# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
|---|---|---|
| Miss C Milnes | **- V -** | Imperial College of Science Technology & Medicine |

**Heard at**: London Central

**On**: 20-30 September & 4-5 October 2022

**Before:** Employment Judge Baty
Mr D Kendall
Mr S Hearn

**Representation:**

**For the Claimant:** In person
**For the Respondent:** Ms E Misra (counsel)

# RESERVED JUDGMENT

**1. The claimant's complaints brought under claim 2201868/2019 where the acts or omissions alleged predated 30 December 2018 were presented out of time. The claimant's complaints brought under claim 2204479/2019 where the acts or omissions alleged predated 2 July 2019 were presented out of time. It is not just and equitable to extend time in relation to such complaints brought under the Equality Act 2010 and it was reasonably practicable to have brought such complaints in time in relation to such complaints brought under the Employment Rights Act 1996. The tribunal does not therefore have jurisdiction to hear any such complaints and they are struck out. However, had the tribunal had jurisdiction to hear those complaints, they would all have failed.**

**2. As regards the claimant's complaints for which the tribunal does have jurisdiction to hear them, those complaints (of disability discrimination (direct discrimination, discrimination arising from disability, reasonable adjustments and harassment), victimisation, of detriment as a result of making a protected disclosure pursuant to section 47B**

**Employment Rights Act 1996 ("ERA") and of constructive unfair dismissal pursuant to section 103A ERA) all fail.**

# REASONS

## The Complaints

1. By a claim form presented to the employment tribunal on 7 May 2019 (2201868/2019) (the "first claim"), the claimant brought complaints of disability discrimination (direct discrimination, discrimination arising from disability, reasonable adjustments and harassment) and victimisation. By a further claim presented to the employment tribunal on 21 October 2019 (2204479/2019) (the "second claim"), the claimant brought further complaints under these headings and complaints of detriment as a result of making a protected disclosure pursuant to section 47B Employment Rights Act 1996 ("ERA") and constructive unfair dismissal pursuant to section 103A ERA.

2. The respondent defended the complaints.

3. The claims were consolidated and listed to be heard together.

## The Issues

4. A list of issues had been prepared in connection with an earlier case management preliminary hearing before EJ Khan on 27 May and 5 June 2020. This was subsequently adjusted over time by the parties. By the start of this hearing, there were a few minor outstanding points on that list of issues, which the parties agreed that they would discuss whilst the tribunal did its reading. They duly did so and provided the tribunal with an agreed list of issues on the third morning of the hearing, which the tribunal adopted by agreement with the parties. That list of issues is lengthy (it runs to over 80 individual allegations over the various heads of claim) and is annexed to these reasons.

5. There was only one element which the judge wanted to explore further with the parties, which was to do with the scope of the issue at 9.3 concerning the case of Polkey v AE Dayton [1987] IRLR 503 HL ("Polkey). The parties had agreed with the tribunal at the start of the hearing that this hearing should deal with liability only and not remedy. However, the nature of the Polkey issue was not clear from the list of issues and the judge explored with the parties as to whether it was appropriate to determine this issue at the liability stage. For the benefit of the claimant, he explained the legal principle and the implications of the case of Polkey. The precise nature of the Polkey issue was then ascertained with Ms Misra, who stated that, as these issues would be dealt with in the evidence which the tribunal would hear at this liability hearing, it was appropriate to make any Polkey findings at the liability stage. The claimant agreed, as did the tribunal. It was therefore agreed that the tribunal would, at the liability stage, consider the Polkey issue set out below.

6. The basis of the Polkey argument is that the respondent submits that the claimant would not have continued in employment with the respondent anyway, due to her working relationships within her department, in particular with key managers in that department, and due to her own unwillingness to stay.

**The Hearing**

7. Today's hearing had been listed for 12 days commencing on 19 September 2022. However, the first day had to be vacated because of the additional bank holiday for the Queen's funeral on 19 September 2022. The hearing therefore commenced on 20 September 2022, with 11 days of the original listing remaining.

