the effect that she had for example undertaken work on these contracts. She had not in fact given that evidence and the list of contracts which appears in the list of issues does not appear anywhere in anyone's witness statement nor in any of the documents in the bundle. Ms Brown then stated that the claimant was going to give this evidence in her rebuttal statement, but of course that would not be rebutting anything it would be brand new evidence and in any event the application to adduce that had already been rejected. Ms Brown seemed to be of the view that because the claimant had therefore not been allowed to give this as her evidence in chief, she, Ms Brown, was unable to cross examine the respondent's witnesses and assert that the claimant did in fact do that work. But that was certainly not my view nor the view of the tribunal members. There seemed to me to be no difficulty in putting to, for example, Ms Baxter that the claimant did in fact do work on this contract or that contract without stating that the claimant had given that as her evidence in chief, which she had not.

29. It is the tribunal's experience that where you have mutual exchange of witness statements, which is the norm in the employment tribunals in England and Wales, not every matter set out in each witness statement will be dealt with in some other witness statement and where the matter is significant a representative may seek to adduce further evidence through asking supplementary questions which, as we say, was not done in this case. That is not to say every application to put supplementary questions would be allowed

but where there is no application there is really nothing the tribunal can do about that.

30. It was at this point in the hearing Ms Brown asserted that she had wished to ask supplementary questions before cross-examination started but had not been permitted to by the tribunal. I checked my notes of the hearing, and I asked the members (who had both been taking detailed notes) and Mr Gibson to check his notes. None of our notes indicated at any point that Ms Brown had sought leave to ask supplementary questions and therefore the notes did not show that such a request had been refused. Ms Brown essentially said that her notes were correct, and everybody else's is were wrong.

31. Ms Brown was at this point beginning to express how unhappy she was with how the tribunal were handling the hearing and she made an application to adjourn the hearing and for the tribunal to recuse itself. We heard that application and we heard from Mr Gibson in response. Given the time, we then adjourned for the day and said that we would give our decision on the morning of day three.

32. The tribunal considered matter and for the reasons set out below we decided that we would not adjourn the hearing. We delivered this decision at 10:00 AM on day three of the hearing at which point Ms Brown made a further application which was that the hearing be adjourned to allow that claimant to appeal. The tribunal considered that application and again for the reasons set out below we refused.

33. Ms Brown then made her final application which was to allow her to recall the claimant. Again, for the reasons set out below that application was refused.

34. At this stage Ms Brown said that the claimant was considering withdrawing and asked the tribunal what it would do in that event. Ms Brown drew the tribunal's attention to the authority of **Harada Limited** (No.1) [2001] EWCA Civ 599. She submitted this was a case which should not continue in the claimant's absence, and she offered to send copies of the case, but I said that I was familiar with the case and would take it into account. Ms Brown asked for an hour to consider her next move but given that we were already almost halfway through the hearing she was given around 20 minutes. At 11:00 AM Ms Brown told the tribunal that the claimant did not feel able to continue participating in the hearing. Ms Brown and the claimant then left the hearing.

35. At this point the tribunal adjourned to consider whether it should continue to hear the rest of the case and we decided that we should. The tribunal determined that given we would not hear the respondent's witness is being cross examined the tribunals own questions might be relatively more significant than would otherwise have been the case and therefore we decided to use the afternoon of day three to reread the respondent's witness statements and note any areas we would wish to ask questions about or which required clarification so that we could efficiently use the rest of the time allocated to the hearing and that is in fact what took place. At the end of the evidence, we heard submissions from Mr Gibson and our judgement is as set out in this document.

Applications made during the final hearing

36. We set out below the various applications that were made by the claimant and the basis on which they were determined.

Application to adduce new evidence/documents

37. The first application was that the claimant be allowed to adduce a new witness statement and add documents to the bundle.

38. Given that there was a new witness statement the tribunal took the view that it should not read the statement unless and until it was allowed in evidence.

39. Ms Brown initially referred to the statement as a rebuttal statement and she was very clear that its purpose was to rebut allegations made by the respondent's witnesses that the claimant was not particularly interested in her job and wished to leave in order to set up her own fitness business. Later she added that she wished to put in evidence the list of contracts set out in issue A1 as an additional ground to the application.

40. That application was refused although we did allow the documents, which we were told amounted to certificates for courses which the claimant had attended, to be added to the bundle.

41. The application to adduce a new witness statement was refused for the following reasons.

42. First, the application was made at a very late stage and could have been made as early as the end of March this year. Mr Gibson would have needed time to take instructions on what was in the new statement, and it would be perfectly possible that if we allowed a new witness statement to be adduced at this stage, Mr Gibson would have to be allowed to produce statements rebutting anything in the new statement that his clients objected to and there would be a potentially never-ending round of statements dealing with ever decreasingly significant information.

43. This issue is all the more acute because Ms Brown drafted the list of issues so she must have always known that issue A1 was a matter about which she wished the claimant to give evidence and indeed the matter is dealt with in paragraph 12 of the claimant's witness statement in which the claimant refers to:

> "the Orthopaedic Therapy items contract, The Workwear Clothing contract and the PPL PRS Music Licensing Contract. These were substantial contracts and Jenny had been responsible for these contracts at Band 5"

44. Thus, it did not require a whole new witness statement to be adduced in order for that issue to be put to the respondent's witnesses as Ms Brown submitted in

her application. The matter was already referred to in the claimant's witness statement.

45. The litigation process must have some finality and we would have hoped that if the information in the rebuttal statement was significant then sufficient time before the beginning of the hearing would have been allowed for both a judge and the respondent to consider the application without the pressure of hearing time being taken up. Given when witness statements were exchanged, it is surprising to the tribunal that the application was left to the 11th hour.

46. Second, the allegation that the claimant was not particularly interested in her work is irrelevant to the tribunal proceedings given that there is no allegation of discrimination upon which that matter touches, and it does not impact on the unfair dismissal claim which is related entirely to the claimant's long-term absence.

47. The tribunal accepts of course that there may be instances where, for example, a litigant in person fails to deal with a significant matter in their witness statement and is allowed to adduce further evidence in chief at a late stage because the matter is one which the tribunal has to make a decision about but that is not the case here. Ms Brown referred to the issue as going to credibility but there are all sorts of matters which touch upon credibility and whether the claimant was or was not particularly interested in her work may, or indeed may not have been, one of those.

Application to recuse

48. The basis of the claimant's application that the tribunal should recuse itself was that:

    a. we had refused the application to adduce new witness evidence,
    b. that therefore we had not allowed the claimant to give evidence about the contracts on which she says she worked,
    c. that we had made assumptions about redeployment documents that were not in the bundle, and
    d. what Ms Brown referred to as the judge's previous relationship with the respondent.

49. Having considered the matter the tribunal was content that it dealt with the issue of the new statement appropriately having taken into account the case management orders, the timing of the application the impact on the litigation and the relevance of evidence which, as we understood it, was merely by way rebuttal of something which appeared to be of tangential relevance.

50. In relation to the redeployment documents here perhaps it should be explained that I asked the claimant a question which was essentially this: if she was able to attend to her university course at the time redeployment was being considered, why she says she was unable to complete the redeployment documentation with which I was familiar. Ms Brown made the point that it was not appropriate to assume what was in documents which were not in the

bundle. This is a fair point but in the event the claimant said that she was psychologically unable to attend to those documents at the relevant time and there was no evidence that that was not the case, so in the end what was contained within the redeployment documentation was irrelevant because whatever was in it, the claimant did not read it and was not able to deal with it.

51. The final matter is one which should never have been raised and we note is not now relied upon in the appeal documentation which we have seen. It had to be pointed out to Ms Brown that I had been clear not simply at the outset of the hearing but again on the second day when Ms Brown also referred to my "previous relationship" with "the respondent" that there had been no such relationship and it was not a basis for the tribunal to recuse itself.

52. The effect of bringing the hearing to a premature close would be profound. Given the pressure on listings in our region multi day cases are now being listed as far ahead as November 2023. Significant costs will have been wasted and people whose recollections would yet further deteriorate notwithstanding the existence of written witness statements. As it was witnesses were struggling to remember some of the detail from 2020 at this stage so that would simply be more problematic if the hearing was further significantly delayed.

53. In the tribunal's view there was no basis for the claimant's application, and it was refused.

Application to adjourn to allow the claimant to appeal

54. This application suffers from the same problem of delay as the previous application. As Mr Gibson said the application takes us no further and notwithstanding that the claimant was not allowed to produce a new witness statement there was nothing preventing Ms Brown asserting what she says was the case in putting her case positively to the respondent's witnesses.

55. We could see no basis to adjourn the hearing and the application was refused.

Decision to continue in the claimant's absence

56. We note that Ms Brown asserts in her appeal documentation as she did in an e-mail to the tribunal during the course of the hearing, but after the claimant had withdrawn from the hearing, that

> "*having advised the Tribunal of the Claimant's decision to withdraw the Tribunal indicated to the Claimant and her representative that whether or not the Tribunal decided to proceed in the Claimant's absence was not a matter on which the Claimant was entitled to make representations"*

57. As we said in response to Ms Brown's e-mail, the Tribunal is genuinely at a loss to understand how this assertion can be sustained given that in fact Ms Brown made representations on this very point, for example, referring the Tribunal to the decision in **Harada Ltd** No.1 (above). The Tribunal did consider that case along with the case of **Peter Simper & Co Ltd v Cooke** [1986] IRLR 19

before deciding its course of action.

58. Having considered the law, the length of time already taken to get this case to hearing, the potential delay and the stage of the hearing, the tribunal determined that it would conclude the case in the absence of the claimant, and we continued as we have set out above.

Issues

59. The issues in the case are set out in the Appendix which was prepared by Ms Brown and accepted by the respondent.

Law

60. We set out here a summary of the relevant law.

Knowledge of disability

61. Prior to the final hearing the respondent conceded that the claimant was a disabled person at the material times. However, the respondent denies actual or constructive knowledge of disability.

62. In relation to the claim for failure to make reasonable adjustments, paragraph 20(1) of Schedule 8 to the EqA provides that a person is not subject to the duty to make reasonable adjustments if he or she does not know and could not reasonably be expected to know not just that the relevant person is disabled but also that his or her disability is likely to put him or her at a substantial disadvantage in comparison with non-disabled persons. Knowledge, in this regard, is not limited to actual knowledge but extends to constructive knowledge (i.e. what the employer ought reasonably to have known). In view of this, the EAT has held that a tribunal should approach this aspect of a reasonable adjustments claim by considering two questions

    a. first, did the employer know both that the employee was disabled and that his or her disability was liable to disadvantage him or her substantially?
    b. if not, ought the employer to have known both that the employee was disabled and that his or her disability was liable to disadvantage him or her substantially? (see **Secretary of State for Work and Pensions v Alam** 2010 ICR 665, EAT).

63. It is only if the answer to the second question is ‘no’ that the employer avoids the duty to make reasonable adjustments.

64. An employer cannot simply turn a blind eye to evidence of disability. While the EqA stops short of imposing an explicit duty to enquire about a person’s possible or suspected disability, the EHRC Employment Code states that an employer must do all it can reasonably be expected to do to find out whether a person has a disability (see para 5.15). It suggests that ‘Employers should consider whether a worker has a disability even where one has not been

formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a "disabled person"' — para 5.14.

65. Failure to enquire into a possible disability is not by itself sufficient to invest an employer with constructive knowledge. It is also necessary to establish what the employer might reasonably have been expected to know had it made such an enquiry (see for example **A Ltd v Z** 2020 ICR 199, EAT).

66. An employer cannot claim that it did not know about a person's disability if the employer's agent or employee (for example, an occupational health adviser, HR officer or line manager) knows in that capacity of the disability. The EHRC Employment Code makes it clear that such knowledge is imputed to the employer (see para 6.21).

Direct race discrimination

67. In relation to direct race discrimination, for present purposes the following are the key principles.

68. Under section 13 Equality Act 2010 (EqA), there are two issues: (a) less favourable treatment and (b) the reason for that less favourable treatment. These questions need not be answered strictly sequentially (**Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR 337).

69. Given the treatment must be "less favourable" a comparison is required, and a comparator must "be in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class" (**Shamoon** above).

70. The burden of proof is set out in section 136 EqA. The leading cases on the burden of proof pre-date the Equality Act (**Igen Ltd v Wong** 2005 EWCA Civ 142 and **Madarassy v Nomura international Plc** 2007 EWCA Civ 33, [2007] IRLR 246) but in **Hewage v Grampian Health Board** 2012 the Supreme Court approved the guidance given in **Igen** and **Madarassy**.

71. By virtue of section 136, it is for a claimant to prove on the balance of probabilities facts from which the Tribunal could conclude, absent any explanation from the respondent, that the respondent has discriminated against the claimant. If the claimant does that, the burden of proof shifts to the respondent to show it did not discriminate as alleged.

72. In **Madarassy** the Court of Appeal held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g. sex) and a difference in treatment. This merely gives rise to the possibility of discrimination. Something more is needed. Any inference about subconscious motivation has to be based on solid evidence (**South Wales Police Authority v Johnson** 2014 EWCA Civ 73).

Harrasment

73. Three forms of behaviour are prohibited under S.26 EqA,

    a. 'general' harassment, i.e. conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment — S.26(1);
    b. sexual harassment — S.26(2); and
    c. less favourable treatment following harassment — S.26(3).

74. The general definition of harassment set out in S.26(1) states that a person (A) harasses another (B) if:

    d. A engages in unwanted conduct related to a relevant protected characteristic — S.26(1)(a); and
    e. 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 — S.26(1)(b).

75. There are three essential elements of a harassment claim under S.26(1):

    a. unwanted conduct;
    b. that has the proscribed purpose or effect; and
    c. which relates to a relevant protected characteristic.

76. Mr Justice Underhill, then President of the EAT, expressed the view that it would be a 'healthy discipline' for a tribunal in any claim alleging unlawful harassment specifically to address in its reasons each of these three elements — **Richmond Pharmacology v Dhaliwal** 2009 ICR 724, EAT (a case relating to a claim for racial harassment brought under the Race Relations Act 1976 (RRA)). Nevertheless, he acknowledged that in some cases there will be considerable overlap between the components of the definition — for example, the question whether the conduct complained of was unwanted may overlap with the question whether it created an adverse environment for the employee. An employment tribunal that does not deal with each element separately will not make an error of law for that reason alone — **Ukeh v Ministry of Defence** EAT 0225/14.

Unwanted conduct

77. The Equality and Human Rights Commission's Code of Practice on Employment ('the EHRC Employment Code') notes that unwanted conduct can include 'a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour' — para 7.7. The conduct may be blatant — (for example, overt bullying) — or more subtle (for example, ignoring or marginalising an employee). An omission or failure to act can constitute unwanted conduct as well as positive actions (see, for example, **Marcella and anor v Herbert T Forrest Ltd and anor** ET Case No.2408664/09 below and Owens v Euro Quality Coatings Ltd and ors ET Case

No.1600238/15, in which an employer's failure to remove a picture of a swastika for some weeks amounted to unwanted conduct).

78. Where there is disagreement between the parties, it is important that an employment tribunal makes clear findings as to what conduct actually took place, such as what words were used. In **Cam v Matrix Service Development and Training Ltd** EAT 0302/12 an employment tribunal had erred by failing to find whether or not the alleged harasser had used the expression 'white trash', given that he denied doing so.

Unwanted and 'Inherently' unwanted conduct

79. In **Reed and anor v Stedman (above) and Insitu Cleaning Co Ltd v Heads** (above) the EAT held that the word 'unwanted' is essentially the same as 'unwelcome' or 'uninvited'. This is confirmed by the EHRC Employment Code (see para 7.8). The EAT in **Thomas Sanderson Blinds Ltd v English** EAT 0316/10 pointed out that unwanted conduct means conduct that is unwanted by the employee. The necessary implication is that whether conduct is 'unwanted' should largely be assessed subjectively, i.e. from the employee's point of view.

80. In **Reed and anor v Stedman** 1999 IRLR 299, EAT, the EAT noted that certain conduct, if not expressly invited, can properly be described as unwelcome. Normally, conduct that is by any standards offensive or obviously violates a claimant's dignity will automatically be regarded as unwanted. The EHRC Employment Code calls this 'self-evidently' unwanted conduct.

81. A failure to complain at the time is unlikely to undermine a claim based on inherently unwanted conduct. For example, as noted by the EAT in Reed v Stedman, a woman does not have to make it clear in advance that she does not want to be touched in a sexual manner.

Intimidating, hostile, degrading, humiliating or offensive environment

82. Some of the factors that a tribunal might take into account in deciding whether an adverse environment had been created were noted in **Weeks v Newham College of Further Education** EAT 0630/11. Mr Justice Langstaff, then President of the EAT, held that a tribunal did not err in finding no harassment, having taken into account the fact that the relevant conduct was not directed at the claimant, that the claimant made no immediate complaint and that the words objected to were used only occasionally. Langstaff P also pointed out that the relevant word here is 'environment', which means a state of affairs. Such an environment may be created by a one-off incident, but its effects must be of longer duration to come within what is now S.26(1)(b)(ii) EqA.

Single or multiple events

83. The adverse purpose or effect can be brought about by a single act or a combination of events. The EAT in **Reed and anor v Stedman** 1999 IRLR 299, EAT, made some useful comments about how the effect should be assessed

when dealing with a combination of events, suggesting that tribunals should adopt a cumulative approach rather than measure the effect of each individual incident.

Purpose

84. A claim brought on the basis that the unwanted conduct had the purpose of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment obviously involves an examination of the perpetrator's intentions. As the perpetrator is unlikely to admit to having had the necessary purpose, the tribunal hearing the claim is likely to need to draw inferences from the surrounding circumstances.

Effect

85. In deciding whether the conduct has the effect referred to in S.26(1)(b) (i.e. of violating a person's (B) dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B), each of the following must be taken into account:

    a. the perception of B;
    b. the other circumstances of the case; and
    c. whether it is reasonable for the conduct to have that effect — S.26(4).(Note that S.26(4) is not applicable to 'purpose' cases.)

86. The test therefore has both subjective and objective elements to it. The subjective part involves the tribunal looking at the effect that the conduct of the alleged harasser (A) has on the complainant (B). The objective part requires the tribunal to ask itself whether it was reasonable for B to claim that A's conduct had that effect.

87. In **Pemberton v Inwood** 2018 ICR 1291, CA, Lord Justice Underhill, gave the following guidance: 'In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both

    a. whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and
    b. whether it was reasonable for the conduct to be regarded as having that effect (the objective question).

88. It must also, of course, take into account all the other circumstances.

89. The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect (the subjective element)

90. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse

environment for him or her, then it should not be found to have done so' (the objective element).

Subjective element

91. The first part of the statutory test set out in S.26(4) involves examining the act from the complainant's perspective — that is, whether he or she regarded it as violating his or her dignity or creating the proscribed environment (see para 7.18 of the EHRC Employment Code). This is a factual inquiry.

92. Tribunals should bear in mind that different people have different tolerance levels. Conduct that might be shrugged off by one person might be found much more offensive or intimidating by another.

Objective element

93. The objective aspect of the test is primarily intended to exclude liability where B is hypersensitive and unreasonably takes offence. As noted by the EAT in **Richmond Pharmacology v Dhaliwal** 2009 ICR 724, EAT, 'while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the… legislation…) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase'. It continued 'if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question.'

Related to a relevant protected characteristic

94. In order to constitute unlawful harassment under S.26(1) EqA, the unwanted and offensive conduct must be 'related to a relevant protected characteristic'. However offensive the conduct, it will not constitute harassment unless it is so related, and a tribunal that fails to engage with this point will err — **London Borough of Haringey v O'Brien** EAT 0004/16.

95. Whether or not the conduct is related to the characteristic in question is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it – **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor EAT** 0039/19.

96. The words 'related to' in S.26(1)(a) have a broad meaning and holding that conduct that cannot be said to be 'because of' a particular protected characteristic may nonetheless be 'related to' it — **Hartley v Foreign and Commonwealth Office Services 2016** ICR D17, EAT.

97. Where direct reference is made to an employee's protected characteristic or he or she has been subjected to overtly racist/sexist/homophobic, etc, conduct, the necessary link will usually be clearly established.

98. Where the link between the conduct and the protected characteristic is less obvious, tribunals may need to analyse the precise words used, together with the context, in order to establish whether there is any (negative) association between the two.

Victimisation

99. In determining allegations of victimisation three questions should be asked

a. did the alleged victimisation arise in any of the prohibited circumstances covered by the EqA?
b. if so, did the employer subject the claimant to a detriment?
c. if so, was the claimant subjected to that detriment because he or she had done a protected act, or because the employer believed that he or she had done, or might do, a protected act?

100. Section 39(4) provides that an employer (A) must not victimise an employee of A's (B):

a. as to B's terms of employment
b. in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training, or for any other benefit, facility or service
c. by dismissing B or
d. by subjecting B to any other detriment.

Detriment

101. Tribunals need to make findings as to the precise detriment pleaded (see for example **Ladiende and ors v Royal Mail Group Ltd** EAT 0197/15).

102. Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events or excluded from opportunities to train. A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. The claimant will not succeed simply by showing that he or she has suffered mental distress: it would have to be *objectively reasonable* in all the circumstances.

103. Where it is not entirely obvious that the claimant has suffered a detriment, the situation must be examined from the claimant's point of view (**Chief Constable of West Yorkshire Police v Khan** 2001 ICR 1065, HL, **Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR

337, HL and **Derbyshire and ors v St Helens Metropolitan Borough Council and ors 2007** ICR 841, HL).

Because of protected act

104. To succeed in a claim of victimisation the claimant must show that he or she was subjected to the detriment *because* he or she did a protected act or *because* the employer believed he or she had done or might do a protected act. Where there has been a detriment and a protected act but the detrimental treatment was due to another reason, e.g. absenteeism or misconduct, a claim of victimisation will not succeed.

Failure to make reasonable adjustments

105. Section 20 EqA states that the duty to make adjustments comprises three requirements:

a. a requirement, where a provision, criterion or practice (PCP) 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 — S.20(3)
b. a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage — S.20(4)
c. a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid — S.20(5).