8. The hearing was listed as a hybrid hearing. However, having discussed the matter with the parties at the start of the hearing, it immediately became clear that it was really an in-person hearing (with all parties and representatives to be present in the hearing room) but with three of the respondent's 14 witnesses giving evidence remotely by video link. One of these (Ms Catherine Watt) was giving evidence from the UK. The other two (Ms Stephanie Morris and Dr Shona Blair) were giving evidence from Australia and permission to do so had been obtained in advance from the relevant authorities in Australia. During the respondent's witnesses' evidence, the order of witnesses was adjusted with the agreement of the parties in order that all the witnesses could be heard in a way which best accommodated the needs of the parties and the witnesses. This included the parties agreeing that Dr Rebecca Wilson should also give her evidence remotely (from the UK) which, with the tribunal's permission, she did.

9. Although, before this was clarified, the hearing had started off with a big screen and CVP room such that any observers could observe the hearing remotely, it appeared initially that this equipment would not be necessary for the whole of the hearing. Having taken instructions whilst the tribunal was doing its reading, Ms Misra told the tribunal that she would still like to have the big screen during the course of the claimant's evidence so that other witnesses from the respondent could observe the proceedings without them needing to be present in the room; this would therefore cut down considerably the number of people from the respondent in the room and the tribunal considered this a good idea particularly given the claimant's anxiety. Whilst the claimant objected to this request not having been made until after the tribunal had done its reading, she did not object to the request itself. It was, therefore, agreed that the CVP room and screen would be used for the two days on which the claimant was giving her evidence and then, of course, for the three witnesses (in the end four witnesses) who were giving their evidence remotely; but that otherwise it would not be necessary. There were no issues about public access as any third party who wished to observe the hearing could attend in person if they wished. As it turned out, there were some observers of the hearing who attended remotely at the beginning of the hearing and continued to do so, so the CVP screen was in fact used for most of the hearing, but no one objected to this. The parties could see on the big screen the names of those who were attending remotely. However, except when they were actually giving evidence, those attending remotely kept their cameras switched off so as not to be a distraction.

10. There was a train strike on the last day of the hearing (day 11). By that stage the evidence had been completed and that day had been reserved for submissions. The previous day, the claimant, after discussion with the tribunal, confirmed that she would attend by CVP on the day of the train strike. Ms Misra also did so. That day was therefore conducted entirely by CVP, with only the tribunal itself present in the physical hearing room.

**Adjustments**

11. The claimant is disabled by reason of anxiety and/or depression and/or asthma and disability was conceded by the respondent. At the preliminary hearing before EJ Khan, the question of suitable adjustments for the final hearing was discussed and three specific adjustments were agreed with the judge at that hearing. These were that: the hearing would take place in one of the larger tribunal rooms with windows; there would be a 5-10 minute break every hour; and any additional breaks would be provided as and when required by the claimant.

12. At the start of this hearing, the judge discussed these amendments with the claimant. The tribunal had provided one of its largest tribunal hearing rooms, which was up on the fifth floor of the building and had lots of windows. Furthermore, the claimant confirmed that the arrangements regarding breaks remained of importance; the judge confirmed that the claimant could take breaks as had been agreed and she was permitted to do so throughout the hearing. Breaks were taken at least roughly every hour, except on a couple of occasions during the claimant's evidence and those occasions when she was cross-examining the respondent's witnesses when the claimant indicated she wanted to or was happy to carry on a short while longer in order to conclude a particular section of the evidence.

13. In addition, having read the papers and realised that ventilation was of particular concern to the claimant and that her asthma could be triggered by strong smells, including from perfumes and aftershave, the tribunal ensured that the windows in the hearing room were kept open for ventilation purposes (which both parties were happy with) and confirmed that they would avoid wearing any aftershave on the days of the hearing. Ms Misra also confirmed that those attending from the respondent would similarly avoid wearing any perfume/aftershave.

14. On the first day of the hearing, the judge also asked the claimant whether the 10 AM start time for the hearing had any impact on her in relation to any medication which she may be taking. However, the claimant confirmed that this start time was fine.