106. In the case of an employer, a 'relevant matter' for the above-mentioned purposes is any matter concerned with deciding to whom to offer employment and anything concerning employment by the employer — para 5, Sch 8.

107. In **Abertawe Bro Morgannwg University Local Health Board v Morgan** 2018 ICR 1194, CA, the Court of Appeal held that the duty to comply with the reasonable adjustments requirement under S.20 begins as soon as the employer can take reasonable steps to avoid the relevant disadvantage.

108. It is no part of the duty to make reasonable adjustments for the employer actively to consult the employee about what adjustments should or could be made (**Tarbuck v Sainsbury's Supermarkets Ltd** 2006 IRLR 664, EAT).

Discrimination arising from disability

109. Section 15 EqA, 'Discrimination arising from disability', provides that 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.

110. Section 15(2) goes on to state that 'S.15(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.' In other words, if the employer can establish that it was unaware — and could not reasonably have been expected to know — that the claimant was disabled, it cannot be held liable for discrimination arising from disability (see above in relation to 'knowledge').

111. In **Secretary of State for Justice and anor v Dunn** EAT 0234/16 the EAT (presided over by Mrs Justice Simler, President) identified the following four elements that must be made out in order for the claimant to succeed in a S.15 claim:

a. there must be unfavourable treatment
b. there must be something that arises in consequence of the claimant's disability
c. the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability, and
d. the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

112. The EHRC Employment Code indicates that unfavourable treatment should be construed synonymously with 'disadvantage'.

113. In **Pnaiser v NHS England and anor** 2016 IRLR 170, EAT, Mrs Justice Simler considered the authorities, and summarised the proper approach to establishing causation under S.15.

a. First, the tribunal has to identify whether the claimant was treated unfavourably and by whom.
b. It then has to determine what caused that treatment — focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant.
c. The tribunal must then determine whether the reason was 'something arising in consequence of the claimant's disability', which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

114. The distinction between conscious/unconscious thought processes (which are relevant to a tribunal's enquiry on a S.15 claim) and the employer's motives for subjecting the claimant to unfavourable treatment (which are not) was described by Simler J in **Secretary of State for Justice and anor v Dunn** EAT 0234/16 in the following terms:

> *'[Counsel for the claimant asserts] that motive is irrelevant. Moreover, he submits that the claimant did not have to prove the reason for the unfavourable treatment but simply that disability was a significant influence in the minds of the decision-makers. We agree with him that motive is irrelevant. Nonetheless, the statutory test requires a tribunal to address the question whether the unfavourable treatment is because of something arising in consequence of disability… [I]t need not be the sole reason, but it must be a significant or at least more than trivial reason. Just as with direct discrimination, save in the most obvious case, an examination of the conscious and/or unconscious thought processes of the putative discriminator is likely to be necessary'.*

115. The enquiry into such thought processes is required to ascertain whether the 'something' that is identified as having arisen as a consequence of that claimant's disability formed any part of the reason why the unfavourable treatment was meted out.

116. In **Hall v Chief Constable of West Yorkshire Police** 2015 IRLR 893, EAT, the EAT clarified that a claimant needs only to establish some kind of connection between the claimant's disability and the unfavourable treatment.

Unfair dismissal

117. There was no dispute that the reason for dismissal was the claimant's long term ill health absence and the potentially fair reason for dismissal was 'capability'.

118. The key question in a long-term ill health absence dismissal is whether the ill health absence was a sufficient ground for dismissal, and key to that is the question whether the employer can be expected to wait any longer (**Spencer v Paragon Wallpapers Limited** 1977 ICR 301 and see also **S v Dundee City Council** 2014 IRLR 131).

119. A dismissal for capability incorporates the Burchell test. In **DB Schenker Rail (UK) Ltd v Doolan** 2010 EAT 0053/09/1304 the EAT held

> *"In determining whether or not the Claimant's dismissal was fair or unfair (s.98(4)) of the 1996 Act) there were, accordingly, three initial questions that the Tribunal required to address: whether the Respondent genuinely believed in their stated reason, whether it was a reason formed after a reasonable investigation and whether they had reasonable grounds on which to conclude as they did."*

120. In **Pinnington v City and County of Swansea and another** EAT 0561/03, the EAT held that the range of reasonable responses test applies to both the dismissal and the procedure, including the employer informing themselves of the true medical position. Whether the employer caused an injury is not determinative of the fairness of the decision to dismiss. In **Royal Bank of Scotland v McAdie** 2008 ICR 1087 the Court of Appeal held that:

> "…*the fact that an employer has caused the incapacity in question, however culpably, cannot preclude him forever from effecting a fair dismissal. If it were otherwise, employers would in such cases be obliged to retain on their books indefinitely employees who were incapable of any useful work…"*

121. The Court of Appeal also held in **McAdie** that the Tribunal must consider the question of reasonableness by reference to the situation as it was at the date that the decision was taken and for that reason it will usually not be necessary or appropriate for a tribunal to undertake an inquiry into the employer's responsibility for the original illness or accident.

122. A dismissal on ill health grounds requires a balance to be struck between the impact of the absence on the respondent and the impact of the dismissal on the claimant. Those factors include the nature of the illness, the impact of the absence on other staff, the likely length of the illness, the cost of the absence, the size of the employer and the unsatisfactory position of having an employee on very lengthy sick leave. Consultation with the employee is important in such cases (see **East Lindsey District Council v Daubney** 1977 ICR 566 and **Taylorplan Catering (Scotland) Limited v McInally** 1980 IRLR 53).

Time limits

123. Finally, we note that in relation to a number of individual allegations the issue of whether the claim was in time is in issue. The tribunal considers that following law applies to this issue.

124. Were the discrimination, harassment and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

a. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
b. If not, was there conduct extending over a period?
c. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
d. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
    1. Why were the complaints not made to the Tribunal in time?
    2. In any event, is it just and equitable in all the circumstances to extend time?

Findings of fact

125. We make the following findings of fact.

126. The respondent is a large NHS foundation trust. The respondent was formed by the merger of two NHS Trusts based one based in Derby and the other in Burton.

127. The claimant commenced her continuous NHS employment in 1993. At all material times the claimant was employed as what is termed a contracts buyer.

128. The claimant describes herself as British Afro Caribbean.

129. The claimant was employed in the respondent's procurement department and for our purposes the key roles in that department in relation to the claims we have to consider are those of day-to-day buyer and contracts buyer. The difference between those two roles is best described thus: the day-to-day buyers receive requisitions from all departments in the respondent for things which have to be bought on a daily basis and hence they are extremely busy all of the time. The contracts buyers are responsible for buying items from existing contracts. Those contracts might be ones negotiated by the contracts buyers themselves, which in general will be relatively smaller contracts, or they may be buying from nationally negotiated contracts, that is to say contracts negotiated nationally by the NHS which all trusts use. Whilst these latter contracts may be of considerable value, the contracts buyers do not have responsibility for the contracts *per se* and therefore the work under those contracts is in fact rather more straightforward.

130. At the material times the procurement department had around 24 or 25 employees, some full time some part time.

131. The department was described by all of the respondent's witnesses (save for Mr Fowkes who is not in the procurement department) as collegiate, with people tending to stay for a long time, many staff having been there over 20 years. Staff turnover in the department is relatively low.

132. The contracts buyers are placed at band 3 under the national terms and conditions for most NHS staff known as Agenda for Change. Each band contains a salary range so that once a person in a particular band reaches the top of the salary range, they can only obtain an increase in their pay if there is a pay award or if they obtain a role at a higher banding.

133. At the time of the events we are considering, the claimant was the only member of staff in the procurement department from a BME background. In her witness statement, at paragraph 6, the claimant asks the tribunal to take account of the fact "*that no other person from a BAME background had been appointed within the department".* She goes on to say that "*during the management of Karen Jones and Jenny Haynes no BAME staff had been appointed by them to work in the section I was employed in".*

134. We accept the evidence of Karen Jones, who acknowledged that BME staff are not widely represented in the procurement department not by choice but largely because the turnover of staff is very low. Her evidence was that there had been two other BME staff members one of whom left in 2001 and the other who worked in the department from April 2016 until June 2018 who remains employed by the respondent in the Information Department. In the circumstances, the tribunal does not draw any adverse inference from the fact

that BME staff are on the face of it somewhat underrepresented within the procurement team.

135. At the material times the claimant's direct line manager was Sue Baxter, Assistant Head of Procurement and in turn she reported, perhaps unsurprisingly, to the Head of Procurement, Karen Jones. Sue Baxter began working for one of the predecessor organisations in 1989 and Karen Jones began working for one of the predecessor organisations in 1980.

136. Rather unusually the person with overall responsibility for the procurement department, amongst other things, was Darren Riley. We say unusually because Mr Riley is not employed by the respondent. Mr Riley was at one point the respondent's deputy director of finance, but in 2017 he became the commercial director of a company wholly owned by the respondent called D-Hive Limited. In January 2020 Mr Riley became a director of that company. In that capacity he continued to manage the procurement department and indeed did so until around the summer of 2021 although he did not have day-to day management. That was left to Karen Jones.

137. The claimant has a history of depression having been first diagnosed in 1995. She has taken medication to deal with the condition but there is no suggestion that until she went off sick in April 2019, she had anything other than a good attendance record.

138. One of the claimant's colleagues and somebody who she had previously described as a friend, was Jenny Haynes. Ms Haynes became employed in the NHS in 1994 and in 1995 she became a band 3 contracts buyer, the same role occupied by the claimant. Ms Haynes became a band 4 Assistant Operational Buyer in 2005, she became the Contracts Department Lead at band 5 in 2010, and in 2016 she became the Procurement Manager at band 7. The claimant was aware of Ms Haynes progression. We note that Ms Haynes jumped from a band 5 role to a band 7 role without being required to work at a band 6 level at any point.

139. One of the issues that was discussed at the hearing, but in respect of which there is no allegation of discrimination, is that Karen Jones stifled the claimant's promotion ambitions. The concept of promotion within the respondent perhaps needs to be explained. In order for an employee, taking as an example Jenny Haynes, to move from band 3 to band 7 as she has done, whilst that progression may be described as a series of 'promotions', each movement to a new band, in this example from band 3 to band 4, from band 4 to band 5 and finally from band 5 to band 7, were achieved because vacancies had been advertised for the jobs at the higher band, Jenny Haynes applied for those jobs and in each case went through a competitive recruitment exercise. In other words, higher banded jobs are not simply given to a chosen person; 'promotion' is the result of a competitive process.

140. The claimant's evidence was that in her entire career with the respondent and its predecessor organisations she applied twice for new jobs, once in 2004 and the last time in 2014. This does not suggest to the Tribunal that Karen Jones had stifled the claimant's promotion ambitions. The claimant

also said that she had been told by Karen Jones, that she could not become a band 4 because she was part time and that she could only move from one band to another.

141. The latter of these suggestions is clearly incorrect because Jenny Haynes had moved from band 5 to band 7 without ever having done a job at band 6. Furthermore, given the number of staff in the procurement department who were part time and doing jobs above band 3 we find that the claimant would have been well aware that, first that she could become a band 4 employee notwithstanding that at any particular time she may have been part time, and second that it was not the case that employees could only move from one band to the next. For those reasons we are not prepared to draw any adverse inference from the fact that the claimant started and remained at band 3.

142. The procurement department was described as friendly in part because many of the team had worked together for a very long time. That is not to say, and we do not make a finding that every member of the department was a friend to every other member of the department, merely that the department operated in a friendly atmosphere with staff helping each other out as necessary. This was particularly important because the department was always very busy.

143. As we have noted above Jenny Haynes started as a band 3 contracts buyer, the same role as the claimant. When Jenny Haynes was promoted to a band 4 role, to her band 5 role and again to her band 7 role, she retained some of her contracts buying work largely because the team was so busy, and it suited them that she continued to do some of that work. However, in 2017 it became clear that it was not cost effective for Jenny Haynes to continue to do what is described as lower value contracts buying work and that work was distributed to the claimant and Claire Neville who continues to do that work up to the present day.

144. The department has a record of assisting staff with their development and allowing time off for training. The department has funded staff to undertake training by the Chartered Institute of Procurement Supply and other training relevant to their role.

145. In 2014 the claimant became a full-time member of staff.

146. In 2016 the claimant enrolled in and paid for a course at the University of Derby in Dietetics and Personal Fitness. This course was entirely unrelated to her work with the respondent. The claimant says that she did not realise that the course would involve her attending university for two half days each week during what would have been her normal working hours. When she did become aware of this, she spoke to Karen Jones on the basis that the claimant did not wish to become part time and therefore to see whether she could remain full time, working 37.5 hours per week yet still attend her university course.

147. The procurement department did not operate what might be called a flexi time system but did operate under a flexible working policy which appears from

page 616 of the bundle. The policy states that it aims to *"meet the personal circumstances of individuals"* and it sets out a number of conditions and requirements in relation to flexible working. Given those requirements, unsurprisingly those who are taking advantage of flexible working may be required to show what hours they work and that is most obviously done by using timesheets. We pause to note that all staff used to always fill out timesheets but by the time of these events that requirement had ended although we accept the evidence of the respondent's witnesses that many staff still use timesheets to track their working hours.

148. In the event it was agreed by Mr Riley that the claimant could work flexibly retaining her full-time status and attend to her university course notwithstanding that it was unrelated to her work. The initial requirement was that she complete a timesheet which is essentially a sheet of paper covering a month within which she would record her hours each day she worked. At the end of the month, she would then submit the timesheet to Karen Jones so that she in turn could ensure that given that the claimant's daily hours fluctuated, the claimant was not under over her full-time working hours overall. This arrangement was confirmed in an e-mail to the claimant which appears at pages 600 and 601 of the bundle.

149. After only a short period of this arrangement operating, Karen Jones felt that receiving the daily hours figures on a monthly basis made it difficult for her to keep track of the claimant's working pattern, whether, and when the claimant had worked under or over her full time hours and it was difficult to reconcile that with what the claimant should have been working and she felt it would be better if she received the figures on a weekly basis.

150. Given that, a decision was taken to ask for submission of the timesheet weekly rather than monthly. The change was discussed in a series of e-mails between Karen Jones and the claimant, and these can be seen at pages 597, 598 and 599 of the bundle. The e-mails are consistent with Karen Jones' evidence.

151. The procurement department undertook their work on PCs and the buyers used a particular software package which was upgraded in April 2018. The new software was called Agresso. The upgrade applied to the entire respondent organisation and three departments were particularly affected, the procurement department, the requisition department and the finance department.

152. Training on the new software was organised by the financial systems team, not by the procurement department. That training was provided by way of a one-hour session which was put on over a series of dates. The respondent expected that not everyone affected by the change would be able to attend one or other of the training sessions and as they had done previously, they used what they refer to as a train the trainer approach so that anyone who could not attend a scheduled training session could speak to one of their colleagues who had attended a training session in order to be updated on the new software. The claimant was not able to attend any of the scheduled training sessions.

Likewise, Karen Jones was unable to attend any of the scheduled training sessions.

153. The claimant says that in May 2018 there was an error in the Agresso system which she said she brought to the attention of Karen Jones who, the claimant alleges, spoke to her in a manner which implied that she, the claimant, was not competent. The claimant says that Karen Jones said in front of colleagues that she should ask "*Danielle or Chloe*" about the problem. The claimant says she was humiliated by this.

154. 2018 was the 70th anniversary of the NHS and on 2 July 2018 the procurement department held a so-called bake sale which meant that members of the department bought or baked cakes which were sold to raise money. A member of the communications department was walking around the event taking photographs and a photograph was taken of some of the procurement team. That photograph is at page 197 of the bundle. The procurement team numbered 24 at the time and 11 of them appear in the photograph. The claimant does not appear in the photograph.

155. On 31 January 2019 the claimant had her annual appraisal with Sue Baxter. The appraisal documentation starts on page 279 of the bundle. Nowhere in that appraisal does the claimant say that she had been the subject of bullying, humiliating treatment or anything particularly negative other than a comment that the merger which had taken place to form the respondent had not led to further opportunities for promotion for lower banded staff.

156. The claimant alleges that in February 2019 she was spoken to in a way that she did not like by a colleague called Sue Lean. The claimant says that Karen Jones failed to take action in respect of that incident and made no effort to engage with the claimant to hear her account of it. Karen Jones says that she was not aware of the incident.

157. In April 2019 the procurement department, which at the time numbered 25 members, was issued with five new PCs. The claimant complains that she was not allocated one of the new PCs. We find as a fact that these new computers were specifically earmarked for the day-to-day buyers not the contracts buyers. The tribunal accepts that at this time there was some overlap in the work and the contracts buyers were doing some day-to-day buying following the departure of one of the day-to-day buyers, but this was not the bulk of their work. In the event only four of the new PCs were given to the day-to-day buyers and the fifth was placed on the desk next to the claimant for use by the contracts buyers for any day-to-day buying they were tasked with.

158. On 24 April 2019 the claimant had a run in with a colleague, Claire Neville. Following this, the claimant threw her papers onto the floor and left the office in tears. Sue Baxter witnessed this and went after the claimant finding her crying in the toilet. They talked and the claimant said that she had too much work to do, and it appeared to Ms Baxter that the confrontation with Ms Neville tipped the claimant over the edge as she put it in her witness statement (paragraph 37). Claire Neville was known for being what is described as 'snappy' when she is stressed.

159. The claimant went off work on sick leave from 25 April 2019 and never returned.

160. Darren Riley was asked to manage the claimant's sickness absence and invited the claimant to a sickness absence review meeting to take place on 24 May 2019. The claimant's response to that invitation was not sent to Mr Riley but instead to Claire Rowe of the respondent's HR department and is on page 201 of the bundle. The claimant's e-mail said that

> *"I am not able to attend this meeting. Could you please give me a call… so that I can expand on this further"*

161. On 15 May 2019 the claimant sent a letter to Claire Rowe and that appears at pages 202 and 203 of the bundle. This raises a number of complaints, refers to racial slurs, silent racism through being ostracised, excluded, shunned and demoralised by Karen Jones and Jenny Haynes, bullying, marginalisation, bigotry and inhumane treatment. The examples given by the claimant are the timesheet issue, the Agresso software issue, the July bake sale photograph issue and the issue of the allocation of the 5 new PCs.

162. The Tribunal notes that the claimant has referred to suffering direct race discrimination and we deal with her specific allegations about that below. The Tribunal further notes above that the claimant referred to racial slurs, silent racism, bullying, marginalisation, bigotry and inhumane treatment. Nowhere in her witness statement or in her oral evidence and nowhere in the bundle is there any suggestion of any racial slur, whether aimed at the claimant or not, by anyone in the respondent's employment. The Tribunal can find no evidence of bigotry and it is entirely unclear what the claimant means by inhumane treatment. As we have said above, the specific allegations are centred around the timesheet, the Agresso software, The photograph and the PCs. There are complaints about the investigation of the grievance and the handling of the claimant's sickness absence, but we find as a fact that there is no evidence of what we might terms overtly racist language. In this context, we find the reference to racial slurs and bigotry surprising. We also note that the claimant made no complaint relating to race discrimination until she raised her grievance in 2019 despite having been employed for around 25 years at that point, and although the absence of complaint is not conclusive evidence of the absence of a problem, we would be surprised that if the claimant had been subject to the kind of gross direct race discrimination by the way of racial slurs and bigotry that she alleges, she would not have raised a complaint sooner.

163. Claire Rowe spoke to the claimant on 22 May 2019 and her note that conversation starts at page 205 of the bundle. In the conversation the claimant complained about the amount of work she had to do and the incident with Claire Neville and described the latter as the straw that broke the camel's back.

164. Mr Riley invited the claimant to another meeting to review her sickness absence to take place on 22 May 2019. This meeting took place at a neutral location, the Mallard public house. The claimant was accompanied by her husband and Mr Riley attended along with Claire Rowe, HR representative. It

was at this meeting that Mr Riley first saw the letter from the claimant dated 15 May 2019.

165. Following the 22 May meeting, Darren Riley e-mailed the claimant stating that having re-read her letter of 15 May 2019 he had

> *"a responsibility… to ensure the allegations made in the letter are properly looked into, a responsibility to the rest of the team in terms of supporting them to continue to ensure the department functions with limited additional stress on them as well as a responsibility to the people mentioned in order that they can voice their response to at least the examples provided"*

166. Mr Riley suggested as potential ways forward that he could chair an informal mediation session by way of resolution, he could organise formal mediation to be undertaken by a third party or he could pass the matter on for a formal investigation. He invited the claimant's views on these options. Mr. Riley's e-mail to the claimant is on pages 207 and 208 of the bundle.

167. In response, on 7 June 2019 the claimant e-mailed Mr Riley [207] and said that

> *"I am in agreement with what you have stated and I too feel that a more formal undertaking would be of more benefit. Therefore please initiate the process.*

168. Darren Riley confirmed the position to the claimant in a letter and an e-mail of 17 June 2019 which appear at pages 210 and 212 of the bundle. He confirmed that the complaints would be formally investigated and that he would appoint an independent investigating officer for that purpose. He also confirmed that he wanted to refer the claimant to occupational health and that after the occupational health appointment he would meet with the claimant to review the situation. The claimant seems to have been content with this proposal.

169. On 1 July 2019 Darren Riley wrote to Mr Geoff Neild and asked him to undertake the investigation into the claimant's complaints. The claimant was based in Derby and Mr Neild was based in Burton. At the time of the investigation Mr Nield was an Associate Director of the respondent but he has a background in human resources having been for a time the deputy director of HR. The letter appointing Mr Neild as the investigating officer is at pages 220 and 221 of the bundle. Details of the allegations and the scope of the investigation were set out in an attachment to the letter, and this can be seen at pages 223 to 225 of the bundle.

170. The respondent's grievance policy states that a grievance investigation should be concluded within four to six weeks and that was the requirement set out in the instructions from Mr Riley to the investigating officer, Mr Neild.

171. In compliance with his instructions Mr Neild contacted the claimant by letter dated 9 July 2019 confirming his appointment and stating that he would like to meet with the claimant to take a formal statement from her and to gather more details of the allegations she had made [226/227]. Mr Neild confirmed that

he was aware that the claimant was off sick, and he did not therefore simply impose a meeting date upon her, instead asking her to make contact so that a suitable date for the claimant to meet with him could be arranged.