15. The room arrangements appeared to work well. As the afternoon of the first day of the claimant's evidence went on, the tribunal room began to get warmer despite the fact that the windows were open (it was a warm day). Both the claimant and Ms Misra commented that it was getting warm. However, there was nothing further that could be done about it and the parties raised no

objection to continuing. Furthermore, the fact that it got gradually warmer as the afternoon went on did not appear to impact unduly negatively upon any of the parties or on Ms Misra's ability to carry on her cross-examination questions or on the claimant's ability to answer those questions. With one exception, the temperature outside was cooler for the remainder of the hearing and there were no problems, either evident or raised, with the temperature in the room, which was at a comfortable level. The exception was on the tenth day of the hearing (the last day of evidence), when the weather had again become milder outside and, as the afternoon went on, the temperature in the tribunal room increased. The last of the respondent's witnesses was Dr O'Regan, for whom the claimant had earlier informed the tribunal that she only had about half an hour of questions (which did indeed turn out to be the case). Just before the claimant began cross-examining Dr O'Regan about halfway through the afternoon on the tenth day, she informed the tribunal that she would press on but was feeling a bit unwell; that she was feeling a bit hot and dizzy; but that she wanted to get the evidence over with and therefore wanted to go on. The judge asked her if she was sure if she felt well enough to continue. The claimant confirmed that she was. The judge therefore permitted her to do so, conscious also that there was only around half an hour to go. The claimant then carried out her cross-examination of Dr O'Regan. In doing so, she did not appear to be disadvantaged in comparison with the other cross-examination she carried out or in any noticeable discomfort.

16. At the start of the eighth day of the hearing, the claimant stated that, despite her having made the tribunal aware of the problems which were caused to her by people wearing perfume or aftershave, someone was wearing perfume or aftershave. The tribunal explained that they were not and Ms Misra confirmed that no one from the respondent was wearing perfume or aftershave (and there were no independent observers in the room at the time). Dr Hayes, the claimant's husband, then explained that he had noticed it in the corridor outside the tribunal room, but it was not evident in the room itself. The claimant confirmed that this was the case and that she was fine to carry on so long as the windows remained open for ventilation (which they were). The judge stated that it sounded as if the wearer of the perfume/aftershave was someone who had walked down the corridor outside the tribunal hearing room, in other words it could have been anyone who worked in or was visiting the tribunal building. He apologised but said that it would have been impossible to preclude against every such eventuality. The hearing then continued as normal and the issue did not arise again.

17. The claimant was accompanied by her husband, Dr Hayes, throughout the hearing, which was clearly of great assistance to her. The only exceptions to this were on the ninth and tenth days of the hearing, when Dr Hayes could not be present because of childcare commitments. At the end of the eighth day, Dr Hayes notified the tribunal that he would not be present the next day and asked that the tribunal take extra care in relation to the claimant the following day, which it did. It was more difficult for the claimant that day, partly because she was on her own and also because she revisited issues which were painful to her when she cross-examined Dr Watkins; indeed, at the end of her cross-examination of him, she was tearful; however, she remained assertive and

structured in her cross-examination throughout the day and the tribunal did not consider that she was unable to put her points across effectively. As it turned out, Dr Hayes was also not present on the tenth day, again for childcare reasons. The tribunal again was mindful of this and took extra care in relation to the claimant. At one point that day the claimant became tearful when she was putting to Ms Cox a matter that was painful to her but, even when the judge suggested a break at this point, the claimant recovered and asked if she could go on and ask a further question, which the tribunal allowed. However, with this exception only, the claimant again remained assertive and structured in her cross-examination throughout that day and the tribunal did not consider that she was unable to put her points across effectively.

## The Evidence

18. Witness evidence was heard from the following:

*For the claimant:*

The claimant herself (through two witness statements); and

Dr Patrick Hayes, the claimant's husband.

*For the respondent:*

Dr Vjera Magdalenic-Moussavi, the Director of Industry Partnerships and Commercialisation for the Faculty of Medicine in the Enterprise division of the respondent and, between January and October 2018, the claimant's line manager;

Ms Stephanie Morris, who became the Director of Industry Partnerships and Commercialisation for the Faculty of Medicine in the Enterprise division of the respondent from October 2018 (when Dr Magdalenic-Moussavi went on maternity leave) and was, between October 2018 and March 2019, the claimant's line manager. (Ms Morris gave evidence remotely from Australia);

Ms Clare Budden, an HR Partner in the respondent's "Strategic Support" team;