172. The claimant and Mr Neild agreed to meet on 18 July 2019 but on 14 July 2019 the claimant e-mailed Mr Neild to say that she had not had sufficient time to arrange for a trade union representative to attend the meeting with her and that she would contact the union and that as soon as she had some possible alternative dates she would contact Mr Neild [232].

173. On 17 July 2019 Mr Neild chased the claimant for a date for the proposed meeting [232]. The claimant responded on the same day to say that she was still waiting for her union to get back to her but that she would chase them [231].

174. The claimant had not got back to Mr Neild by 23 July 2019. Mr Neild then sent another e-mail to the claimant stating that he had to meet a specific timeline for the investigation which he was now in danger of missing. He said that if the claimant could not secure union representation there were other options including attending with a work colleague or companion, he offered to send the claimant written questions or that the investigation could continue simply based upon the claimant's original letter of complaint. It is a matter of specific complaint by the claimant that Mr Neild said about his need to complete the investigation

> *"I have to consider the welfare of all involved in the case including those you have made allegations against. This cannot drag on for weeks as we are likely to be faced with grievances for undo stress caused by the process."*

175. We find as a fact that Mr Neild was simply taking an even-handed and reasonable approach to the investigation process given that at this stage, he had made no findings and was simply trying to move matters forward in everyone's best interests, including those who had been accused as well as the claimant.

176. Whilst he was trying to arrange a meeting with the claimant Mr Neild was not idle. On 10 July 2019 he interviewed Jenny Haynes, Claire Neville, Sue Baxter and Karen Jones. On 17 July 2019 he interviewed Lynn Brookes, Munndeep Chahal, Chris Roe and Angela Evans and on 23 July 2019 he interviewed Kath Potts.

177. Having still not heard from the claimant about a meeting with Mr Neild, Mr Riley e-mailed the claimant on 24 July 2019 [234]. He referred to the fact that a meeting had yet to be arranged between Mr Neild and the claimant and reminded her that there were alternative ways for her to participate in the investigation.

178. The claimant responded on 25 July 2019 [238] stating that she would be unable to attend any work-related meeting until she was "*signed off by my doctor"* by which we take to mean until she was fit to work. She stated

> *"please leave all requests for a meeting until I am returned to work"* (sic).

179. Given this unequivocal response from the claimant, on 25 July 2019 Mr Neild e-mailed her as follows [238]

> *"Thank you for your e-mail response, I appreciate this is a difficult time for you… We recognise that calling you into a face to face meeting may not be appropriate at this stage. However we do need to keep the investigation on track for all concerned including yourself… to achieve this I have attached the questions I was planning to present to you at the meeting which I would ask you to respond to by close of play Monday 29 July 2019. Whilst this is not my preferred way of conducting an interview, as it takes away the ability to ask secondary questions, I feel it is the best compromise at this juncture…"*

180. We find as a fact that this was a perfectly reasonable approach for the respondent to take in the circumstances. The claimant makes a specific complaint about a number of the written questions that were asked of her by Mr Neild, and we deal with that allegation below. The claimant never answered the questions that were presented to her by Mr Neild.

181. The claimant attended an occupational health appointment on 25 July 2019 and the report from that appointment is at pages 245 and 246 of the bundle. The occupational health nurse specialist stated that she was unable to give a time frame for a possible return to work by the claimant.

182. On 5 August 2019 Mr Riley e-mailed the claimant with a summary of the interim findings which had been presented to him by Mr Neild. That e-mail appears at pages 248 to 250 of the bundle. In short, based on the evidence he had collected at that point, Mr Neild found that the allegations made by the claimant were either unsupported by any evidence or that there was no case to answer. Mr Riley concluded his e-mail by stating that

> *"The summary above will be provided to the other people involved and informed that this is on an interim basis. I will now explore with HR what the next steps can be to progress towards a final report with a view to then looking at the support you need to return to work"*

183. Mr Riley did e-mail those accused by the claimant with the interim findings and his e-mails can be seen at pages 603 to 606 of the bundle.

184. Mr Riley invited the claimant to a sickness absence review meeting on 8 August 2019. The purpose of this meeting was to review the occupational health report which had been received by the respondent.

185. On 13 August 2019 Mr Riley e-mailed the claimant and he made the point that the grievance investigation process was becoming somewhat circular. He stated that

> *"your absence is due to a work issue that has been investigated but [you] are unwilling to engage with the process (beyond the point of commencing it) until you return to work, which is dependent on the issues being resolved. Without your cooperation I am unable to resolve the issues. For this reason, I will have to close the investigation... towards the end of August"*

186. The e-mail goes on to invite the claimant to a meeting under the respondent's long term absence policy to discuss her return to work. Attached to the e-mail was the letter which appears at pages 255 and 256 of the bundle. This was a formal letter under the long-term absence management policy inviting the claimant to a review meeting on 21 August 2019.

187. On 14 August 2019 the claimant e-mailed Mr Riley stating that she would be unable to attend the long-term absence management review meeting and referring to a letter attached to the e-mail (dated 11 August 2019) which appears at page 251 of the bundle. In the letter the claimant stated amongst other things that it was "*incredibly distressing"* that the investigation was conducted in her absence and asked how an investigation could be conducted *"without my evidence and contribution".* She goes on to state that at no time was she advised that an interim investigation would be conducted and ultimately says that she is extremely disappointed and does not accept the validity of the interim findings.

188. The claimant e-mailed Mr Riley a second time on 14 August 2019 attaching a letter also dated 14 August 2019 [260] confirming that she would not attend "*to this matter*" whilst on sick leave. In other words, the claimant was saying that she would not attend a meeting to discuss her long-term sickness absence until she was no longer ill or absent on sick leave.

189. In the event Mr Riley asked Mr Neild to produce a final report which he did, and that report appears at pages 261 to 293 of the bundle. Given the fact that there was no further information from the claimant, the outcomes in the final report are the same as those in the interim report in terms of the conclusions to the allegations but with rather more detail of the investigation process and summaries of the witness evidence than was contained in Mr Riley's original summary.

190. Mr Riley next contacted the claimant on 3 September 2019 by letter inviting her to a long-term absence review meeting [294 – 295].

191. The claimant responded by letter dated 9 September 2019 and that appears at page 296 of the bundle. The claimant declined to attend the meeting.

192. Mr Riley referred the claimant to occupational health for a second time on 25 September 2019 [297 – 301] and the appointment was made for 7 October 2019. In an e-mail from the claimant to Mr Riley of 5 October 2019 the claimant says that she could not make the 7 October 2019 appointment as she had a prior appointment but that she had rearranged the appointment for 11

November 2019. As it transpired an earlier appointment became available, on 21 October 2019 and the claimant agreed to, and did attend that appointment.

193. The occupational health report from the second referral is at pages 307 and 308 of the bundle. The report confirmed that the claimant was not fit for work and that no timescale could be given for when she would be well enough to return. The respondent had agreed to pay for a medical report and the occupational health advice was that it would be beneficial for them to liaise with the claimant's GP to explore the claimant's health further by way of a medical report from that GP. The report was requested from the claimant's GP but there was no response until December 2019 when the GP practise stated that they required payment of £100 for them to produce a medical report. The respondent paid the £100 fee to the GP practice on 19 December 2019.

194. In line with the respondent's long term absence management policy Mr Riley invited the claimant to a formal absence management panel meeting in a letter dated 17 December 2019 which was sent by e-mail. The e-mail is at page 310 of the bundle and the letter is at pages 311 and 312. The date of the meeting was to be 9 January 2020 and, amongst other things, the claimant was warned that one possible outcome of the meeting was the termination of her employment on the ground of ill health.

195. The claimant responded to Mr Riley by letter of 18 December 2019 [313 – 314] essentially objecting to Mr Riley's instigation of the panel meeting and stating that he was not adhering to the respondent's policy. The claimant also asked whether Mr Riley would like her to follow up with her GP.

196. Mr Riley responded to the claimant on 19 December 2019 [314] confirming that the GP report had been requested seven weeks previously and explained that the panel meeting was validly set up and it would consider the information available to it at the time of the meeting.

197. In preparation for the panel meeting Mr Riley prepared a Health and Attendance Case Review with assistance from HR. That document was sent to the claimant, and it appears at pages 317 to 321 of the bundle.

198. On 23 December 2019 the claimant e-mailed a letter to Mr Riley essentially asking him to delay the panel meeting until the GP report had been received but Mr Riley's view was that this was unnecessary as first, the report may have arrived by the time of the panel meeting and second, if it had not, its absence would be a matter that the meeting would take into account in deciding any future action.

199. On 7 January 2020 the claimant e-mailed an undated letter to Mr Riley with further information about her health and she stated that she hoped to return to work in February.

200. At some point the claimant did engage the services of Unison and a letter was received by the respondent from Helen Elson, lead representative for Unison. That letter was received on 9 January 2020, the day of the panel meeting [331].

201. The absence panel meeting went ahead as scheduled. The meeting was chaired by Steve Fowkes, Deputy Director of Operational Finance. He was supported by a representative from HR. Mr Riley attended to present his report and he was supported by Claire Rowe, HR.

202. The outcome of the meeting was sent to the claimant and her union representative on 10 January 2020 by Mr Fowkes [332 – 333]. The claimant was not dismissed. Instead it was proposed that a meeting take place within the following two weeks between the claimant, her union representative, Mr Riley and an HR representative to discuss and agree what is referred to as a suitable return to work plan including an anticipated date for return in February which was in accordance with what the claimant had told Mr Riley on 7 January 2020. Three dates were given for a meeting, and it was stated that if there was a failure to cooperate with these arrangements or if there was no return to work within what was described as a reasonable period of time, the absence panel meeting would be reconvened, and a decision made on the claimant's continued employment with the respondent.

203. On 21 January 2020 the respondent received correspondence from the claimant's counsellor who stated that a return to work on a part time basis with the right support was a viable option.

204. Furthermore, the long-awaited GP report was finally received on 22 January 2020 and was reviewed by the occupational health department. The report stated that the claimant continued to attend her GP for support and that as at January 2020 there was no foreseeable return to work date.

205. The claimant and her trade union representative did attend the proposed return to work meeting which took place as scheduled on 22 January 2020. Given all of the information the respondent now had, it was agreed that the respondent would endeavour to help the claimant to find an alternative role and therefore she would not be returning to work to her old role. Mr Riley stated that if no suitable alternative role could be found and if the absence was unsustainable then the claimant's employment may be terminated. After some discussion with her trade union representative, the claimant stated that she would be well enough to return to work from 24 February 2020. The outcome of the meeting was confirmed in writing by Mr Riley on 5 February 2020 [347 – 348].

206. On 23 January 2020, the claimant was sent a redeployment registration form to complete and return, and on 27 January 2020 the claimant was sent a list of then vacant band 3 and band 4 roles for her to consider. The claimant was asked to return the redeployment form as soon as possible as that was required to commence the redeployment process [343 – 344].

207. In the event the claimant did not complete the redeployment registration form and she did not express any interest in any of the vacancies. In fact, in her evidence in chief the claimant said that she was not well enough to consider either of the documents and never read them.

208. On 5 February 2020 [345] the respondent chased the claimant for responses to the documentation they had sent to her on 23 and 27 January

2020 and on 11 February 2020 the claimant replied by e-mail to Claire Rowe stating

> *"As I said in my previous e-mail to Helen I found our meeting on 22nd January very difficult. I was trying to be helpful and come into the trust for a meeting and felt compelled to offer a specific return date. However, it's clear that the 24th February is not feasible now, and no doubt you will be aware that I have submitted a sick note dated to 8th March… I will come back to you by the end of February"*

209. Given that the claimant was not going to return to work as scheduled and that she had not engaged with the redeployment process, Mr Riley e-mailed the claimant on 13 February 2020 inviting her to attend the reconvened absence management panel meeting now scheduled to take place on 28 February 2020. The claimant responded on 26 February 2020 saying that she would not attend as she was signed off sick until 8 March 2020 [355 – 358].

210. The meeting of 28 February 2020 went ahead in the claimant's absence and same parties attended on behalf of the respondent as previously. The meeting was again chaired by Mr Fowkes. Mr Riley updated the panel as to the then current position and he and Ms Rowe then left the meeting. The notes of the meeting are at [359 – 361].

211. The panel decided that in the absence of a likely return to work within a reasonable period of time the absence was unsustainable and given the claimant's failure to engage with the redeployment process her employment would be terminated. That decision was confirmed to the claimant by e-mail on 2 March 2020 [363] and in a more formal letter dated 17 March 2020 [366].

212. The claimant had the right to, but did not appeal against the decision to dismiss her.

213. Although Mr Fowkes stated in his e-mail and in his letter to the claimant that the claimant's employment was terminated on 28 February 2020 with a payment in lieu of her 12 weeks' notice, given that the claimant did not attend the meeting on 28 February 2020 she could not have known about the termination of her employment until she received Mr Fowkes' e-mail of 2 March 2020 and we find as a matter of fact that the latter date, 2 March 2020, was the effective date of termination.

214. In respect of claim number 2600648/2020, the claimant commenced early conciliation on 20 December 2019, and she received her early conciliation certificate on 20 January 2020. The claim was presented on 13 February 2020.

215. In respect of claim number 2601546/2020, the claimant commenced early conciliation on 7 May 2020, and she received her early conciliation certificate on 11 May 2020. the claim was presented on 18 May 2020.

Discussion and conclusions

216. We set out below our discussion and conclusions on the allegations set out in the list of issues. As indicated in the introduction, this was an agreed document although in respect of a number of the matters set out in the list of issues the Tribunal has had to give some thought to what is meant by the allegations which are not particularly well expressed, and the same criticism can be made of the PCPs in the claim for failure to make reasonable adjustments and indeed in relation to the 'something arising' in the s.15 EqA claim. The Tribunal has done its best to understand the claimants' claims. In what follows we have adopted the same numbering as set out in the list of issues attached as an Appendix to this judgment.

A Direct race discrimination

217. We start with a general observation that it appears from the way the list of issues is drafted that the claimant is relying upon named comparators and/or a hypothetical comparator in relation to allegations A1 to A12. There is no narrative about the comparator in respect of allegations A15 to A35 and we have therefore presumed that the claimant relies on a hypothetical comparator in respect of these allegations. We would also add that we specifically checked with Ms Brown at the start of day 2 of the hearing that all of the allegations in section A are for direct race discrimination and she confirmed that was the case.

A1

218. This is the claim that the claimant undertook work on the contracts set out in the allegation, that this work had previously been undertaken by staff paid at a higher grade, which we interpret as meaning a higher band than the claimant's band 3, and that the claimant was not paid at that higher band for that work. This is a reference to some of the work undertaken by Jenny Haynes.

219. The evidence of Jenny Haynes was that the contracts referred to in the allegation were work that she was undertaking as a band 3 contracts buyer, and it was work she retained notwithstanding her various promotions. This is confirmed by the claimant's own evidence in her witness statement where at paragraph 12 she says

> *"Following Jenny's promotion some of her contracts were given to me"*

220. The evidence of the respondent, which we accept, was that at the point Ms Haynes divested herself of this work it was given to the claimant and another band 3 contracts buyer, Claire Neville, who was not of the claimant's race.

221. Given that Claire Neville, a named comparator, was in exactly the same position as the claimant in relation to the work and her pay, the tribunal finds that the claimant suffered no less favourable treatment than her comparator.

222. For that reason, this claim fails.

A2

223. This claim is about the timesheets which the claimant was required to submit following the respondent's agreement to allow her to take time off for her university course but remain on her full time hours.

224. As we understood the evidence, the claimant was provided with a monthly timesheet and she was expected to, and there was no evidence that she did not, record her hours each day she worked. The original requirement was that at the end of the month the claimant would send the completed sheet to Karen Jones.

225. For the reason given by Karen Jones which we have set out above, this arrangement was altered so that the timesheet was sent at the end of each week.

226. The allegation says specifically that

> *"the agreed arrangement that the claimant should record her hours on a timesheet once a month changed to once a week by her manager Karen Jones without explanation or justification"*

227. Because of the way this allegation is drafted it could be an allegation that the less favourable treatment was that the claimant was required to record her hours once a week rather than once a month, or the less favourable treatment could be that the change was made without explanation or justification, or there could be two allegations.

228. From the tribunal's perspective the drafting is problematic because the claimant was never required to change from recording her hours from once a month to once a week. The hours were always to be recorded every day. The change was only to when the timesheet had to be submitted to Karen Jones and that does not appear to be a matter of complaint.

229. However, if we presume that this is what the claim intended to say i.e. that the less favourable treatment was the requirement to submit the timesheet on a weekly rather than a monthly basis, given that this simply meant sending an e-mail once a week rather than once a month this did not change the claimant's position for the worse or put her at a disadvantage. It was not a detriment, and the claim fails for that reason.

230. Even if we are wrong about that and the change did amount to a detriment there is again no evidence provided by the claimant nor even a hypothesis as to why she says the change was made because of her race and we find that in relation to this claim there is insufficient evidence to shift the burden of proof to the respondent.

231. If we are wrong about the burden of proof not shifting to the respondent, we are in any event entirely satisfied with the explanation given by Karen Jones. Her evidence was that if for example the claimant had overworked significantly over a four week period it would be difficult on the team if the claimant would then have to have significant time off during the following week or month in order to reconcile her hours so that she averaged 37.5 per week, and therefore Karen Jones needed a weekly view as to the claimant's working hours to more easily reconcile them if necessary. That reason is untainted by considerations of race.

232. For all of those reasons this claim fails.

A3

233. This claim is that the change to the arrangement in relation to the timesheets referred to at A2 was without consultation and was therefore belittling and demeaning to the claimant. The allegation ends with the words

> *"who was the only member of staff required to complete a timesheet".*

234. It is unclear to the tribunal whether it is a matter of complaint that the claimant was the only member of staff required to complete a timesheet. If it is, we do not consider that the claim can be made out. It is entirely clear from the evidence that the claimant was required and agreed to complete a timesheet because she was being afforded special dispensation to take time off during her normal working hours to attend training unrelated to her work yet continue to be employed full time and therefore be allowed to work flexibly, in effect starting and finishing at times she chose, and the time sheets were to ensure that she was not working too much or too little in those circumstances.

235. Turning to the question of consultation, as we have indicated even though there was a change in the original arrangement, it amounted simply to a requirement to submit a document which already existed and was completed daily, once a week rather than once a month and it was not reasonable for the claimant to conclude that if there was no consultation about that she was being belittled.

236. But that of course begs the question whether there was consultation.

237. On 28 October 2016 Karen Jones sent an e-mail to the claimant asking her to provide the timesheet on a weekly basis. The claimant responded in an e-mail on the same day to ask why the requirement was changing from monthly to weekly submission. Karen Jones responded on the same day to say that as the agreement is that time had to be made up in the week, a weekly timesheet is needed to verify the hours the claimant had worked. The claimant e-mailed Karen Jones again, on the same day, saying that Karen Jones was correct but that the claimant had agreed, and it was approved that a monthly submission would suffice. Again, on the same day Karen Jones responded by e-mail to say that as the timesheet was being completed daily the information existed and

she asked that it be sent through weekly. The claimant raised no further objection.

238. Considering this exchange of e-mails, it would seem to the tribunal that there was consultation and although it might be described as rather minimal consultation it seems to the tribunal that it was sufficient because an explanation for the change was sought by the claimant, the explanation was given by Karen Jones in one of her e-mails and the claimant appears to have accepted the explanation. If that is correct, and we find that it is, then the claim cannot be made out because there was consultation.

239. If we are wrong and there was no consultation, then in the tribunal's judgment the claimant was subject to a perfectly reasonable and proportionate management instruction to alter the original arrangement. Moreover, there is no evidence that any failure to consult was motivated consciously or subconsciously by race and there was a good deal of evidence to show that it was motivated by Karen Jones' need to have a more regular oversight of the hours the claimant was in fact working.

240. Furthermore, there is no evidence or even frankly any argument put forward by the claimant as to why she says a hypothetical comparator would have been treated differently, there is merely an implicit assertion that that would have been the case.

241. For the above reasons this claim fails.

A4

242. This claim relates to the fact that the claimant did not receive formal training on the Agresso software.

243. This allegation states that from around February/March 2018 the claimant did not receive training on the Agresso system. We think this puts the matter somewhat incorrectly because the claimant continued to work until she went off sick in April 2019 and therefore, she must have been able to work with the new software, and therefore either she did not require training, which is unlikely, or she had training through the train the trainer system which we have described in our findings of fact above. We consider that what the claimant meant by this allegation was that she was not able to attend one of the formal training sessions put on by the systems team.

244. One of the difficulties with this allegation, and it arises a number of times in this case, is that where the claimant does not name a person as committing the discrimination (or harassment or victimisation), we have to fall back on the implicit assertion that it was in a general sense 'the respondent' who discriminated against the claimant.

245. In this case the training which the claimant refers to was not organised by the procurement department and so none of those that the claimant accuses of discrimination by name, most notably Karen Jones, could possibly have discriminated against her because she/they did not organise this training and therefore did not organise it in a way which meant that the claimant could not

access it, and she/they did not have the power to change the dates the training was being provided to enable the claimant to attend.

246. Given that the claimant has not alleged that the systems team nor any named person in the respondent's systems team who did organise the training discriminated against her because of race, it is difficult to see how she concludes that the training was organised in such a way as to discriminate against her because of her race. Direct discrimination requires the discriminator to have had a discriminatory motive (consciously or subconsciously) for that discrimination and in our judgment that is difficult to make out in a case where the systems team simply put on a series of short training sessions for everyone affected by the change to the Agresso software, and this will very likely have included staff from different racial backgrounds, and even if it did not, it remains the case that the claimant cannot show that whoever organised the training did so with a discriminatory motive.

247. Furthermore, in respect of this claim the claimant also cannot show less favourable treatment than one of her named comparators because as the evidence shows Karen Jones likewise could not access the training.

248. For those reasons this claim fails.

A5

249. This claim is that in relation to the claim at A4 above, the claimant complained to her line manager, Sue Baxter who failed to take any action and/or failed to ensure that training was provided for the claimant.

250. The evidence is clear that Sue Baxter was not in a position to ensure the training was provided for the claimant other than through the train the trainer provision, because the training was put on by the systems team for a limited period for affected staff to access as and when they could. Given that fact it is difficult to see what other action Sue Baxter was expected to take. We find that Sue Baxter did not fail to ensure that training was provided for the claimant. The provision for those who could not attend a formal training session was through train the trainer and that was always available to the claimant. In our judgement the claimant has not done sufficient to shift the burden of proof to the respondent, but even if she has, we accept the respondent's explanation which is entirely unrelated to the claimant's race.

251. For those reasons this claim fails.

A6

252. This claim relates to an allegation that Karen Jones humiliated the claimant in May 2018.

253. The claimant's witness statement explains that she encountered an error in the upgraded software, Agresso. The claimant says that she approached Karen Jones in her office to explain the problem and that

> *"rather than deal with the issue discreetly, Miss Jones came out of her office and stood in the open plan space to point at colleagues sitting some distance and then told me in front of colleagues to ask 'Danielle or Chloe'"*

254. The claimant goes on to say in her witness statement and that she had been

> *"humiliated and spoken to in a manner which implied I was not competent in front of colleagues"*

255. In the tribunal's judgement it is difficult to reconcile what the claimant said happened with her interpretation of what that meant. On any sensible reading of the claimant's witness statement all that happened was the claimant had encountered an issue with the software, had approached Karen Jones who, it must be remembered, had also not had the scheduled training on the new system, and quite properly, it seems to the tribunal, Karen Jones referred the claimant to a couple of colleagues who may have been able to assist her. This is not remotely close to being humiliating and given that all the claimant says is that Karen Jones said to ask Danielle or Chloe, it is impossible to understand why this amounted to being spoken to in a manner which implied that the claimant was not competent. That was not a reasonable interpretation of what had occurred.

256. We can find no detriment in this allegation. Even if we are wrong about that and there was a detriment, there is no suggestion that this incident was in any way related to the claimant's race or that Karen Jones was motivated by the claimant's race whether consciously or subconsciously. We do not think that the claimant has provided sufficient evidence to shift the burden of proof.

257. If the burden of proof had shifted to the respondent, then the explanation for the behaviour of Karen Jones is simply that she could not assist the claimant and she pointed the claimant to those who could assist her.

258. For all of those reasons this claim fails.

A7

259. We have treated this as a separate allegation although it is a little unclear from the list of issues whether that was the intention because this looks like a comment on the previous claim. Nevertheless, we can deal with the matter quite shortly. We find that the claimant was not placed in a humiliating situation merely having been pointed towards colleagues who could assist her in respect of the query she raised with Karen Jones. In relation to having been *"denied the tools to do her job"* this is presumably a reference to the training on the new software which we have dealt with above and which we do not need to repeat here.

260. Given the findings we have made at A6 above we reach the same conclusion, there was no detriment and even if there was, there is no evidence that it was in anyway related to the claimant's race and she has not shifted the

burden of proof to the respondent. But even if she had shifted the burden of proof, given the content of the allegation we accept the explanation by the respondent that Karen Jones could not assist the claimant and it was appropriate for her to refer the claimant to those in the team who could help her and this was wholly unrelated to the claimant's race.

A8

261. This claim is that on 2 July 2018 the claimant was excluded from a departmental photograph and that no efforts were made to enable her to be included.

262. We have set out the essential background to this in the findings of fact above. Essentially there was a bake sale to raise funds on 70th anniversary of the NHS. A person from the respondent's communications department was walking around the event taking photographs.

263. in relation to this claim there is something of a difference between the evidence in the claimant's witness statement and that which she gave during the hearing. In her witness statement at paragraph 24 the claimant puts the matter as follows

> *"… it was decided that there would be a departmental photographed taken to celebrate the participants efforts"*

264. During cross examination when the claimant was asked about this matter, she agreed that the communications team had taken the photographs and it follows therefore that the procurement team did not as implied in the witness statement 'decide' that there would be a 'departmental photograph'. The fact is that there was no decision to have a departmental photograph. The claimant also said in cross examination that she was in fact available and was merely "round the corner" from where the photograph was taken. This is not quite the same as her witness statement which says that she was in fact *"unavailable".*

265. The respondent also pointed out that the photograph which appears at page 197 of the bundle includes only 11 members of the team which at the time in question numbered some 25 and therefore most members of the team were not included in the photograph. If the claimant's allegation was accepted the logical conclusion would be that 14 people were excluded from the photograph but only one of them, the claimant, was excluded by reason of her race and there is no evidential basis for reaching such a conclusion.

266. Had the claimant been regularly or even previously excluded from departmental photographs there might have been evidence from which we could conclude that this was in some way deliberate but there are other examples of photographs in the bundle in which the claimant is clearly included, and these appear at pages 198 and 199.

267. The tribunal is not convinced that not appearing in a photograph amounts to a detriment particularly where the circumstances are those which pertained in this case. But even if we are wrong about that the claimant was in

no different position to other members of the team, not of her race, who were likewise not in or excluded from this photograph which was taken in the workplace during working hours. We conclude that the claimant has not done sufficient to shift the burden of proof to the respondent but even if she has the respondent's explanation as we have set out above is wholly unrelated to the claimant's race.

268. For those reasons this claim fails.

A9

269. This claim is based on an allegation that Karen Jones failed to deal with an allegation that a colleague of the claimant, Sue Lean, spoke to the claimant in a way that the claimant did not like.

270. The claimant deals with this at paragraph 28 in her witness statement. It would appear that the claimant had provided Ms Lean with some information which Ms Lean did not think was sufficiently clear and that she, Ms Lean, said loudly *"can you make this information clearer in future as I am not a mind reader".*

271. The claimant does not say that Karen Jones heard this exchange. What she says is

> *"later I saw Ms Lean in conversation with Karen Jones and believe that Ms Lean was discussing the incident with the manager. Karen Jones took no action and made no effort to engage me to hear my account…"*

272. For her part, Karen Jones says that she was unaware of this incident and when the claimant was being cross examined by Mr Gibson and he put to her that she did not know what Ms Lean and Karen Jones had been discussing, the claimant said

> *"I don't know what Sue Lean said to Karen Jones, there is not a lot I can say about Karen Jones saying she knew nothing about it"*

273. We find that there is insufficient evidence to conclude that Karen Jones knew anything about this incident and that there was therefore no failure on her part to do anything about it and for that reason alone this claim fails.

274. Even if Karen Jones did know what had taken place, at no point did the claimant ask her to take any action or to deal with any aspect of the matter and in fact the claimant says she herself spoke to Ms Lean and said she told her that *"I didn't appreciate being spoken to in that manner"* so why the claimant would have expected Karen Jones to deal with it when the claimant herself had already dealt with it and in circumstances where the claimant did not raise the matter with Karen Jones is entirely unclear.

275. There is insufficient for us to conclude that the burden of proof has shifted to the respondent but even if it has, the respondent explanation, that

Karen Jones knew nothing about this matter is accepted and therefore this claim fails on this basis as well.

A11

276. This is the claim that when five new PCs were allocated to the procurement department the claimant was not allocated one and was required to continue using her old machine.

277. In truth, this allegation is perplexing. The claimant does not allege that the other contracts buyers received new PCs but the claimant did not. What the claimant says in her witness statement is "*I believe sufficient PCs had been ordered so that I too could be allocated a new machine"*. The claimant goes on to say :

> *"I have noted the explanation offered by Karen Jones that the machines were for staff doing day to day buying and that I did not fit the criteria to receive a new PC. I invite the tribunal to reject this assertion. Firstly, I was a buyer and having taken on Daniel's workload also I doing even more buying. It is simply not tenable to assert that I didn't meet the criteria to be allocated a machine given the work I did"* (sic)

278. We accept the evidence that the new PCs were for the day-to-day buyers not the contracts buyers even though it is accepted by the respondent and therefore by the tribunal that the contracts buyers were doing some day-to-day buying. That latter fact was dealt with by the respondent allocating only four of the five new PCs to the day-to-day buyers and leaving the fifth machine on the desk next to the claimant so that the contracts buyers doing day-to-day buying had a spare PC for that purpose. The claimant accepted that there was a spare PC. Therefore, the respondent's explanation makes perfect sense - four new PCs were allocated to day-to-day buyers because they needed new machines, and insofar as other people doing day-to-day buying needed to access a new machine a spare machine was available.

279. The claimant suffered no detriment and no less favourable treatment than other contracts buyers who were not of her race.

A12

280. This is the claim that on 24 April 2019 the claimant complained to Sue Baxter about being bullied and that Sue Baxter did nothing about the complaint.

281. It is again useful to look at what the claimant says in her witness statement which often varied from the detail given in the specific allegations in the list of issues.

282. At paragraph 34 of the claimant's witness statement, she describes an exchange with Claire Neville who, the claimant says, shouted that she did not have time to help the claimant. The claimant does not allege that this amounted to race discrimination. What she says was that she felt humiliated by this, she

snapped, emptied the contents of her desk onto the floor and walked out in tears. She then says

> *"Sue Baxter followed I was crying and she sat beside me. I said I don't understand why I have been treated like this just because I am trying to better myself. She then responded that perhaps she should have done more to help. It was clear that Sue was aware of the bullying treatment of me"*

283. The reference to the claimant trying to better herself refers to her belief that she was being treated differently by her colleagues since she started her university course. The claimant's statement goes on to talk about the fact that she rang Sue Baxter the next day to tell her she could not come to work, and that is the sum total of the evidence she gave in relation to this claim.

284. The claimant's evidence in chief was not that she complained to Sue Baxter about the bullying way she was being treated nor that she expected Sue Baxter to do anything about it. The tribunal notes of course that the respondent has a detailed grievance procedure which the claimant could have instigated at any point prior to this should she have felt that she needed to have the behaviour of others towards her dealt with by the respondent. She could also have expressly asked for assistance from her managers or, for example, from human resources, but she did not.

285. In cross examination the claimant changed her account somewhat and said that she complained to Sue Baxter about being bulleted and told her she felt victimised, and she said that Sue Baxter said she would speak to the staff.

286. Sue Baxter's account is it paragraph 37 in her witness statement. She agrees that she found the claimant crying in the toilet, that they talked and discuss what happened with Claire Neville and that the claimant had said that she could not "take it anymore" and that she had "too much work to do" and thus as far as Ms Baxter was concerned this was about stress related to the amount of work the claimant had to do and there was no mention of bullying, victimisation or anything else. The respondent's evidence in general is that Claire Neville could be quiet, as they put it, 'snappy' when she herself was under pressure as everybody was at the time given the amount of work the team had to do. The claimant agreed that Claire Neville was snappy with everyone except her managers.

287. In our judgement there was no failure on the part of Sue Baxter to deal with any specific complaint by the claimant or any specific or even implicit request by her to deal with her problems, but even if there was there is no evidence to suggest or from which we could infer that Sue Baxter was motivated consciously or subconsciously by the claimant's race and for those reasons this claim fails.

288. For the sake of clarity, we note that claim numbered A10 is noted as deleted on the list of issues, there is no A13, A14 is a list of comparators and therefore the next claim is at A15.

289. We pause to note that allegations A15 to A30 are all under the general heading “failure to conduct any or any adequate investigation into the claimant’s grievance” and we have examined these allegations in that context.

A15

290. This is the claim that undue pressure was placed on the claimant to meet the grievance investigator despite him being aware that the claimant was suffering with depression and anxiety.

291. The grievance process is well documented in the bundle. The claimant raised a grievance by a letter of 15 May 2019 [202] which was then discussed at a meeting with Mr Riley on 22 May 2019 [205]. There was an exchange of emails between Mr Riley and the claimant on 7 June 2019 in which the claimant agreed that she wanted the matter dealt with formally. Mr Riley appointed an investigating officer, Mr Neild, on 1 July 2019 [221] and on 9 July 2019 he wrote to the claimant asking her to meet with him so that he could better understand her grievance [226].

292. As to the question of undue pressure, in his first contact with the claimant, Mr Neild confirms that he was aware that the claimant was off work and therefore instead of him imposing a date on her to meet with him, he asked that the claimant make contact with him so that a suitable time to meet could be arranged.

293. In an e-mail to Mr Riley of 25 June 2019 the claimant acknowledged the update that Mr Riley had given her about appointing an investigator and she asked, “*do you have any idea how long the process is likely to take?”.* Under cross examination the claimant accepted that this meant that she did not want the investigation to drag on and in that context Mr Riley, in line with the respondent’s grievance policy, asked Mr Neild to complete his investigation by 9 August 2019.

294. Mr Neil did not hear from the claimant and therefore he provisionally booked a meeting for 18 July 2019. He advised the claimant of this.

295. The claimant responded on 14 July 2019 saying

> *“I, unfortunately, am unable to make the meeting provisionally booked by you on the 18th of July. This is because it does not give me enough time to arrange for a trade union representative to attend the meeting with me."*
>
> [232]

296. The claimant does not say that she was too ill to attend the meeting and she does not refer to depression or stress.

297. Perhaps unsurprisingly on 17 July 2019 [232] Mr Neild chased the claimant asking whether she had a date for their meeting. The claimant responded on the same day again stating

> *"unfortunately no. I am still waiting for a unison to get back to me which they said would be in the next few days"* (sic)
>
> [231]

298. Again, the claimant did not say that she could not meet with Mr Neild because of any stress or depression.

299. Mr Neild wrote to the claimant again on 23 July 2019 in which he emphasised the need for a meeting but also said that if the claimant could not secure union representation she could be accompanied in different ways or alternatively she could send in a statement, or he could rely on her initial complaint letter [231].

300. It was only at this stage that the claimant said that she was unable to attend any "work related meeting" until she was signed off as fit [238]. She said in her e-mail of 24 July 2019

> *"we all want a speedy resolution to this matter. However, pushing for a meeting whilst I am off sick is very unhelpful and in fact makes things worse. Please leave all requests for a meeting until I am returned to work"* (sic)

301. This was the first time the claimant had said she would not meet or indeed attend to any matter related to work whilst she was off sick. Mr Neild's response was to send the claimant a list of written questions as an alternative to meeting with her.

302. Given those facts we cannot conclude that there was any undue pressure on the claimant to meet with Mr Neild. Mr Neild pressed the claimant for a meeting when he understood from the claimant that the only bar to a meeting was that she was waiting for union representation. At the point the claimant said she was not going to deal with the matter until she was fit to be back at work, he backed off and dealt with the matter through written questions. This seems like an entirely reasonable and proportionate approach in all the circumstances and certainly does not amount to pressure let alone undue pressure.

303. Furthermore, even if Mr Neild was pressuring for the claimant to meet with him, it had nothing to do with race, and indeed reading the totality of her evidence the claimant nowhere suggests that it did have anything to do with race.

304. We do not consider that there was any detriment suffered by the claimant in being asked to attend a meeting to deal with the grievance she had raised. As soon as the potential for a detriment was raised because the claimant said that she was unable to attend the meeting because she was signed off sick, the respondent stopped asking her to attend a meeting.

305. In relation to less favourable treatment, the claimant relies on a hypothetical comparator and the tribunal finds that a hypothetical comparator would have been treated in exactly the same way as the claimant was. Mr Neild

was following the respondent's grievance procedure and it is the experience of the members of the employment tribunal that a sensible first step in dealing with a grievance, if it can be achieved, is to meet with the complainant to better understand the complaints being made. Mr Neild was unable to do that and so he found an alternative route. We find that there was no less favourable treatment of the claimant and even if there was, as we have indicated above, there is absolutely no evidence to suggest or from which we could infer that this had anything to do with race.

306. We find that the claimant did not shift the burden of proof to the respondent in this matter but even if she had we find that the reason for the respondent's behaviour was the requirements of the grievance procedure and good practice, and not race and for those reasons this claim fails.

A16

307. This allegation is put as follows

> *"Failed to ask about her mental well being, state of health or her ability to participate in the process".*

308. At the point the investigation commenced the respondent knew that the claimant was off work with work related stress. That never changed. The claimant went off with and remained off with work related stress and it is unclear why the claimant says the respondent failed to ask her about this given that they knew what the problem was.

309. In relation to being asked about her ability to participate in the investigation, we stress again that at no point did the claimant suggest she could not participate in the process because of her health until 24 July 2019 at which point the respondent stopped asking her to attend a meeting. The claimant at no point said that she could not answer written questions and the respondent had every reason to presume that she could because she had corresponded freely, regularly and in detail with the respondent.

310. More significantly of course is how the claimant says this failure, if indeed there was such a failure, and we did not find that there was, was because of the claimant's race. There is no evidence to suggest either expressly or implicitly that any failure on the part of the respondent to ask how the claimant was feeling or discuss whether she was well enough to participate in the process was motivated subconsciously or otherwise by race.

311. The claimant suffered no detriment by not being asked about her state of health or her ability to participate in the process. But even if she did there is no suggestion that this was less favourable treatment because of race.

312. For those reasons this claim fails.

A17

313. This allegation appears to the tribunal to be an allegation of a failure to make reasonable adjustments given that it says that the respondent failed to

ask what if any reasonable adjustments the claimant may need to enable her to participate in the investigation.

314. If the respondent did fail to make reasonable adjustments, there was again no evidence of, and nothing from which we could infer that any such failure was because of the claimant's race.

315. However, in any event, the claimant is simply wrong about this. It is perfectly clear that adjustments were made.

316. First, at the point the respondent was made aware that the claimant would or could not attend a meeting with Mr Neild, the respondent used written questions rather than requiring the claimant to attend a meeting which would have been their normal procedure.

317. Second, Mr Neild produced an interim report which he would not normally have done. He did so in the hope that the claimant would add further detail or perhaps provide further evidence so that he could then finalise the report. The claimant never did of course and so the final report reached the same conclusions as those set out in the interim report.

318. Third, in relation to adjusting timescales, there was no need for the respondent to make any adjustment to this because the claimant told the respondent that she would not participate unless and until she returned to work and it was reasonable for the respondent, in those circumstances, to continue to meet the timescale in the grievance procedure because the only alternative was to do nothing until the claimant returned to work at some indeterminate point in the future and for reasons which are discussed in relation to allegation A19, that was not reasonable.

319. This claim fails because there were reasonable adjustments, there was no detriment and therefore there was no less favourable treatment. Even if we are wrong about all of that, and we do not consider that we are, there was again no evidence to suggest or from which we could infer that anything done or not done in this context by the respondent was because of race.

320. For all those reasons this claim fails.

A18

321. In this claim the claimant says, without referring to any particular matter, that the language used by the investigator in e-mail correspondence sent to the claimant was on several occasions insensitive and emphasised his concerns that the claimant should agree to meet him even if she was unable to secure suitable support from her union. The claimant also complains that Mr Neild expressed that he was in danger of exceeding timescales in the grievance policy.

322. In the claimant’s witness statement, at paragraph 49, she refers to being rushed into engaging with the grievance process rather than prioritising her health and recovery. To a large extent we have dealt with this in the allegations above and we simply repeat that the grievance process has a timescale within

which grievances should be responded to and when the claimant said she was too unwell to attend a meeting she was no longer required to attend a meeting so it is difficult to see how she asserts that she was being rushed into doing anything.

323. In paragraph 50 of her witness statement the claimant says she was shocked by the letter from Mr Neild which appears at page 231 of the bundle. That is in fact an e-mail from Mr Neild dated 23 July 2019 and it says is that if the claimant was unable to secure union representation within a reasonable timescale then there are other options for her including being accompanied by a work colleague, attending on her own, questions being sent to her and the claimant providing a statement in response as well as answering the questions, or the investigation continuing based on the claimant's initial complaint letter. The claimant does not seem to complain about this aspect of the e-mail. What she says is

> "*the welfare of those I had complained against was plainly paramount to Mr Nield"*

324. She does not explain how she comes to that conclusion, but we consider that the only words Mr Neild wrote which might have led the claimant to conclude this were

> *"this cannot drag on for weeks as we are likely to be faced with grievances for undue stress caused by the process"*

325. The tribunal understands that the claimant took this to refer to those she had complained about being stressed by the fact that they were accused of racism, amongst other things, and that if the allegations were not dealt with timeously, those accused might complain.

326. Whether we look at this e-mail in isolation or in the context of the entire correspondence about the investigation process, we do not see how the claimant could possibly reach the conclusion this was Mr Neild prioritising those the claimant was accusing. At this stage all the respondent had was a series of accusations with no supporting evidence and an accuser, the claimant, who refused or was unable to participate in the process further than raising the grievance in the first place. The respondent's position was that they have a duty to all of their employees and it was not appropriate to leave serious allegations hanging over the heads of a number of staff for an indeterminate period, and therefore unsurprisingly they wished to conclude the grievance within a reasonable time.

327. It is not for the tribunal to trawl through the e-mail correspondence to try to work out what the claimant thinks might have been insensitive and the only reason we are able to refer to the correspondence above is because the claimant refers to that in her evidence, but she does not refer to anything else which she considered insensitive or emphasising the concerns of others rather than the claimant. On any objective reading of the evidence the respondent was equally concerned about all of its employees at this point and given that all

they had was a series of unsupported allegations, that seems to the tribunal to be a reasonable and proportionate approach to the matter.

328. We do not consider that the claimant has shown that she has suffered a detriment, that she had suffered less favourable treatment and certainly not because of race. The claimant's complaint seems to be that she was treated in the same way as those she complains about but for the reasons we have set out above, that seems to the tribunal to have been appropriate at least at this point in the process.

329. In the tribunal's judgement the claimant has not shifted the burden of proof but even if she has, the respondent's explanation which we have explored above is entirely unrelated to race.

330. For these reasons this claim fails.

A19

331. We have dealt with the substance of this claim in our discussion of the allegation at A18. For the avoidance of doubt, we find that nothing in the e-mail of 23 July 2019 comes close to amounting to less favourable treatment let alone less favourable treatment because of race and for those reasons this claim fails.

A20

332. The substance of this claim is identical to that in claim A19, save for the final words which we do not consider alters the outcome and we repeat here what we have said above about that.

A21

333. This claim is that in his e-mail of 25 July 2019 Mr Neild ignored the claimant's request for reasonable adjustments; that is to defer his requests for a meeting with the claimant until she had returned to work.