Dr Shona Blair, the Head of Research Strategy in the Faculty of Medicine at the respondent. (Dr Blair gave evidence remotely from Australia);

Dr Rebecca Wilson, who was at the relevant time Director of Industry Partnerships and Commercialisation for the Faculty of Natural Sciences in the Enterprise division of the respondent. (Dr Wilson gave evidence remotely from the UK);

Dr Simon Hepworth, the Director of Enterprise at the respondent and to whom, at the relevant times, Dr Magdalenic-Moussavi, Ms Morris and Dr Wilson reported;

Mr Robert Scott, the Data Protection Officer at the respondent;

Ms Catherine Watt, a Senior Employee Relations Manager at the respondent and a qualified "Mental Health First Aider", who was the member of HR present at the claimant's first grievance. (Ms Watt gave evidence remotely from the UK);

Dr Alistair McDermott, the Director of Science Led Services at the respondent, who reports to Dr Hepworth, and who heard the claimant's first grievance;

Dr Chris Watkins, the Faculty Operating Officer for the Faculty of Medicine at the respondent, who was appointed to hear the claimant's second grievance;

Ms Maria Lynch, a Senior Employee Relations Manager at the respondent and a qualified "Mental Health First Aider", who was the member of HR present at the claimant's first grievance appeal;

Ms Lynne Cox, the Director of the Research Office at the respondent, who is a "Mental Health Champion" for the respondent and who heard the claimant's first grievance appeal;

Ms Ann Kelly, the Head of Employee Relations at the respondent and a qualified "Mental Health First Aider"; and

Dr Declan O'Regan, a part-time clinician and part-time academic who, amongst other things, is an academic based in the Institute of Clinical Sciences, which is one of five departments within the Faculty of Medicine at the respondent.

19. An agreed bundle was produced to the hearing, in both paper and electronic form, which ran to some 2,689 pages. In addition, the respondent produced a chronology, a cast list and a proposed timetable for the hearing, together with an "opening skeleton argument" from Ms Misra. The cast list and the chronology were not agreed and the claimant complained that she had not received them until recently. The judge explained that it was not uncommon that such documents were produced not long before the hearing; and that they could be useful and helpful for the tribunal, even more so if they were agreed. However, he said that he appreciated that the claimant may have other things to do in terms of preparation for the hearing and that he certainly did not insist on the claimant checking these documents and seeking to agree them if she did not want to. The claimant did not, however, object to the admission of these documents to the tribunal and they were admitted.

20. The tribunal read in advance the witness statements and any documents in the bundle referred to in those statements, together with Ms Misra's "opening skeleton argument". The witness statements ran to some 200 pages and, having

dealt with preliminary matters on the first morning of the hearing, the tribunal needed the rest of that day and the following day to do its reading.

**Management of the Hearing**

21. When the hearing reconvened on the third day, the judge noted, having done the reading, that there was a discrepancy in the numbering between the electronic and paper bundle. This was nobody's fault, the judge said, particularly as the paper bundle, with its various later insertions which meant that the numbering in it did not align with the numbering in the electronic bundle, was produced back in 2020 at a stage of the pandemic before the tribunal had started to insist that parties preparing bundles ensured that the numbering in paper and electronic bundles aligned. However, the judge raised it in case there were any problems further down the line in the hearing. This was then discussed between the judge and the parties. However, the claimant said that she was very familiar with the documents and Ms Misra said that she had references for both the paper and electronic bundle and so should be able to deal with any discrepancies as they came along; they did not think that this would impact on the smooth running of the hearing. That turned out to be the case and there were in this respect no problems which affected the smooth running of the hearing.

22. During Dr Hayes' evidence, it became clear that he had some typed notes of the meeting of 25 July 2019 which had not been disclosed to the respondent. He had taken handwritten notes at that meeting and then typed them up. He had disposed of the handwritten notes but had retained the typed notes. Dr Hayes said that the typed notes had essentially been used as the basis for his witness statement, which did not diverge from those notes in any material respect. Dr Hayes agreed to find the typed notes and provide a copy to the respondent, which he duly did later that evening. However, no party asked for them to be added to the bundle, so the tribunal did not at any stage see them.