334. As we said above, there was good reason why the respondent said it could not wait until the claimant returned to work to deal with the grievance given that there was no foreseeable return to work date. More significantly however is the fact that this is essentially an allegation of failure to make reasonable adjustments. There was again not a scintilla of evidence to suggest or from which we could infer that even if Mr Neild did ignore the claimant's request for reasonable adjustment as she suggests, that was consciously or subconsciously motivated by race.

335. There is no evidence of less favourable treatment because of race

336. There is insufficient to shift the burden of proof in this claim and even if the burden of proof had shifted to the respondent it has explained why the conclusion of the grievance investigation could not simply be put on hold awaiting the claimant's return to work at some indeterminate point in time.

337. For those reasons this claim fails

A22 and A23

338. We consider that there is a typographical error in the list of issues, and it was intended that these claims are in fact one claim. This claim is that the written questions sent by Mr Neild to the claimant were, in her words, offensive, patronising, insensitive and/or irrelevant.

339. What the claimant does not explain is even if all of those things are true, why that amounts to direct race discrimination.

340. In the allegation the claimant refers to simply the written questions but in her witness statement she refers to specific questions stating that questions 4, 6, 7, 8, 9, 10, 12, 13 and 15 were "*largely irrelevant and did not engage with my complaints".* She goes on to say that questions 2, 11 and 14 had been covered in her original letter.

341. The questions which Mr Neild sent to the claimant appear at pages 242, 243 and 244 of the bundle. We did not have the benefit of evidence from Mr Neild although an examination of the questions asked do not lead to the conclusion that they are inherently offensive, patronising or insensitive even if subjectively the claimant found them so. It may be that the tribunal would not have asked these questions but the question we have to ask is whether they amounted to less favourable treatment of the claimant because of race.

342. The questions that the claimant refers to as irrelevant in her witness statement are, in our judgment, questions which are being asked so that Mr Neild could have a greater understanding of the context and circumstances in which her specific complaints had been made. For example, he asks about departmental meetings, he asks about specific incidents, he asks about qualifications and so forth. The criticism that questions had been covered in the claimant's original letter seems to miss the point. Mr Neild refers to the claimant's original letter and agrees that the claimant refers to certain matters but he asks her to expand on what she set out in her original complaint and we see nothing wrong in that.

343. We are again in the position of stating that the claimant gave no evidence or explanation or drew our attention to any evidence from which we could infer that these questions would not have been asked of anybody else making similar allegations but who was of a different race to the claimant, and there is simply no basis on which to find that these questions amounted to less favourable treatment because of race.

344. In our judgement the claimant has not suffered less favourable treatment by the asking of the questions by Mr Neild. Further, even if she had, the claimant has not done sufficient to shift the burden of proof to the respondent there being nothing to suggest or from which we could infer that race had anything to do with the questions to which the claimant takes exception. For those reasons this claim fails.

345. As to the part of the claim which alleges that the questions failed to address key complaints in grievance letter, we would go so far as to say that

this allegation borders on the bizarre. First the claimant complains about the questions that were asked and in the same claim she complains about questions that were not asked. Again, we do not have a witness statement from Mr Neild but we are prepared to risk the presumption that he had sufficient information in the claimant's original letter to deal with the matters she refers to in this part of the claim being the Agresso training, the photograph and the allocation of the PCs none of which are particularly complex complaints.

346. But even if this was a legitimate complaint about the failure to ask appropriate questions, we say yet again that there is no evidence to suggest or from which we could infer that the reason for that, even if it amounted to less favourable treatment, was because of race.

347. In our judgement the claimant has not done sufficient to shift the burden of proof to the respondent and for that reason this claim fails.

A24

348. This allegation is that the focus of the respondent was to progress the grievance investigation to safeguard the welfare of those the claimant had referred to in her complaints. This is in effect an identical complaint to that in A20 and also touches upon matters raised in allegations A18 and A19 and we have dealt with that in detail above.

349. On any reading of the emails from Mr Neild his focus was on meeting the timescale set by Mr Riley for completion of his investigation. He refers to those being accused but he also deals in detail with the claimant's position, her need for union representation in her emails at the start of the process and then her comment that she would not meet with him unless and until she came back to work.

350. There is no focus on those being accused at the expense of the claimant, indeed there is no focus on them at all, there was simply a recognition by Mr Neild that those being accused would be suffering from that fact and the investigation should be concluded in a reasonable time to both give the claimant a response to her grievance and to let the accused know what the outcome was and to move on.

351. The claimant has not shown that there was any less favourable treatment in this claim but even if she had she again has given no evidence to suggest or from which we could infer that any such less favourable treatment was because of race even accepting that those she accused were not of her race.

352. For those reasons this claim fails.

A25

353. We set this claim out in full as follows

> *"The respondent ignored the claimant written requests for the respondent to make adjustments to its approach highlighting her ill health"* (sic)

354. This reads like an allegation of a failure to make reasonable adjustments. The claimant therefore appears to be saying that the respondent failed make reasonable adjustments and that amounts to less favourable treatment because of race.

355. We have set out extensively above that the respondent did not ignore the claimant's requests to make adjustments in its approach to the grievance investigation and we have set out what adjustments were in fact made by Mr Neild, even if he did not make all of the adjustments that the claimant would have wanted - although in truth the claimant really only wanted one adjustment which was that she not be required to take part in the process unless and until she returned to work which for the reasons we have set out above the respondent found unacceptable, and which were entirely unrelated to race.

356. In our judgement the claimant has failed to show that there was less favourable treatment and she has failed to shift the burden of proof to the respondent. Even if we are wrong about that and she has shifted the burden of proof, we are satisfied that the respondent made such adjustments as were reasonable in all the circumstances and certainly did not fail to make any adjustments because of the claimant's race and for those reasons this claim fails.

A26

357. This claim is that the respondent failed to take account of advice in the occupational health reports it received and in particular that the claimant was not fit to be at work because of her reduced emotional resilience.

358. This also appears to the tribunal to be a claim that the respondent failed to make reasonable adjustments because of race.

359. In truth it is extremely difficult to understand what the claimant means by "*failed to take account of*" in the context of our findings of fact in this case. What is it that the respondent should have done or failed to do?

360. It seems to the tribunal that the respondent expressly took account of the fact the claimant was suffering from stress. The investigation methodology was changed by Mr Neild expressly because the claimant said she would not take part in a meeting unless and until she returned to work from her sickness absence. What was that if it was not taking account of the fact that the claim was showing signs of stress whether set out in the occupational health report or advised by the claimant directly? Either way the claimant suffered no less favourable treatment for that reason. The investigation process was adjusted albeit that it was not indefinitely delayed as the claimant wanted.

361. The tribunal does not understand the second part of this allegation which simply states as a fact that the occupational health report in July 2019 stated

that the claimant would not be fit to be at work for between four and six weeks. This seems to highlight if nothing else a misunderstanding on the part of the claimant which is that having a fit note meant that she was not required to take part in any procedure being operated by the respondent, and indeed this was her expressed position both in writing during the course of the investigation and in her evidence to the tribunal.

362. Her view is not one shared by this tribunal. It is possible for a fit note to say that an employee is not fit, not only to work but also not fit to engage at all with the employer. That is not what the fit notes say in this case and it is not what the occupational health reports say. The claimant mistook dealing with her grievance, and indeed as we will see later, engaging with the absence management process as "work" and she took the view that given that she was signed off from work she was also not obliged to participate in these processes. This was in our view a misconception on her part. We think that this is what the claimant is referring to in this allegation when she refers to failing to take account of her sickness absence and the fact that she was suffering from work related stress.

363. We refer in particular to the occupational health report of 25 July 2019. The respondent had asked a specific question about the claimant's ability to undertake her usual work, the response to which was that this would be possible in the future with appropriate support. As we have said, nowhere in this report does it say that the claimant was too unwell to engage with the respondent notwithstanding that she was too unwell to work.

364. In short therefore, the respondent did take account of occupational health advice and for that reason alone the claim fails. The claimant cannot shift the burden of proof to the respondent for this reason alone but also because there is no evidence from which we could conclude or infer but any failure if there was such was because of race and again for those reasons claim fails in any event.

A27, A28 and A29

365. We intend to deal with these three allegations together because they all relate to what the claimant refers to as Mr Riley's "*decision*" on the grievance.

366. The reference in the claim is to the e-mail from Mr Riley of 5 August 2019 which appears from page 248 of the bundle.

367. This e-mail states clearly as follows

> *"Geoff has now presented to me his findings following the investigation of the allegations you made. As you were unable to provide further evidence during the process, I requested that Geoff provide an interim report based on the written letter provided. I understand this has been a difficult process for all involved and I felt this approach would ensure that everyone was treated fairly and reasonably"*

368. Thus, it was clear to the claimant that this was not Mr Riley's final decision, merely an interim report with interim conclusions. Mr Riley then summarises the findings to date and ends his e-mail as follows

> *"I will now explore with HR what the next steps can be to progress towards a final report with a view to them looking at the support you need to return to work. In the meantime, please don't hesitate to contact me should you wish to discuss further"*

369. In respect of the allegations there are 3 findings of either no case to answer, insufficient evidence at this stage to support the allegation or allegation unsupported.

370. The claimant's claim is that these interim conclusions amounted to direct race discrimination. The claimant does not say why or how she reaches this conclusion. In her witness statement the claimant barely mentions this. The only reference to the interim report, which she incorrectly says was 8 August, is in paragraph 63 in which the claimant says

> *"the investigation went ahead without my input, and on 8th August the outcome was that there was no case to answer. I returned to my doctor I felt that I was encompassed in a dark tunnel with a great weight pressed down on me I felt lifeless and joyous, I could not focus on anything. I was prescribed sertraline at the beginning of August 2109 for anxiety and depression"*

371. We once again find ourselves in the position of stating the obvious, that there is no evidence from the claimant or indeed otherwise from which we could conclude or from which we could infer that Mr Riley's conclusions, based as they were on Mr Neild's investigation at this interim stage amounted to less favourable treatment because of race. What these interim conclusions amounted to was the best the respondent could do given the information it had at the time and we reiterate that as part of the context of these claims that despite the claimant using words such as "racist slur" and "silent racism" she gave no evidence and pointed to no documents, conversations or circumstances in which any language or behaviour was used which could be said to be racist.

372. In our judgement the claimant did not suffer less favourable treatment because of race when Mr Riley reported to her the interim findings on 5 August 2019. Even if she had and therefore even if she had shifted the burden of proof to the respondent, its explanation, that Mr Riley acted on Mr Neild's investigation which is not tainted by race discrimination is an explanation not, in and of itself, tainted by race discrimination.

373. For those reasons this claim fails.

A30

374. The final claim under this sub-heading is that it was race discrimination for the respondent to write to the accused with the interim findings.

375. The claimant gave no evidence about this allegation at all other than to say that the colleagues against whom the claimant had complained were notified of the interim results.

376. What Mr Riley did do was to write to each of the accused persons providing the interim result but only in relation to the matters they were accused of so that none of the accused saw the entire interim report. The e-mails sent out by Mr Riley start from page 603 of the bundle. It is noted that Mr Riley included the paragraph about the fact that the report was interim, and the final report would be produced following the receipt of further submissions of evidence.

377. In the tribunal's experience it is common and wholly appropriate for both the accused and the complainant to know the outcome of a grievance. If the accused were not told the outcome they would be forever unsure about whether the grievance against them was upheld or not and that is a wholly untenable position for an employee to be in and we do not understand the basis upon which the claimant complains about Mr Riley's actions i this regard. Whatever that basis, it does not amount to a detriment to the claimant to tell someone she has accused of, for example, ostracising, excluding, shunning and demoralising her, that this accusation has not been upheld subject to further evidence being submitted.

378. In our judgement the claimant did not suffer less favourable treatment because of race when Mr Riley reported, to those she had accused in her grievance, the interim findings related to them on 5 August 2019. Even if she had and therefore even if she had shifted the burden of proof to the respondent, its explanation, that, to put it shortly, they had a right to know, is an explanation not tainted by race discrimination.

379. For those reasons this claim fails and is dismissed.

380. The remaining claims of direct race discrimination all fall under the heading of sickness absence dismissal.

A31

381. We repeat here something we referred to in respect of one or two of the claims above which is that this claim reads like an allegation either of disability discrimination or a failure to make reasonable adjustments. We reiterate something we said at the beginning of this judgment which is that we specifically and deliberately asked Ms Brown whether all the allegations in section A were being pursued as race discrimination and she confirmed that they were.

382. The claimant says that it was a matter of race discrimination that the long-term absence review meetings on 12 August 2019 and 13 September 2019 were scheduled despite the respondent being advised that the claimant was unfit to return to work until 22 September 2019.

383. That does not appear to the tribunal to be drafted as an allegation of race discrimination but if the claimant is saying that this was done because of the claimant's race then we must analyse the matter in that context.

384. The best way to approach dealing with this allegation is perhaps to look at the letter from the claimant to Mr Riley of 9 September 2019 which appears at page 296 of the bundle. We will not quote all of it, but it is important to note the claimant says as follows

> *"I note the occupational health advice. However, as you acknowledge, my sick note records that I am currently unwell and unable to return to work until 22nd September. My health status will be reviewed by my GP before this date and I will advise you when I am to be fully signed off and able to attend work.*
>
> *Consequently, as advised in at least four previous communications, I am unable to attend to work matters, including a back to work review whilst on sick leave. It is not reasonable for a contract to request that a person comes into work whilst off sick, and particularly work induced stress and anxiety. Nor is it reasonable for you to continue to request this almost weekly in the last month or so. I have asked you to stop. To continue to request this is unreasonable and is harassment"*

385. The claimant's confusion can be seen in the language she uses. She refers variously to "return to work", "able to attend work" and "attend to work matters". This is indicative of a confusion which we have referred to above between working and dealing with matters which are related to work, but which do not amount to work. The circularity of the claimant's position on the long-term absence procedure was pointed out by Mr Riley when he said that there was a circularity in the claimant saying that she could not come to a meeting to discuss her long-term absence and the potential for dismissal for that reason, unless and until she was fit and back at work. That is for obvious reasons an absurd position to take. The claimant must surely have realised that once she was fit and back at work, she would no longer be absent with long-term sickness and therefore there would be no need for a long-term sickness absence process. It is always the case that such a process operates at a time when the employee is away from work on sick leave and that fact does not obviate the need for the employee to engage with the process save in circumstances where the medical advice is clear that the employee cannot engage, which is not the case here. But nevertheless, that was the view the claimant took in our view wholly incorrectly and wholly unreasonably because, to reiterate, there is no evidence in the bundle to suggest that she was unable to attend to this matter except what she herself says.

386. There is no evidence whatsoever that the respondent implements its long-term absence management process differently for other staff compared to the way that it implemented it in this case, including the requirement for the employee to attend to the procedure notwithstanding that they are not fit to work and in that case we find that there was no less favourable treatment of the claimant let alone no less favourable treatment because of race.

387. In our view the claimant did not do sufficient to shift the burden of proof to the respondent but even if she had done, we accept the respondent's explanation that this is what the procedure requires and absent medical evidence to suggest that the claimant could not participate in such a process, they acted reasonably in engaging with her in the way that they did. We stress that merely having a fit note does not amount of evidence that the claimant could not participate in the long-term absence management process.

388. For those reasons this claim fails.

A32

389. This appears to be a claim that it was race discrimination for the respondent to advise the claimant that she had a contractual obligation to attend the long-term absence management meetings.

390. It is unclear to the tribunal why the claimant that says this amounted to direct race discrimination. All that seems to have happened is that an employee who appeared to be insisting that she had no obligation to attend a meeting under, in this case the long-term absence management process, being advised by her employer that in fact she does have an obligation to attend. This appears to the tribunal to not only not amount to a detriment, there is also nothing to suggest or from which we could infer that this had anything to do with race and indeed there is no evidence from which we could conclude that any other employee in a similar position would not have been likewise advised of their contractual obligations.

391. If this allegation is driven by the claimant's belief that there was no such contractual obligation and that in some way the respondent was being dishonest then we would remind her that she has two implied obligations under her contract of employment with the respondent, the first of which is to co-operate with her employer and the second of which is to comply with the employer's lawful and reasonable instructions. It was not unlawful discrimination for the respondent to point this out.

392. The claimant did not suffer less favourable treatment because of race when being advised that she had a contractual obligation to attend the long-term absence management meetings.

393. For these reasons this claim fails.

A33

394. This allegation is again one of a failure to make reasonable adjustments and therefore we presume the claimant is alleging that the respondent failed to make reasonable adjustments because of race.

395. We can deal with this matter quite shortly because in our judgement the duty to make reasonable adjustments was never triggered because there never was a return to work on the horizon and the purpose of a reasonable adjustment is either to keep an employee in work if they are in danger of having

to leave work or if they are absent, at the point there is a reasonable likelihood that they will return.

396. We would also point out that the respondent accepted that the claimant was not going to return to her old role and at the point where they were told that was the case, they immediately began to put in place a process to redeploy the claimant, a process with which she did not engage. Given that the claimant was clear that she was not going to return to her old role, there was no obligation on the respondent to make reasonable adjustments in respect of that job, and, given that there is no obligation to make reasonable adjustments as it were theoretically, the respondent was not in a position to make reasonable adjustments unless and until a role had been identified into which the claimant was going to be redeployed, and, as we have indicated, that never happened because the claimant failed to engage with the redeployment process, hence our conclusion that there never was an obligation on the respondent to make reasonable adjustments in this case.

397. Given that, there was no less favourable treatment, there was no race discrimination, and this claim fails for those reasons.

A34 and A35

398. We deal with these two claims together because the first is that it was race discrimination to convene the absence management meeting on 28 February 2020 and that the second is that the decision of that meeting, to dismiss the claimant amounted to race discrimination.

399. By the time this meeting was convened the claimant had been off work for 10 months and there was no reasonably foreseeable date for a return even though she had a fit note which ran out on 8 March 2020. The reality was that the claimant had a series of fit notes which were always replaced by further fit notes and the circumstances in which those fit notes had been replaced by further fit notes all saying work related stress had not altered. The claimant had failed to engage in the grievance process, she had failed to engage in the long-term absence management process, and she did not engage in the redeployment process. Given those circumstances it was entirely understandable that the respondent followed its long-term absence management process.

400. It should be remembered that a final meeting under the process had been convened on 9 January 2020 which did not result in the claimant's dismissal because of the possibility of redeployment. The outcome of that meeting was a plan to meet with the claimant and her union representative within two weeks to discuss her return to work and the claimant was told that if there was no cooperation with the plan to return to work or if there was no return to work within a reasonable period of time then the absence panel would be reconvened to consider taking the matter forward including the possibility of terminating the claimant's employment.

401. The claimant did in fact attend a meeting on 22 January 2020 to discuss her return to work as agreed at the panel meeting on 9 January 2020. The

claimant was accompanied by her union representative. It was agreed that any redeployment would include a phased return to work and the return to work plan would be developed once a suitable role had been identified through the redeployment process. In the event the claimant did not engage with the redeployment process and specifically she did not return the redeployment registration form and she did not consider any of the band 3 and band 4 roles that were sent to her on a spreadsheet.

402. In those circumstances the tribunal understands why the respondent took the decision to dismiss her on 28 February 2020 at the reconvened panel meeting and it seems to the tribunal that there is no evidence that either the decision to convene the meeting or the decision of that meeting to terminate the claimant's employment was tainted by race discrimination. There is no direct evidence and there is no evidence from which we can infer race discrimination. The reconvening of the panel meeting and the decision to dismiss the claimant derive from 10 months absence and no foreseeable return to work within a reasonable time.

403. The tribunal does not consider that the claimant can show that she has been treated less favourably because of race and even if she had shown less faithful treatment and had shifted the burden of proof to the respondent, we are satisfied that the respondent's decision was untainted by race discrimination.

404. For those reasons these claims fail.

B Harassment related to race

405. We start this section of the judgement by noting that the claimant claims that she has been subjected to a hostile and degrading working environment. It is unclear whether the claimant is saying that the particular behaviours concerned had the purpose of creating that environment or merely had the effect of so doing and we have therefore had to deal with both of those possibilities. We do note however that there is no claim for harassment under s.26(1)((a)(i) or (b()(i) EqA which is to say that it is not alleged that any of the matters set out below violated the claimant's dignity.

B1

406. This is the same allegation as set out in A1 above. We have made detailed findings about this allegation above and we adopt them here.

407. In the tribunal's judgement although the claimant was allocated work which had been undertaken by somebody who at that point was in a higher band than the claimant, that fact was merely a legacy issue, because the work was being done when the individual concerned was a band 3 but had been retained through her various promotions.

408. Furthermore, the claimant gave no evidence as to why she considered the undertaking of this work by her and/or her rate of pay in respect of that work had the purpose or effect of creating a hostile and degrading environment.

409. Clearly it is the claimant's case that she subjectively considered that the environment was hostile and degrading. We do not consider that such a belief was reasonable. The claimant had worked with Ms Haynes from when she, Ms Haynes was a band 3 and the claimant had no evidence that the contracts work handed over to her by Ms Haynes when Ms Haynes was promoted to a band 7 role was not work Ms Haynes had always undertaken.

410. But more significantly, even if it did, because an employee not of the claimant's race was equally affected, we do not consider that the question of whether any such behaviour related to race is made out.

411. It is entirely clear from the respondent's evidence that some contracts work which had been undertaken by Jenny Haynes, following her various promotions from band 3 was dispersed amongst the claimant and her white colleague.

412. For all those reasons this claim fails.

B2

413. This is the allegation about the timesheets, and we repeat that the allegation that the claimant was required to record her hours on the timesheet once a month was changed to once a week is simply wrong. There was no change to the recording requirement, the claimant was always required to record her hours every day. Furthermore, the allegation is not about the change, but it is about the change without apparent explanation or justification but, as we have found, there was an explanation, and it was justified in the circumstances.

414. There was good reason for the requirement to report the claimant hours to Karen Jones on a weekly basis, and there is no evidence evidential basis for finding that a hostile and degrading environment was created.

415. In relation to this claim we note that the claimant never alleged that returning the time sheets on a monthly basis amounted to either race discrimination, harassment or indeed victimisation. It is difficult to understand therefore why she considers the change to weekly reporting to be something done to her which was related to race. the requirement was precisely the same save for the frequency of reporting. In our judgement, the reason for the requirement to both record the hours and submit the timesheet, whether weekly, monthly or otherwise are wholly unrelated to race and entirely connected to the proper administration of the claimant's working time given the flexibility afforded to her because of her university studies.

416. In short, whilst the requirement for weekly reporting may have been unwanted it did not have the purpose or effect of creating a hostile and degrading environment nor was the requirement related to race and for those reasons this claim fails.

B3

417. This is the same allegation as B2 and but refers to the lack of consultation being belittling and demeaning which are not words which appear in s.26 EqA. If it is intended to imply that as a result of the lack of consultation being belittling and demeaning a hostile and degrading environment was created, we find that it was not. The completion of the timesheet and the reporting to Karen Jones was a matter between them and Mr Riley and we do not see how in those circumstances a hostile and degrading environment could possibly have been created.

418. Furthermore, we repeat the findings set out above in relation to the proscribed purpose and that this matter was not related to race.

419. For those reasons this claim fails.

B4

420. This is the claim in relation to the Agresso training.

421. We encounter the same difficulty here as we encountered with this claim under the heading of direct discrimination which is that the claimant is claiming that what was done to her was done by her department and it is that department or at least the people in it who have been discriminating against her. But as we have set out above, no one in the procurement department was responsible for organising the Agresso training or the dates and times it was delivered so it is difficult to see how the claimant could alleged that her procurement team colleagues were in any sense responsible for the conduct about which she now complains.

422. In any event as we have said, others missed out on the training for the same reason as the claimant, that they were not available when the sessions were put on and this included Karen Jones who is not of the claimant's race.

423. In those circumstances whilst no doubt it would have been desirable for everyone to have accessed the training in its original form, other staff had to rely on the train the trainer system which was put in place in which we have described above.

424. In the circumstances even if the claimant subjectively believed that a hostile and degrading work environment was created by the fact that she was unable to access that training, it was not reasonable for the claimant to conclude that given all of the circumstances.

425. We find that the organisation of the training did not have the proscribed purpose or effect and we find that the organisation of the training on particular dates and at particular times was not related to race.

426. For those reasons this claim fails.

427. We pause to note that there is no claim numbered B5 in the list of issues.

B6

428. This claim relates to the previous allegation and states that Sue Baxter failed to ensure that the claimant was provided the training that she had missed. There was no such failure. Sue Baxter had nothing to do with the training and it was not in her gift to have it re-provided for anybody who missed it. The system in operation, which we say again was utilised by others including Karen Jones, was that if individuals could not attend what amounted to a one hour course on the dates and at the times they were scheduled, then they would be trained by those who had attended, so-called train the trainer training, to which the claimant did in fact have access.

429. There was no unwanted conduct in this claim. There was no hostile and degrading environment created (whether purposely or in effect) in these circumstances and in any event nothing which occurred in relation to the Agresso training related to race.

430. For those reasons this claim fails.

B7

431. This is the claim against Karen Jones that when she could not assist the claimant with a question about the Agresso software, Karen Jones pointed the claimant to colleagues who would be able to help.

432. As we have found above, this seems to the tribunal to be a rather innocuous event and it remains unclear why the claimant considers that this amounted to being spoken to in a manner which implied she was not competent. What the incident implied, correctly, was that the claimant was not able to deal with the problem herself, but colleagues could assist her and in fact she was being pointed to the people who could assist so the tribunal does not see how this could possibly be said to be unwanted conduct. The claimant asked for help, and she got it.

433. This could not reasonably be said to have created a hostile and degrading environment (whether purposely or in effect), indeed quite the opposite is the case. The 'conduct', finding the claimant help with her query, was in line with what the witnesses told us was a collegiate and helpful environment in which staff assisted each other as necessary.

434. Furthermore, and in any event, there is no suggestion that anything which took place around this incident in anyway related to race and for those reasons this claim fails.

B9

435. This claim is parasitic upon the previous allegation in that the claimant says that as a consequence of being denied training she was humiliated because she had to rely on colleagues. In that context we repeat what we say above in claim B8 and the collegiate nature of the procurement team.

436. The key point is that the need to rely on the train the trainer system and colleagues was not unwanted conduct, it was built into the training system. Further it is not reasonable to conclude therefore that having to rely on colleagues for assistance had the purpose or effect of creating a hostile and degrading environment. Finally, there is no evidence that being assisted by colleagues in these circumstances related to race and therefore the claimant cannot make out this claim which therefore fails.

B9

437. This is the issue relating to the photograph at the anniversary event for the NHS. Given our findings about what took place and how the photograph came about, nothing in relation to the photograph can be said to have created a hostile and degrading environment. Had the claimant been deliberately excluded we may have found differently but that is clearly far from the case. As we indicated above, the claimant's evidence in chief was that she was not available, and her complaint seemed to be that the photograph was arranged specifically at the time that she was not available. But that clearly was not the case. In fact, the photograph was not organised at all it was simply the result of the member of the communications department walking around taking pictures of the event and that person happened to take a picture of those in the procurement department who were present at the time and as the claimant said in her evidence in chief, she was not available. We accept that that evidence changed somewhat when she gave oral evidence, but we prefer her evidence in chief set out in her very detailed and lengthy witness statement in respect of which she took an oath and said was true to the best of her knowledge and belief.

438. We also remind ourselves that of the 25 members of the department at that time only 11 appear in the photograph and so most of the team do not appear in the photograph.

439. Given those facts, there was no unwanted conduct, but if there was, it was not reasonable to believe that it had the purpose or effect of creating a hostile and degrading environment because the failure to include the claimant in the photograph was a matter of chance which in any event was wholly unrelated to race.

440. For those reasons this claim fails.

B10

441. This is the claim relating to what appears on the face of it to be a rather trivial exchange between the claimant and a colleague, Sue Lean.

442. We have no doubt that being spoken to sharply at work maybe momentarily unpleasant, but it falls a long way short of having the purpose or effect of creating a hostile and degrading environment and, in any event, there is absolutely no evidence to suggest that this was in anyway related to race and for those reasons this claim fails.

B11

443. This claim relates to the previous allegation and is essentially a complaint that Karen Jones did nothing about the behaviour of Sue Lean.

444. As we have found in relation to this claim under the direct discrimination head, Karen Jones said that she did not know about it and the claimant is entirely unaware of whether Karen Jones ever knew about it.

445. We find that there was no unwanted conduct because there was no failure on the part of Karen Jones. There was no hostile and degrading environment was created.

446. For that reason, this claim fails.

447. There is no claim B12.

B13

448. This is the claim around the allocation of five new PCs.

449. As we have concluded above, we do not accept the claimant's evidence that she ought to be to have been allocated one of the new machines. The new machines were specifically for the day-to-day buyers and although the contracts buyers were doing some day to day buying at the time the new machines arrived, that was not their principal job and one machine was set aside for them for that purpose, the other four machines were given to day-to-day buyers.

450. Thus, there was no unwanted conduct. Even if such conduct as there was, was unwanted and even if, so far as the claimant was concerned, it subjectively created a hostile and degrading environment, we do not consider that was a reasonable belief for her to have in the circumstances because the decision not to give the claimant one of the new machines was that the new machines were for day-to-day buyers and she was a contracts buyer. Finally, there is no evidence that the decision not to give the claimant a new PC was in any was related to race.

451. For those reasons this claim fails.

B14

452. This is the claim relating to the fact that Claire Neville spoke to the claimant in a short, clipped tone and refused to assist the claimant.

453. The evidence we heard, which the claimant agreed with under cross examination was that Ms Neville could in fact be quite snappy with everyone other than management when she was under pressure. Given those facts, and although no doubt being snapped at was unwanted, it was not reasonable for the claimant to conclude that this had the purpose or effect of creating a hostile and degrading environment and more significantly even if it did, there is no evidence to conclude from which we could conclude that Claire Neville's behaviour related to race.

454. For those reasons this claim fails.

B15

455. This is the claim that Sue Baxter failed to do anything about the alleged bullying of the claimant by her colleagues. We repeat the findings we made at A14 above.

456. Specifically, we repeat that in our judgement there was no failure on the part of Sue Baxter to deal with any specific complaint by the claimant or any specific or even implicit request by her to deal with what she perceived as problems she was encountering. but even if there was there is no evidence to suggest that Sue Baxter's alleged failure was related to race.

457. For those reasons this claim fails.

458. There is no allegation B16. Allegation B17 is noted as 'deleted'.

459. The allegations which follow all relate to the grievance investigation. In relation to all of the allegations that follow under this sub-heading, these occurred when the claimant was no longer in work and there is no evidence that any other member of the procurement department were aware of what was happening in relation to the interactions between the investigating officer, Mr Riley and the claimant, and in those circumstances it is difficult to see how the 'environment' was hostile and degrading. We have nevertheless dealt with each claim in turn.

B18

460. This is the claim that the respondent placed undue pressure on the claimant to meet the investigating officer.

461. We have found as a matter of fact that there was no undue pressure on the claimant. Furthermore, given our finding that there was no undue pressure on the claimant and given our finding that any pressure there was on the claimant to meet with the investigating officer was not in any way motivated by race, whether consciously or unconsciously, we consider that

a. there was no unwanted conduct
b. it was not reasonable for the claimant to conclude that such conduct as there was had the purpose or effect of creating a hostile and degrading environment and
c. there is no evidence that such behaviour as there was, was in any way related to race.

462. For those reasons this claim fails.

B19

463. We set out above in respect of claim A16 our findings in respect of the claim for direct race discrimination. We found that the claimant suffered no

detriment by not being asked about her state of health or her ability to participate in the process.

464. In respect of the claim for harassment we likewise find that there was no unwanted conduct. The respondent was well aware of the fact that the claimant was off work with work related stress, and they were endeavouring nevertheless to meet with her so that the investigating officer could obtain further details of her complaints.

465. It will be recalled that the claimant's initial reluctance related to the fact that she could not organise union representative and it was only latterly that she said that she was too unwell at which the respondent backed off and no longer required her to attend a meeting. That is not conduct which in anyway can reasonably be said to have had the purpose or effect of creating a hostile and degrading environment. Furthermore, it is entirely clear from the evidence that race played no part in the decisions of either Mr Neild or Mr Riley.

466. For those reasons this claim fails.

B20

467. As we have set out above in relation to allegation A17, there was no failure to make reasonable adjustments. It follows that there was no unwanted conduct and such conduct that there was, essentially relating to making reasonable adjustments, was unrelated to race and for all of those reasons this allegation fails.

468. Thus

a. there was no unwanted conduct
b. it was not reasonable for the claimant to conclude that such conduct as there was had the purpose or effect of creating a hostile and degrading environment had been created and
c. there is no evidence that such behaviour as there was, was in any way related to race.

469. For those reasons this claim fails.

B21

470. We have dealt with the factual circumstances relating to this issue at A18 above.

471. Our essential finding was that on any objective reading of the evidence the respondent was equally concerned about all of its employees at this point and given that all they had was a series of allegations by the claimant, that seems to the tribunal to have been a reasonable and proportionate approach to the matter.

472. In short, there was no insensitive language used by the investigating officer. What he said was what the tribunal would have expected him to say in the circumstances and when he expressed that he was in danger of exceeding

the time given to do the investigation, that was a reference to not simply to the policy but also the requirement placed upon him by Mr. Riley and again in the circumstances that seems entirely reasonable.

473. We do not consider that there was unwanted conduct in this case but even if there was, it certainly cannot be said on any objective measure even taking account of the claimant's potential sensitivity, it had the purpose or effect of creating a hostile and degrading environment and, furthermore, there is no evidence that whatever was said by the investigating officer it in anyway related to race and for all of those reasons this claim fails.

B22

474. Leaving aside for a moment the question of whether any pressure put on the claimant was undue pressure, it was perfectly reasonable for the investigating officer to say that he wanted to keep the investigation on track for everyone concerned and to avoid causing stress by the process. It must be remembered that the context here was that the claimant had entirely failed to engage in a grievance she had started and in which she had accused colleagues of direct race discrimination, amongst other things, and it was incumbent on the respondent to deal with the matter within a reasonable timeframe.

475. This allegation suffers from the same problem the allegation B21 suffers from which is that there was not undue pressure, there was appropriate pressure given all the circumstances and even if that was unwanted by the claimant, it was not reasonable to conclude that it had the proscribed purpose or effect and there is no evidence that it related in any way to race and for those reasons this claim fails.

B23

476. This claim is identical to that at B22 but with slightly different words the end of the allegation. For all practical purposes the allegations are the same and for the same reasons this claim fails.

B24

477. It is of course correct that the respondent did not comply with the claimant's request to defer meeting under the grievance procedure until she returned to work, and we explored the reasons for that in dealing with the allegations of direct race discrimination.

478. We can deal with this matter quite shortly because even if the requests to attend an investigation meeting amounted to unwanted conduct, no reasonable reading of the evidence can lead to the conclusion that that conduct had the purpose or effect of creating a hostile and degrading environment, and it was not reasonable for the claimant to believe that the purpose or effect of asking her to meet the investigating officer created a hostile and degrading environment. Moreover, the requests to meet the investigating officer were made at a point at which the claimant was not suggesting that she was not able

to meet him because of hill health but rather because she did not have union representation. At the point she said that she was too unwell to meet with him the requests to meet ceased making it all the more unreasonable for the claimant to conclude that the requests for her to meet with the investigating officer created a hostile and degrading environment.

479. Furthermore, once again there is no evidence that any requests by the investigating officer, or indeed Mr Riley for the claimant to meet with the investigating officer to further her grievance related to race.

480. For those reasons this claim fails.

B25 and B26

481. This is the claim which relates to the written questions sent by the investigating officer Mr Neild to the claimant. We believe that there is a typographical error in the list of issues and B25 and B26 are in fact one allegation.

482. We have found as a matter of fact that the questions posed by Mr Neild were by and large what one would expect when dealing with allegations of the type raised by the claimant, and it must be remembered that it was hoped by Mr Neild that this would be a starting point for engagement with the claimant not the finishing point thus he would wish to have expanded on anything he got back from the claimant although unfortunately she failed to respond to the questions at all.

483. From the tribunal's perspective we do not consider that the evidence shows that this conduct was unwanted. It may not have been invited conduct but all it amounted to was Mr Neild sending to the claimant a list of questions he would have asked her had she attended a meeting with him and given that she always said she would attend the meeting with him, but simply on her terms, that is to say once she was back at work, it is difficult to see how she could object to receiving a list of questions in lieu of a meeting which she did not want to have at that time. Further, at no point did the claimant indicate she did not want written questions sent to her and at no point in any correspondence with Mr Neild did the claimant suggest that she would not be prepared to deal with written questions if they were sent.

484. Even if we are wrong about that and this conduct was unwanted, we do not see how on any reasonable reading of the evidence it could be said that it was reasonable of the claimant to believe that being sent written questions had the purpose or effect of creating a hostile and degrading environment and in any event it certainly was not conduct related to race and for all of those reasons this claim fails.

B27

485. This is the claim that the focus of the respondent during the grievance investigation was to safeguard the accused rather than the claimant or everyone equally. We have rejected that allegation.

486. Thus

a. there was no unwanted conduct
b. it was not reasonable for the claimant to conclude that such conduct as there was had the purpose or effect of creating a hostile and degrading environment and
c. there is no evidence that such behaviour as there was, was in any way related to race.

B28

487. The factual matrix in relation to this claim was dealt with at A25 above. In brief, the respondent did make reasonable adjustments to its approach and the only thing it did not do was to put the investigation on hold unless and until the claimant returned to work and in our judgement that was an entirely correct approach given the impact of the grievance on those she had accused and also the logical position that if the work related stress related to what was happening at work then the only way the claimant was going to return was to deal with those matters and therefore they could only be dealt with whilst she was off work.

488. We do not consider that the claimant has shown that there was unwanted conduct in this case but even if she has, it clearly was not reasonable for her to conclude that it had the purpose or effect of creating a hostile and degrading environment given that adjustments were made and only one requested adjustment was rejected – the wish to defer the entire process effectively indefinitely. Furthermore, what was done was not related to race. For all of those reasons this claim fails.

B29

489. We have dealt with the factual circumstances of this allegation at A26 above. We have found that the respondent did take account of occupational health reports and took account of what the claimant said about how she was feeling and made adjustments accordingly.

490. Thus

a. there was no unwanted conduct
b. it was not reasonable for the claimant to conclude that such conduct as there was had the purpose or effect of creating a hostile and degrading environment and
c. there is no evidence that such behaviour as there was, was in any way related to race.

491. For those reasons this claim fails.

B30, B31 and B32

492. We have taken these together as we have done above as they are really part and parcel of the same event - that is the outcome on an interim basis of the grievance.

493. We first make the same point that we made above which is to say that on 5 August 2019 the grievance was not concluded, there was simply an interim report. Given that the claimant was offered the chance to meet or have other contact with Mr Neild including answering written questions and if she wished make a written statement, and given her failure to engage at all in the process we wonder what else was the respondent expected to do given its obligations not simply to the claimant but to those who have been accused and also to the respondent in general?

494. In the circumstances Mr Neild did the best he could and indeed something he had flagged with the claimant in one of his emails which is that he could proceed simply relying on her initial complaint. In the circumstances that was reasonable particularly given that it was only an interim response. What is surprising is that the claimant appears to be saying that getting an interim response in a reasonably short space of time was unwanted by her almost suggesting that she did not want agreements to be concluded or at least to be concluded reasonably quickly.

495. We have set out above the details about the interim findings, and we need say no more well that here.

496. In the circumstances

a. there was no unwanted conduct
b. it was not reasonable for the claimant to conclude that such conduct as there was had the purpose or effect of creating a hostile and degrading environment and
c. there is no evidence that such behaviour as there was, was in any way related to race.

497. For those reasons this claim fails.

B33

498. Finally, under this subheading, is the allegation that it was harassment related to race for the respondent to write to the accused notifying them of the interim findings.

499. It is necessary for those accused of serious offences such as bullying, harassment and so on to know whether those accusations have been upheld or not and it is difficult to understand the claimant's criticism of the respondent in this regard. We have no doubt that if the claimant had been accused of such behaviour, she would want to know whether such accusations had been upheld or rejected and those she accused are in no different position.

500. As we have said above, the respondent behaved proportionately in writing to each of the accused only in respect of the matters they were accused of. They were not told about allegations against anybody else all the outcome of those allegations and in those circumstances, we do not see how it can be said that this created a hostile and degrading environment, and we find that it did not. Furthermore, and in any event what Mr Riley did in this regard was not related to race.

501. Thus, we find that

a. there was no unwanted conduct
b. it was not reasonable for the claimant to conclude that such conduct as there was had the purpose or effect of creating a hostile and degrading environment had been created and
c. there is no evidence that such behaviour as there was, was in any way related to race.

502. For those reasons this claim fails.

503. The remaining claims of harassment relate to the scheduling of the long-term absence review meetings and the claimant's dismissal.

B34

504. This is the allegation that it was harassment to schedule long term absence review meetings during a period when the claimant was unfit for work.

505. This is a nonsensical allegation. We have already expressed that there would be no purpose served in having long term sickness absence management meetings if the claimant was fit and at work and it is difficult to understand why the claimant had such a hard time in understanding this as she clearly has. The management of long-term sickness absence always takes place when the employee is off sick otherwise it would not be necessary.

506. The claimant may not have wanted these meetings to take place but it was inevitable that they would even in her absence given that the long term absence had to be managed. We know that the claimant did attend the penultimate meeting when she had secured union support although that appears to have been very quickly abandoned after the January 2020 meeting and the meeting dealing with redeployment when it looked as though the claimant might be returning to work in a new job as part of a redeployment process.

507. In the circumstances we do not consider that it was reasonable for the claimant to believe that scheduling the long-term absence review meetings when the claimant was off sick amounts had the purpose or effect of creating a hostile and degrading environment for the claimant and in any event doing so was entirely unrelated to race and therefore this claim fails.

B35

508. We can deal with this matter shortly. We do not see how it can amount to unwanted conduct to tell an employee what their contractual obligations are even if the employee concerned does not wish to be told.

509. This event took place in an e-mail between Mr Riley and the claimant, but we do not see that even if it was unwanted, it was reasonable to believe that it had the purpose or effect of creating a hostile and degrading environment. In any event what the claimant was being told was correct and it was wholly unrelated to race and for those reasons the claim fails.

B36

510. As we have found above, at this stage in the process, during late January and February 2020, there was no obligation on the respondent to make reasonable adjustments because the claimant was not in work, it had been agreed that she would not return to her old role and therefore the question of reasonable adjustments in relation to her return to work would only have been triggered at the point a new job had been identified and then only if getting the claim it back to work in that job required reasonable adjustments bearing in mind that it had already been agreed that there would be at least a four to six week phased return.

511. Thus, we conclude that

a. there was no unwanted conduct
b. it was not reasonable for the claimant to conclude that such conduct as there was had the purpose or effect of creating a hostile and degrading environment and
c. there is no evidence that such behaviour as there was, was in any way related to race.

512. For those reasons this claim fails.

B37

513. The final claim relates to the convening of the final absence management meeting on 28 February 2020. In fact, this was the re-convening of the meeting which started in January 2020 because of the failure of redeployment because the claimant failed to engage with the process.

514. The conduct, the re-convening of the meeting may well have been unwanted by the claimant, but it was not reasonable to believe that this created a hostile and degrading environment and even if it did, it was unrelated to race and for those reasons the claim fails.

515. At this stage of course we have looked at each allegation of harassment individually, but it is incumbent upon us to consider whether there was a course of conduct which taken together could amount to unwanted conduct which had

the purpose or effect of creating a hostile and degrading environment and which was related to race.

516. We find that there was no such cumulative effect if we can put it that way.

517. We find that whether looked at individually or cumulatively, much of what the claimant says took place did not take place or at least did not take place in the way she says. For example, she is critical of the respondent for taking an even-handed approach to the investigation of her grievance even though at the investigation stage the respondent had no idea whether there was any merit to any of her allegations and even though they have a duty of care not simply to the complainant, in this case the claimant, but also those being accused.

518. But the bigger objection to the cumulative approach is simply that there is no evidence whatsoever in this case that anything the respondent did or failed to do was in any way related to race whether the claimant's race or race in general. In reaching this conclusion we have taken account of all of the findings of fact we have made including what the witnesses said about how this team operated over many years without apparent difficulty, we have taken account of the fact that the claimant made no complaint for more than 20 years, always accepting of course that in many cases the absence of complaint is not the same as the absence of the problem but in this case given the fact that the climate is an intelligent, educated and articulate person we would have expected that had she been the subject of the kind of race discrimination she has described latterly, that would have been raised much sooner that was the case here.

519. Therefore, we reiterate whether looked at each complaint individually or cumulatively, the claims of harassment related to race fails.

C Victimisation

520. The claimant relies on three protected acts as follows

a. grievance letter of 15 May 2019
b. her contacting ACAS and thereby notifying the responded that she intended to issue a claim
c. issuing her employment tribunal claim on 17 February 2020.

521. The tribunal accepts that the acts at paragraph 508a and 508c above were protected acts for the purposes of victimisation under s.27 EqA.

522. The tribunal finds that the claimant's contact with ACAS was not a protected act because there is no evidence that the respondent knew the subject matter of any proposed employment tribunal claim.

523. Given the overlap of the victimisation claims with the claims of direct race discrimination and harassment related to race we do not intend to repeat the detailed findings we have made about these matters here. We will deal with whether any of the matters raised amount to a detriment and if so whether there

is any evidence from which we could conclude that any detriment was because the claimant did one or more of the protected acts.

C1

524. Claim C1 concerns the alleged undue pressure on the claimant to meet the investigator. The tribunal does not consider that the claimant was subject to undue pressure and therefore she suffered no detriment. In that case this claim fails.

525. Even if the 'pressure' put on the claimant was 'undue' there is no evidence that such pressure was put on the claimant because she did a protected act. The reason for the pressure to meet the investigating officer was to move forward with the investigation which the claimant started by raising a grievance and in any event the claim fails on this basis.

C2

526. This is the allegation that the investigator failed to ask the claimant about her mental well-being. As set out above, we find that there was no detriment in this case and therefore no victimisation. Again, however even if there was a detriment, there is no evidence that any detriment was because the claimant did a protected act and the claim fails for those reasons.

C3

527. This is the allegation that the respondent failed to ask the claimant what reasonable adjustments may be needed to enable her to participate in the investigation. As we have found, adjustments were made, and the claimant suffered no detriment. Even if we are wrong about that, and we do not consider that we are, there is no evidence that any failure to ask the claimant what reasonable adjustments she may need was because she did a protected act.

528. For these reasons this claim fails.

C4

529. This is the allegation that the language used by the investigating officer in e-mail correspondence was insensitive. We have found that it was not. In fact the investigating officer was even handed as between the claimant as the complainant and the staff about whom she complained and given that the investigating officer had to investigate whether there was any merit in those claims, that was entirely appropriate.

530. There was therefore no detriment and furthermore there is no suggestion that anything the investigator did was because the claimant did a protected act.

531. For those reasons this claim fails.

C5

532. This is a further claim of undue pressure on the claimant specifically in relation to an e-mail of 23 July 2019. The tribunal does not find that the claimant was put under undue pressure, and she did not therefore suffer a detriment. Furthermore, there is no evidence that anything the investigating officer did he did because the claimant did a protected act and for those reasons this claim fails.

C6

533. This is an identical complaint to the one that C5 above save for the addition of the words" irrespective of the impact on the claimant's health" but in our view that adds nothing to the allegation particularly in the context of victimisation and we repeat our findings relation to the claim at C5. For those reasons this claim fails.

C7

534. This is another claim that the investigating officer failed to make reasonable adjustments in particular to defer meeting with the claimant until she returned to work. As we have found, the investigating officer acted reasonably in seeking to meet the claimant and when she said that she would not, he found an alternative method to engage her in the investigation albeit that she did not in fact participate.

535. We do not consider that the claimant suffered a detriment in this case although even if she did, there is no evidence to suggest that any detriment was because she did a protected act. The investigation continued without the investigating officer meeting the claimant because the claimant refused to meet with him whilst she was off sick, and it was reasonable for the respondent to conclude that it was not appropriate to wait to complete the investigation for an indeterminate period given the impact of that on those who were accused.

536. For these reasons this allegation fails.

C8 and C9

537. We consider that there is a typographical error and that in fact the allegations separately noted as C8 and C9 were intended to be one composite allegation and we have dealt with it as such.

538. This is the complaint about the written questions sent by the investigating officer to the claimant. The claimant suffered no detriment by being sent a list of questions for her to respond to. The questions were not in any sense offensive, patronising, insensitive or irrelevant. Even if the claimant found some of the questions genuinely offensive, patronising comment insensitive or irrelevant, that was not because she did a protected act, they were simply the questions which the investigating officer felt it appropriate to ask in light of the claimant's grievance.

539. It must also be remembered that as far as the investigating officer was concerned this was merely the first step in his investigation because he intended, having received responses to his written questions, to follow that up asking for further detail, but he never got that opportunity because the claimant did not answer the questions.

540. There is no evidence that what the investigator did was because the claimant did a protected act.

541. For those reasons this claim fails.

C10

542. This is the claim that the focus of the investigation was the safeguarding of those the claimant had complained about. The tribunal found that this was not the case, even if that was the claimant's perception. It is entirely plain from the many exchanges of emails that the investigating officer's focus was to carry out his investigation within the given timescale and the claimant was preventing that from happening by failing to engage with the process. All the investigating officer did was point out that it would increase the stress generally for the claimant, as well as for those who were the subject of her complaints if the matter was not dealt with within a reasonable time.

543. Even if the investigating officer had as a principal concern the impact of the investigation on the persons complained about, there is no evidence that that was because the claimant did a protected act and for all those reasons this claim fails.

C11

544. This is another claim that the respondent ignored requests to make adjustments and we repeat that the respondent did make adjustments to its process as soon as it became apparent that the claimant would not meet with the investigating officer while she was signed off sick and we remind ourselves that in the early stages of the investigation this was not the claimant's position. On two occasions she wrote to the investigating officer to say that she was not ready to meet him because she could not get union representation in time and not because she was too ill.

545. Given that the respondent did make adjustments, the claimant suffered no detriment and again, even if she did, there was simply no evidence that any detriment was suffered because she did a protected act.

546. For those reasons this claim fails.

C12

547. This is the allegation that the respondent failed take account of advice provided by occupational health. We have found that the respondent did take account of the advice from occupational health and as we have pointed out we consider that the claimant has misunderstood her obligations and the effect of a fit note. She has presumed that a fit note saying that she is not fit to work gave

her free rein to not engage with a process she commenced, and indeed to not engage with the long-term absence management process which ultimately led to her dismissal. She was incorrect in that presumption for the reasons we have dealt with in detail above.

548. Therefore, the claimant did not suffer a detriment and even if she did, it was not because she did a protected act, rather that she failed to engage with the relevant process.

549. For those reasons this claim fails.

C13, C14 and C15

550. These are the claims relating to the conclusions in the interim investigation report about which we have made detailed findings above.

551. The investigation was not concluded on 5 August 2019 as the claimant alleges. All that happened was that an interim report was provided and that interim report stated that it would be finalised subject to whatever process was going to be followed thereafter. In those circumstances we do not consider that the claimant suffered any detriment.

552. The assertion that it was victimisation in relation to the findings of no case to answer and unsubstantiated allegations is nonsensical. Those findings were made following what by any measure was a reasonable investigation and the only thing missing was further input from the claimant because the claimant did not engage with the process even though she was given every opportunity to do so.

553. We do not consider that the interim findings amount to a detriment and even if they did, there is no evidence that the reason for the findings was that the claimant did a protected act and for those reasons these claims fail.

C16

554. This is the claim about those staff who were the subject of the claimant's complaints being told about the interim report. Again, we have made detailed findings about this above and in those circumstances, we do not consider that the claimant suffered a detriment. But even if it could be said but the claimant suffered a detriment when the results of the interim reports were reported to those she had accused in her grievance, that detriment was not because the claimant did a protected act but because the colleagues she had accused had a right to know where they stood in the process.

555. For those reasons this claim fails.

C17

556. This claim relates to the scheduling of the long-term absence review meetings of 21 August 2019 and 13 September 2019.

557. We note that the claimant's complaint is not really about when the meetings were in fact scheduled rather that no meetings should have been scheduled unless and until she was fit to return to work and as we have set out above, that was an absurd position to take because if the claimant was fit and able to return to work she would no longer be subject to the long term absence management process and a meeting under that process would not need to take place.

558. The claimant did not suffer a detriment merely by those meetings being scheduled.

559. Furthermore, there is no evidence that the meetings were scheduled because the claimant did a protected act.

560. For those reasons this claim fails.

C18

561. This is the claim about the claimant being advised that she had a contractual obligation to attend the respondent's meetings.

562. It is unclear why the claimant considers this to be a detriment. She was merely being advised that as far as the respondent was concerned, she was obliged to attend but in the end the respondent did not force the issue and when the claimant said she was not able to attend they accepted that and went ahead in her absence as they warned her they would.

563. In the circumstances we do not consider that the respondent advising the claimant appropriately of what she was required to do amounted to a detriment and even if it could, there is no evidence it was because the claimant did a protected act.

564. For those reasons this claim fails.

C19

565. This is another claim of a failure to make reasonable adjustments. As we have found above, the respondent did make reasonable adjustments and did say to the claimant that support was available. The reference to *"including finding suitable alternative employment"* is somewhat confusing being the language of redundancy. What was on offer was redeployment and the respondent did its best to start that process by asking the claimant to fill out it's redeployment registration form, to consider a list of vacant band 3 and band 4 roles and indicate any she may be interested in but the claimant did not do so.

566. In the circumstances the claimant suffered no detriment, and the claim fails for that reason.

567. Even if there was a detriment, which there was not, there is no evidence that this was in anyway because the claimant did a protected act, but rather that she failed to engage in the process and in particular in the redeployment process having indicated that she would at a meeting in January 2020.

568. For all of those reasons this claim fails.

C20 and C21

569. We can take these together because the first is an allegation that it was a matter of victimisation to convene the long-term absence management panel meeting on 28 February 2020 and second, that it was an act of victimisation that the claimant was dismissed in her absence.

570. We have dealt with the convening of meetings under the long-term absence management policy above. As we have indicated the claimant's position has no merit because no employer seeking to implement a long-term absence management policy would wait for an employee to be fit and well and back at work before convening a meeting under that policy. To do so would be the very definition of pointless.

571. The claimant was warned that the meeting would go ahead in her absence and in our view, it was inevitable that it would do so given the history of the matter to that date. For those reasons even though having a meeting in the claimant's absence was a detriment, the reason was not because the claimant had done a protected act but because the process had reached that point and the claimant did not attend the meeting.

572. As to the dismissal, that was bound to be in the claimant's absence because she did not attend the meeting. We note however that it may be of significance in this context that the claimant did not appeal against the decision to dismiss her and she would have done so as she felt that her attendance would have made a difference.

573. Although it is a detriment to be dismissed that is not the complaint, the complaint is that the dismissal took place in the claimant's absence and in that context, we do not find that this was a detriment because the claimant had a choice. Even if it was a detriment the decision to dismiss in the claimant's absence was not because she did a protected act but because the process had reached at that point.

574. For those reasons this claim fails.

Knowledge of disability

575. Given that knowledge is denied and there is no explicit reference to the claimant meeting the s.6 EqA definition in any of the documentation, we have asked whether the respondent made reasonable enquiries about the position and if not, what the respondent might reasonably have been expected to know had it made such enquiry.

576. Looking at the contemporaneous documentary evidence we note that the claimant was sent for two occupational health appointments and the respondent also received a short report from the claimant's GP and her counsellor. The respondent also had a series of fit notes covering, by the time of dismissal a 10-month period all referring to work related stress. The respondent also had a

number of e-mails from the claimant stating that she was too unwell to work or at stages even to participate in meetings unrelated to her work, for example the grievance investigation meetings and the long-term absence panel meetings.

577. There was no evidence before us that the respondent was aware of the claimant's medical history, but even if they were, given that the claimant had worked for them for a considerable time without significant ill health absence related to stress, there is no evidence that she met or would have met the definition of disabled in s.6 at any point prior to the absence which led to her dismissal.

578. The difficulty in dealing with the question of knowledge in this case is that at all material times what the respondent knew was that the claimant was absent because of, specifically, work related stress. The evidence agreed by the parties was that the fit notes did not vary in referring to work related stress as the reason for the absence. The occupational health reports confirm that the reason for the absence is work related stress. The logical presumption to make was that if the work related cause of the stress could be resolved, the claimant would no longer be suffering from work related stress so that unless and until the claimant had in fact been off work with work related stress on a long term basis, that is to say 12 months or more, at no point can it be said that the respondent was fixed with knowledge that the work related stress was likely to last for 12 months or more. The work related stress, the disability, was likely to last for as long as it took to deal with the work related issues which caused the stress or at least which the claimant believed caused the stress.

579. Of course, we understand that just because something is referred to as work related stress it does not follow that immediately the issue is resolved, or the person suffering the stress leaves work that the stress immediately dissipates. It may take some time to recover. However, how long an individual may take to recover from resolved work related stress issues, whether resolved by a return to work or through the knowledge that he or she will never have to return to work Is very much related to individual circumstances.

580. In our judgement given all of the findings of fact we have made, particularly given the point at which it became clear that the claimant would not be returning to her old role and that she required redeployment, and given the time that was reasonably likely to take, we find that the respondent ought reasonably to have known that the claimant was likely to meet the definition of disabled and be substantially disadvantaged in relation to the reasonable adjustments claim, was by the time of the panel meeting on 22 January 2020.

D Failure to make reasonable adjustments

PCPs

581. There are two PCPs relied upon but essentially, they are identical save that one relates to the grievance process and the other to the long-term absence management process. The requirement which the claimant says was applied was the requirement to adhere to timescales within the relevant policy or timescales set down by the respondent.

Substantial disadvantage

582. The substantial disadvantage the claimant said she was placed at was that she was unable to comply with

> "*the requirement by reason of her disability and the symptoms which were related to her disability which meant that she lacked resilience and was stressed and anxious and unable to participate in a face to face meeting or any reasonable alternative process to secure her engagement within the time scales set by the respondent…".*

583. Given our findings in relation to knowledge we are only concerned with any failure to make reasonable adjustments on or after 22 January 2020. By this stage the grievance procedure had been completed and therefore there can have been no failure to make reasonable adjustments in relation to the grievance procedure.

584. In relation to the long-term absence management process, it is difficult to see how the claimant was required to participate in that process. The claimant was advised that if she did not attend the panel meeting under the procedure, it would go ahead in her absence anyway. This seems to us to fall short of the requirement to attend or to adhere to particular timescales.

585. The list of issues sets out possible reasonable adjustments but in relation to both procedures they amount to the same thing which is waiting until the claimant was well enough to, as it is put," *ameliorate the otherwise adverse impact on her poor mental health".* As we know from the documentation in the bundle, that would have involved waiting until the claimant was signed fit to return to work.

586. We find that that would not have been a reasonable adjustment in relation to the long-term absence management processes. It was plainly unreasonable to await the claimant's returned to work before discussing her long-term absence from work.

587. More significantly in relation to the long-term absence management process, we remain unconvinced that the duty to make reasonable adjustments was triggered in respect of the operation of that procedure. This procedure is designed to help the employees return to work or, if their absence is unsustainable, which includes there being no foreseeable return to work within a reasonable time, leading them to dismissal.

588. The requirement to make reasonable adjustments is not theoretical. At the final long term absence management panel meeting which was started in January 2020 the claimant indicated through her trade union that she could not return to her old role and it was agreed that there would be a meeting to discuss redeployment which the claimant would attend along with her union representative. The claimant did attend that meeting. It seems to us that that at this stage there was no substantial disadvantage because the claimant could

and did attend a meeting under the policy in a timeframe dictated by the respondent. Once it was agreed that the claimant would seek redeployment the respondent did what it was supposed to do which was send the claimant the redeployment registration form and a list of vacant band 3 and band 4 jobs.

589. So, at this point there was no obligation to make reasonable adjustments in respect of the claimant's role because she was not going to return to work in that role.

590. In our judgement there was therefore no obligation for the respondent to make reasonable adjustments beyond this point unless and until a specific vacancy had been identified or the claimant needed a reasonable adjustment in order to participate in the redeployment process. However, at no point did the claimant indicate to the respondent that she was too unwell to fill out the redeployment registration form or even read the spreadsheet that was sent with the vacant jobs on it. The claimant said this for the first time at the hearing. Given those facts, as we say, we consider that the respondent was not under a duty to make reasonable adjustments and therefore it did not fail to make reasonable adjustments in respect of the claimant's redeployment.

591. For of those reasons claim for failure to make reasonable adjustments fails.

E Disability related discrimination

592. The tribunal has read section E a number of times, but it is difficult to understand what the claimant says was the unfavourable treatment.

593. As we have set out above, because of our findings in relation to knowledge, there can be no disability related discrimination in relation to the grievance because by the time of the respondent had knowledge of the disability the grievance procedure had been completed and therefore any such claim must fail.

594. in relation to the long-term absence management programme and redeployment, the claimant appears to be saying that the claimant was unable to engage in either the redeployment process or the long-term sickness absence review on 28 February 2020 which resulted in her dismissal. These are the allegations at E2 and E3. We proceed on the presumption that the unfavourable treatment was the fact that the meeting went ahead in the claimant's absence and the fact of the claimant's dismissal.

595. We have dealt extensively with the respondent's position on holding the meeting in the claimant's absence. It is difficult to see what else the respondent could do in circumstances where an employee either refuses to or cannot participate in a meeting. It is of course perfectly possible to delay but in this case the claimant's position was that the meeting should not take place unless and until she was well enough to return to work which, for the reasons we have said on more than one occasion in this judgement was absurd given the purpose of the policy. An adjustment had of course already been made in that the original meeting did not reach a decision to dismiss the claimant but instead

sought to see whether the claimant could be redeployed and it was only when the claimant failed to take action in relation to redeployment, and bearing in mind that she did not tell the respondent at the time that she was to ill to take part in that process, that they reconvened the meeting and dismissed the claimant in her absence warning her in advance that that was something that could occur.

596. By the time of the meeting on 28 February 2020 the claimant had been absent since April 2019, and the respondent concluded that this absence was unsustainable. The claimant could not say when she might be fit enough to engage in the redeployment process agreed in January 2020.

597. The tribunal accepts the respondent's justification for the unfavourable treatment, both the holding of the meeting and the dismissal which is that the observance of its attendance management policy was a proportionate means of achieving the legitimate aim of securing good attendance at work, and that the timescales had been relaxed significantly to allow the claimant to recover.

598. For those reasons this claim fails.

F Unfair dismissal

599. As we set out at the beginning of this judgement, it was not in dispute that the reason for the claimant's dismissal was capability, that is long term ill health absence and the respondent's decision that the absence was unsustainable to use their language.

600. The first question we have asked ourselves is whether the procedure adopted by the respondent was within the range of reasonable responses.

601. The respondent's long term absence management policy starts at page 394 of the bundle. The steps which the respondent should follow include a referral to occupational health, an initial absence review meeting, a further referral to occupational health, a further review, and then a formal absence management panel should the respondent be considering termination of employment. If the employee is dismissed, they have the right to appeal.

602. The procedure was managed by Mr Riley up until the formal panel meetings which were dealt with by Mr Fowkes. We heard witness evidence from both.

603. The claimant went off sick from 25 April 2019. The first sickness absence review meeting with scheduled for 24 May 2019 but the claimant said that she could not attend that meeting.

604. Mr Riley attempted to rearrange the meeting for 22 May 2019, and this is the meeting that took place at the Mallard public house which ultimately resulted in the grievance investigation commencing.

605. The claimant was referred to occupational health on 25 July 2019 and the report from that appointment is at pages 245 and 246 of the bundle.

606. The claimant was invited to a second sickness absence review meeting on 8 August 2019 but that meeting did not take place.

607. Mr Riley invited the claimant to a meeting on 21 August 19 specifically to discuss the occupational health report review for ongoing health and prognosis.

608. The claimant told Mr Riley by e-mail on 14 August 2019 that she was unable to attend the meeting scheduled for 21 August 2019, and indeed said that she would not attend the meeting whilst on sick leave.

609. The claimant was referred to occupational health for a second time on 7 October 2019 but In the end her appointment took place on 21 October 2019. The occupational health reports from that meeting is it pages 307 to 309 of the bundle.

610. By December 2019, some eight months after the claimant first went off sick, there was no sign of a return to work and Mr Riley decided to initiate the formal absence management panel meeting. The meeting was scheduled for 9 January 2020.

611. In preparation for the panel meeting Mr Riley produced a health and attendance case review and that document, which was sent to the claimant, can be seen at pages 316 to 321 of the bundle.

612. By this stage the claimant had engaged the services of a trade union but neither the claimant nor her union representative attended the meeting.

613. The panel meeting was chaired by Mr Fowkes, who was supported by a member from the HR department.

614. At this stage therefore the respondent had notes from the reviews of the claimant's absence, two occupational health reports, Mr Riley's case review, various correspondence between Mr Riley and the claimant, a letter from the claimant's trade union representative and a letter from the claimant's counsellor.

615. The decision from the panel meeting was that the claimant should be offered redeployment as an alternative to dismissal. To that end a meeting was arranged for 22 January 2020 to discuss the redeployment process.

616. The claimant attended that meeting along with her trade union representative and Mr Riley and a member from the HR department attended on behalf of the respondent. At this point the claimant was still off sick. The claimant said she would be fit to return to work on 24 February 2020.

617. The claimant was sent a redeployment registration form and a list of current vacancies in the respondent at bands 3 and 4. The claimant did not respond either by completing the form or by expressing an interest in any of the roles. Furthermore, the claimant did not return to work on 24 February 2020.

618. Therefore, the respondent reconvened the panel meeting which took place on 28 February 2020. The claimant did not attend that meeting, nor did

she send in any written statement to assist the panel. Furthermore, it would appear that the union was no longer involved.

619. The outcome of the meeting was the claimant's dismissal because of the ongoing long-term health which Mr Fowkes considered was unsustainable.

620. The claimant did not appeal this decision.

621. Looking at the procedure set out above, the tribunal conclude that the procedure was one which a reasonable employer could have adopted and therefore is within the band of reasonable responses.

622. We turn last to the question of the dismissal itself.

623. At F4 the claimant sets out a specific set of factors and asks whether these were taken into account in the decision to dismiss the claimant.

624. The claimant suggests that she had consistently expressed a willingness to return to work. We have considered all of the documentation in this case, and we do not consider that the correspondence from the claimant around her ill health absence can be characterised as showing a willingness to return to work. Likewise, there is nothing to suggest that the claimant did not want to return to work until the very last stage of the long-term absence procedure and even then that was only an unwillingness to return to her old job. In any event a willingness to return is largely irrelevant if the absence was unsustainable from the respondent's perspective.

625. The second point raised by the claimant is that the decision to dismiss was contrary to the medical evidence. The first point to note is that that is not the case. Nowhere does it say in the medical evidence that the claimant should not be dismissed but in any event the medical evidence is only one factor for the employer to take into account and in this case the respondent clearly took it into account. The reality is that the medical evidence at no point suggested that there was a likely return to work in a short enough period of time to satisfy the respondent.

626. The Third Point is one which the tribunal does not understand because it says simply that there were no health and safety issues which would justify the claimant's dismissal. The claimant was not dismissed for a health and safety reason, and it is unclear why this has been referred to in the list of issues.

627. The fourth point is that the claimant would have been able to return to work within a reasonable time frame with appropriate support.

628. The fifth point which is related to this is simply put as the availability of suitable alternative employment.

629. The respondent concluded that it was not the case that the claimant would have been able to return to work within a reasonable period. By the stage of the final panel meeting on 28 February 2020, the claimant had been off for ten months and showed no sign of returning to work. Every time a fit note was coming to an end, a new fit note was produced, and the respondent concluded

that there was every likelihood at the beginning of March given that throughout the grievance and long-term absence management process the claimant attended only one meeting, which was the meeting to discuss redeployment. In our judgment that was a reasonable belief.

630. Beyond that, and perhaps most significantly at this juncture, the claimant did not participate in the process and in particular when given the opportunity to seek redeployment entirely failed to engage with that process.

631. In her witness statement at paragraph 86, the claimant talks about the meeting on 22 January 2020 at which she was accompanied by her union representative. She says of that meeting

> *"I left that meeting feeling panic stricken, I was being pushed into making a decision that I wasn't ready to make an soon after experienced a set back. I was having panic attacks, I was not sleeping or eating. I had little knowledge of the types of working environment the various vacancies might encompass, or why these maybe thought suitable or what I might expect or on what basis I was being invited to consider these roles"*

632. Given that the claimant was too unwell even to engage in the redeployment process it seems to the tribunal that the respondent acted reasonably in concluding that there was no likely return to work within a reasonable period. And given that the claimant had been off work for 10 months at that point the tribunal conclude that dismissal was within the band of reasonable responses and for those reasons the claim for unfair dismissal fails.

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Employment Judge Brewer

Dated: 8 July 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

APPENDIX

LIST OF ISSUES

IN THE MIDLANDS EAST EMPLOYMENT TRIBUNAL Case No.2600648/2020

B E T W E E N

MRS PAULINE AUGUSTIN

-And-

UNIVERSITY HOPSITALS OF DERBY AND BURTON NHS FOUNDATION TRUST

REVISED
LIST OF ISSUES

A. DIRECT RACE DISCRIMINATION

Was the Claimant treated less favourably by reason that;

A1. The Claimant was allocated work specifically

(i) Orthopaedic Theatre Consumables Contract
(ii) Contract for the supply of Antibodies
(iii) Microbiology Reagent Contract
(iv) Courier Services Contract for – Biochemistry
(v) Occupational Health Management Software System
(vi) Photocopier Contract
(vii) Printing Contract
(viii) PPL/PRS Music Contract
(ix) Alexandra Workwear contract
(x) Cleanroom Clothing Contract
(xi) Bras and Prosthesis Contract
(xii) DX Network Courier systems - this was for Microbiology.
(i) Lecia Microsystems maintenance contracts
(ii) Endoscopy Reprocessing Service

which previously had been undertaken by staff paid at a higher grade and without being paid for the additional responsibilities at various times during the three - year period prior to her dismissal.

A2. In November 2016 the agreed arrangement that the Claimant should record her hours on a time sheet once a month changed to once a week by her manager Karen Jones without explanation or justification.

A3. The change to the arrangement was without lack of consultation and was belittling and demeaning to the Claimant who was the only member of staff required to complete a time sheet.

A4. From around February/March 2018 the Claimant did not receive training on the procurement system Agresso.

A5. The Claimant raised the issue at (iv) above to her line manager Sue Baxter and Ms Baxter failed to take any action and/or failed to ensure that training was provided for the Claimant.

A6. In May 2018 in respect of a systems error with the Agresso system, Ms Jones stood in the open plan space to point at colleagues sitting some distance and directed the Claimant in front of colleagues to ask 'Danielle or Chloe' and in so doing humiliated the Claimant and spoke to her in a manner which implied she was not competent in front of colleagues.

A7. The Claimant was placed in the humiliating position of (i) needing to rely on other colleagues to tell her what to do and (ii) denied the tools to do her job which was less favourable treatment than that afforded her colleagues.

A8. In August 2018 as regards the fund -raising event the Claimant was excluded from the department photograph and no efforts were made to enable her to be included.

A9. In February 2019 in respect of the Claimant's concern regarding the way that she had been spoken to by Ms Lean. Karen Jones failed to take action in respect of the incident and made no effort to engage the Claimant to hear her account.

A10 **(Deleted)**

A11. In April 2019 the Claimant was not allocated a new PC and/or required to use an old machine.

A12. On 24 April 2019 the Claimant complained to her manager, Sue Baxter about the bullying way she was being treated and nothing was done in response to her complaint.

Comparators

A14. The Claimant has been treated less favourably than others including her colleagues, Jenny Haynes, Sue Baxter, Claire Neville, Sue Lean and/or a hypothetical comparator would or have been treated in similar or not dissimilar circumstances.

Failure to conduct any or any adequate investigation into the Claimant's grievance

A.15 Place undue pressure on the Claimant to meet with the investigator despite being aware that the Claimant was suffering with depression and anxiety.

A.16. Failed to ask about her mental well -being, state of health or her ability to participate in the process

A.17. Failed to ask what if any reasonable adjustments the Claimant may need to enable her to participate including managing/modifying timescales to ameliorate the impact on her given her poor mental health and in any event failed to make any reasonable adjustments to the process.

A.18. The language used by the investigator in e-mail correspondence sent to the Claimant was on several occasions insensitive and emphasised his concerns that the Claimant should agree to meet him even if she was unable to secure suitable support representation from her union on the basis that there were indicative timescales in the policy which he expressed he was " *in danger of exceeding if this drags on"*

A.19. In the e-mail of 23 July 2019 the investigator placed undue pressure on the Claimant on the basis that he wished to "*keep the investigation on track for all concerned, including yourself*" to avoid causing "*undue stress caused by the process'* for those she had complained against

A.20. In the e-mail of 23 July 2019 the investigator placed undue pressure on the Claimant on the basis that he wished to "*keep the investigation on track for all concerned, including yourself*" to avoid causing "*undue stress caused by the process'* and irrespective of the impact on the Claimant's health

A.21 The response from Mr Neild, in his e-mail 25 July 2019, ignored the Claimant's request for reasonable adjustments i.e. to defer requests for a meeting until she had returned to work.

A.22 The questions posed by Mr Nield sent to the Claimant were offensive, patronising, insensitive and/or irrelevant and/or

A.23 Failed to address the key complaints cited in the grievance letter, i) the denial of training, (ii) the exclusion from the department photograph, (iii) the failure to allocate suitable equipment.

A.24. The focus of the Respondent to progress the grievance investigation was to safeguard the welfare of those the Claimant had referred to in her complaints.

A.25 The Respondent ignored the Claimant written requests for the Respondent to make adjustments to its approach highlighting her ill health.

A.26 The Respondent failed to take account of advice provided in occupational health reports including one dated 25 July 2019 which stated that the Claimant was showing signs of stress , anxiety, depression. The report further stated that the Claimant was not fit to be at work due to her reduced emotional resilience and would be unlikely to be so for the following 4-6 weeks

A.27 The decision of Mr Riley advised by e-mail on 5 August 2019 advising that he had decided to conclude her grievance based on her initial letter

A.28 And/or that he had found no case to answer

A.29. And/ or that allegations could not be substantiated without " supporting evidence"

A.30. Writing to the Claimant's colleagues named in the grievance to notify them that the Claimant's grievance had been dismissed with a finding of no case to answer.

Sickness Absence- Dismissal

A.31 In scheduling the Long -Term Absence Review meetings for 21 August 2019 and 13 September 2019 despite being advised the Claimant was unfit to return to work until 22 September 2019;

A.32. Advising the Claimant that she had a 'contractual obligation' to attend such meetings;

A.33 Failing to offer reasonable adjustments in support of a return to work within the timescales and/offer the support indicated in the occupational health reports;

A.34 The decision to convene a Formal Absence Management Panel for 28 February 2020.

A.35 The decision to dismiss the Claimant on 28 February 2020 in the Claimant's absence.

B. <u>HARASSMENT ON GROUNDS OF RACE</u>

Has the Claimant been subjected to a hostile and degrading working environment by reason of the matters referred to below

B1. The Claimant was allocated work specifically (as set out above in A) which previously had been undertaken by staff paid at a higher grade and without being

paid for the additional responsibilities – during the three-year period prior to her dismissal.

B2. In November 2016 the agreed arrangement that the Claimant should record her hours on a time sheet once month was changed to once a week by her manager Karen Jones without explanation or justification.

B3. Detriment - The change to the arrangement and the lack of consultation was belittling and demeaning to the Claimant who was also the only member of staff required to complete a time sheet.

B4. From around February/March 2018 training on the procurement system Agresso held at times when the Claimant was unavailable to attend and no alternative arrangements were made for her to receive the training.

B6. The Claimant raised the issue at (iv) above to her line manager Sue Baxter and Ms Baxter failed to take any action and/or fail to ensure that training was provided for the Claimant.

B7. In May 2018 in respect of a systems error with the Agresso system, Ms Jones came out of her office and stand in the open plan space to point at colleagues sitting some distance and directed the Claimant in front of colleagues to ask 'Danielle or Chloe' and in so doing the Claimant was humiliated and spoken to in a manner which implied she was not competent in front of colleagues.

B8. As a consequence of being denied training the Claimant placed in the humiliating position of needing to rely on other colleagues to tell her what to do and denied the tools to do her job which was less favourable treatment than that afforded her colleagues.

B9. In August 2018 as regards the fund raising event the Claimant was excluded from the department photograph and no efforts were made to enable her to be included ?

B10. In February 2019 due to issues with the Respondent's procurement system it was decided that administration staff would provide support to buyers with data inputting. One of the administrative assistants, Sue Lean, approached the Claimant with a query and spoke to her in a rude and discourteous manner including raising her voice to the Claimant and stating loudly "*Can you make this information clearer in future as I am not a mind reader*" this exchange again occurred in front of colleagues, Danielle Aldred, Claire Neville, Sue Baxter and Chloe Parker.

B11. In February 2019 in respect of the Claimant's concern regarding the way that she had been spoken to by Ms Lean, Karen Jones failed to take action in respect of the incident and made no effort to engage the Claimant to hear her account.

B12. ***(Deleted)***

B13. In April 2019 the Claimant was not allocated a new PC and/or required to use an old machine with the attendant difficulties that ensued.

B14. On 24 April 2019 Claire Neville spoke to the Claimant in sharp clipped tones and refused to assist the Claimant.

B15. 24 April 2019 the Claimant complained to her manager, Sue Baxter about the bullying way she was being treated by her colleagues and nothing was done about it.

B17. **(Deleted)**

B.18 Place undue pressure on the Claimant to meet with him despite being aware that the Claimant was suffering with depression and anxiety.

B.19 Failed to ask about her mental well -being, state of health or her ability to participate in the process

B.20. Failed to ask what if any reasonable adjustments the Claimant may need to enable her to participate including managing/modifying timescales to ameliorate the impact on her given her poor mental health;

B.21. The language used by the investigator in e-mail correspondence sent to the Claimant was on several occasions insensitive and emphasised his concerns that the Claimant should agree to meet him even if she was unable to secure suitable support representation from her union on the basis that there were indicative timescales in the policy which he expressed he was " *in danger of exceeding if this drags on"*

B.22 In the e-mail of 23 July 2019 the investigator placed undue pressure on the Claimant on the basis that he wished to "*keep the investigation on track for all concerned, including yourself*" to avoid causing "*undue stress caused by the process'* for those she had complained against

B.23. In the e-mail of 23 July 2019 the investigator placed undue pressure on the Claimant on the basis that he wished to "*keep the investigation on track for all concerned, including yourself*" to avoid causing "*undue stress caused by the process'* and irrespective of the impact on the Claimant's health

B.24 The response from Mr Neild, in his e-mail 25 July 2019, ignored the Claimant's request for reasonable adjustments i.e. to defer requests for a meeting until she had returned to work.

B.25 The questions posed by Mr Nield sent to the Claimant were offensive, patronising, insensitive and/or irrelevant and/or

B.26 Failed to address the key complaints cited in the grievance letter, (i) the denial of training, (ii) the exclusion from the department photograph, (iii) the failure to allocate suitable equipment

B.27. The focus of the Respondent to progress the grievance investigation was to safeguard the welfare of those the Claimant had referred to in her complaints.

B.28 The Respondent ignored the Claimant written requests for the Respondent to make adjustments to its approach highlighting her ill health.

B.29 The Respondent failed to take account of advice provided in occupational health reports including one dated 25 July 2019 which stated that the Claimant was showing signs of stress , anxiety, depression. The report further stated that the Claimant was not fit to be at work due to her reduced emotional resilience and would be unlikely to be so for the following 4-6 weeks

B.30 The decision of Mr Riley advised by e-mail on 5 August 2019 advising that he had decided to conclude her grievance based on her initial letter

B.31 And/or that he had found no case to answer

B.32. And/ or that allegations could not be substantiated without " supporting evidence"

B.33. Writing to the Claimant's colleagues named in the grievance to notify them that the Claimant's grievance had been dismissed with a finding of no case to answer.

Sickness Absence/Dismissal

B.34 In scheduling the Long -Term Absence Review meetings for 21 August 2019 and 13 September 2019 despite being advised the Claimant was unfit to return to work until 22 September 2019;

B.35 Advising the Claimant that she had a 'contractual obligation' to attend such meetings;

B.36 Failing to offer reasonable adjustments in support of a return to work within the timescales and/offer the support indicated in the occupational health reports;

B.37 The decision to convene a Formal Absence Management Panel for 28 February 2020.

C. <u>VICTIMISATION</u>

The Claimant relies on the following protected acts

(i) The grievance letter, dated 15 May 2019 alleging racial discrimination and harassment.
(ii) The Claimant did a further protected act in initiating employment tribunal proceedings by contacting ACAS and thereby notifying the Respondent that she intended to issue a claim (ACAS certificate dated 27 December 2019)
(iii) The Claimant's third protected act was done on 17 February 2020 in issuing her employment tribunal claim.

The Claimant was victimised for having done her protected acts including by reason that;

Failure to conduct any or any adequate investigation into the Claimant's grievance

C.1 Placed undue pressure on the Claimant to meet with the investigator despite being aware that the Claimant was suffering with depression and anxiety.

C.2. The investigator failed to ask about her mental well -being, state of health or her ability to participate in the process

C.3 Failed to ask what if any reasonable adjustments the Claimant may need to enable her to participate including managing/modifying timescales to ameliorate the impact on her given her poor mental health and in any event failed to make any reasonable adjustments to the process.

C.4. The language used by the investigator in e-mail correspondence sent to the Claimant was on several occasions insensitive and emphasised his concerns that the Claimant should agree to meet him even if she was unable to secure suitable support representation from her union on the basis that there were indicative timescales in the policy which he expressed he was " *in danger of exceeding if this drags on"*

C.5. In the e-mail of 23 July 2019 the investigator placed undue pressure on the Claimant on the basis that he wished to "*keep the investigation on track for all concerned, including yourself*" to avoid causing "*undue stress caused by the process'* for those she had complained against

C.6. In the e-mail of 23 July 2019 the investigator placed undue pressure on the Claimant on the basis that he wished to "*keep the investigation on track for all concerned, including yourself*" to avoid causing "*undue stress caused by the process'* and irrespective of the impact on the Claimant's health

C.7. The response from Mr Neild, in his e-mail 25 July 2019, ignored the Claimant's request for reasonable adjustments i.e. to defer requests for a meeting until she had returned to work.

C.8. The questions posed by Mr Nield sent to the Claimant were offensive, patronising, insensitive and/or irrelevant and/or

C.9. Failed to address the key complaints cited in the grievance letter, (i) the denial of training, (ii) the exclusion from the department photograph, (iii) the failure to allocate suitable equipment

C.10. The focus of the Respondent to progress the grievance investigation was to safeguard the welfare of those the Claimant had referred to in her complaints.

C.11. The Respondent ignored the Claimant written requests for the Respondent to make adjustments to its approach highlighting her ill health.
C.12. The Respondent failed to take account of advice provided in occupational health reports including one dated 25 July 2019 which stated that the Claimant was showing signs of stress , anxiety, depression. The report further stated that the Claimant was not fit to be at work due to her reduced emotional resilience and would be unlikely to be so for the following 4-6 weeks
C.13. The decision of Mr Riley advised by e-mail on 5 August 2019 advising that he had decided to conclude her grievance based on her initial letter
C.14. And/or that he had found no case to answer
C.15. And/ or that allegations could not be substantiated without " supporting evidence"
C.16. Writing to the Claimant's colleagues named in the grievance to notify them that the Claimant's grievance had been dismissed with a finding of no case to answer.

Sickness Absence- Dismissal

C.17 In scheduling the Long -Term Absence Review meetings for 21 August 2019 and 13 September 2019 despite being advised the Claimant was unfit to return to work until 22 September 2019;
C.18. Advising the Claimant that she had a 'contractual obligation' to attend such meetings;
C.19. Failing to offer reasonable adjustments in support of a return to work within the timescales, including finding suitable alternative employment and/offer the support indicated in the occupational health reports;
C.20. The decision to convene a Formal Absence Management Panel for 28 February 2020.
C.21. The decision to dismiss the Claimant on 28 February 2020 in the Claimant's absence.

D. DISABILITY DISCRIMINATION s.20/21 EqA

Sickness absence/dismissal

(i) ***PCP*** – The Claimant was required to participate in the **grievance process** adhering to timescales set down in the Respondent's policy and procedures and/or otherwise dictated by the Respondent.

(ii) ***PCP*** – The Claimant was required to participate in the **sickness absence process** adhering to timescales set down in the Respondent's policy and procedures/and/or otherwise dictated by the Respondent.

(iii) ***Substantial Disadvantage*** – The Claimant was placed at substantial disadvantage because she was unable to comply with the requirement by reason of her disability and the symptoms which were related to her disability which meant she lacked resilience and was stressed and anxious and unable to participate in a face to meeting or any reasonable alternative process to secure her engagement within the timescales set by the Respondent under either the grievance and/or sickness absence processes

(iv) ***Personal Injury*** -The manner in which the process was managed of itself exacerbated the Claimant's symptoms and caused further distress and psychological harm which hampered her recovery.

The Respondent failed to make the following reasonable adjustments to its policies to enable the Claimant to participate.

(a) Grievance Process

D1. To set timescales for engagement in the grievance process to enable the Claimant recover her health and mental well-being sufficient to ameliorate the otherwise adverse impact on her poor mental health;

D2. To defer requests for a meeting until the Claimant had returned to work or was otherwise well enough to participate on the process.

D3. To take account of advice provided in occupational health reports including one dated 25 July 2019 which stated that the Claimant was showing signs of stress, anxiety, depression.

(b) Sickness Absence Process

D4. To set timescales for engagement in the Sickness Absence process to enable the Claimant to recover her health and mental well-being sufficient to ameliorate the otherwise adverse impact on her poor mental health.
D5. (deleted)
D6. To offer reasonable adjustments in support of a return to work within the timescales, including finding suitable alternative employment and/offer the support indicated in the occupational health reports;
D7. To convene a Formal Absence Management Panel after (or in light of) relevant medical evidence.
D8. To consider dismissal after due consideration of relevant medical evidence.

E. <u>DISABILITY RELATED DISCRIMINATION</u>

E1. For a reason related to her disability i.e. by reason of the symptoms which were related to her disability which meant she lacked resilience and was stressed and anxious and unable to participate in a face to meeting or any reasonable alternative process to secure her engagement within the timescales set by the Respondent under either the grievance and/or sickness absence processes.
E2. For a reason related to her disability (as set out above) the Claimant was unable engage in the redeployment process without additional support from the Respondent.
E3. For a reason related to her disability (as set out above) the Claimant was unable to engage in the Long -Term sickness absence review on 28 February 2020 which resulted in her dismissal.

F. <u>UFAIR DISMISSAL</u>

F1. What was the principal reason for the dismissal ?
F2. Did the Respondent carry out a reasonable investigation into the Claimant's health and prospects for a return to work ?
F3. Did the Respondent consider whether the Claimant was disabled, and if so what reasonable adjustments may be necessary to remove substantial disadvantage ?
F4. Did the Respondent fail to consider all relevant factors to the decision to dismissal including that;
(a) The Claimant had consistently expressed a willingness to return to work,
(b) The decision to dismiss was contrary to the medical evidence,
(c) There were no health and safety issues in respect of others that the Claimant had been advised of or such that could justify her dismissal.
(d) The Claimant would have been able to return to work within a reasonable timeframe with appropriate support.
(e) The availability of suitable alternative employment

G. Acts extending over a period

G1. The Claimant refers to the matters set out above as constituting an act/series of acts/ course of treatment which has extended over the period up to and including her dismissal.

H. Remedy

1. The Claimants seeks;

(i) Damages for injury to feelings including personal injury
(ii) Compensation
(iii) Pension loss
(iv) Recommendations.