23. At one point on the afternoon of the first day of her evidence, the claimant became tearful when answering one particular question. That she became emotional appeared to be a direct response to that question rather than any other factor or factors. The claimant and her husband immediately moved to leave the room at this point. The judge said that it was fine to take a break at that point given that the claimant was emotional but asked that the claimant and her husband should in future wait for the tribunal to adjourn the hearing or specifically ask for an adjournment rather than just leaving of their own accord. On this occasion, the parties returned within a few minutes and the hearing continued for the remainder of the afternoon, with the claimant able to continue to answer the questions put to her as she had been prior to the point at which she had become emotional.

24. At another point on the second day of her evidence, the claimant again became tearful in response to a particular matter and the tribunal took a break. After a short break, the parties returned. The judge asked the claimant if she was ok and able to continue. The claimant confirmed that she was.

25. Apart form these occasions, the claimant appeared confident and assertive in her evidence throughout and the tribunal had no concerns that she had not for any reason been able to give her evidence in a fair manner.

26. In her evidence, the claimant frequently did not answer the question put to her, often going off at a tangent and sometimes seeking to say what she wanted to say rather than answer the question being asked of her. Whilst unwilling to interject initially so as not to break the flow of the cross-examination, the judge did then intervene on several occasions to ask the claimant to focus on the question being asked of her, whilst making clear that she was of course still permitted to expand on her answers, just so long as they were relevant to the questions being asked. Otherwise, there would have been a real risk that her evidence would not have been completed within the two days allocated for it (which would also have resulted in the claimant remaining on oath over the weekend and therefore not being able to discuss the case with her husband).

27. On occasions during her cross-examination of the respondent's witnesses (particularly of Ms Morris), the claimant cut across the answers that were being given. On such occasions, the judge asked her to allow the witness to complete the answer to the question.

28. At times during her cross-examination of the respondents' witnesses, the claimant asked questions about matters which did not form part of the issues of the claim as set out in the list of issues. Whilst the judge did allow this to a large degree so as not to break the flow of her cross-examination, he did on occasions intervene and ask the claimant to move on in her questions when it became persistent, for example when she was asking questions of Dr Magdalenic-Moussavi about her probationary period extension in June 2018, which was not one of the issues on the list of issues. The judge repeated that the tribunal would only be determining the matters in the agreed list of issues and that therefore matters which did not relate to those issues were not relevant.

29. Similarly, there were occasions when the claimant repeatedly put the same questions and allegations to the same witnesses during her cross-examination of them. On some occasions, when for example she had done so two or three times, the judge asked her to move on.

30. Furthermore, there were a number of occasions when the claimant put something to a particular witness which was based on, for example, an inaccurate premiss, in other words suggesting that the witness or another witness had previously said something in evidence other than what they had actually said and putting that forward as the premiss to the question. Whilst we do not consider that this was done intentionally to mislead but appeared rather to stem from the claimant's unconscious selective interpretation of the evidence previously given, it happened quite often and the judge on these occasions interjected to stop the question and correct the inaccuracy so that the question was then accurate and the witness was not inadvertently misled.

31. At the start of the sixth day of the hearing (the second day of the claimant cross-examining the respondent's witnesses), the claimant informed the tribunal

that she was not feeling great and was tired and had not slept well the previous night. She was a little tearful as she said this. The judge discussed with the claimant whether she felt fit enough to proceed that day. The claimant stated that she was ok to carry on and wanted to do so and the tribunal therefore permitted this. The claimant then carried on cross-examination of the respondents' witnesses for the rest of that day.

32. Later on the morning of that day, when she was cross-examining Ms Morris, the claimant made a long set of assertions about how it was for her to judge the effects of her disability and not others (an assertion which was clearly of considerable importance to her and which she returned to often in her evidence). It did not appear that this set of assertions was about to turn into a question and the judge could sense the claimant becoming more and more upset as she did this and on the verge of tears. He therefore interjected, and told the claimant that, whilst he could see that the matter was of great importance to her and that she felt very passionately about it, she should try and formulate a question for the witness as that was what was required in cross-examination. The claimant then became more tearful. The judge therefore suggested that there should be a break. The hearing adjourned for 10 minutes. When the claimant returned, she confirmed that she was ok to carry on and did so.

33. The claimant had been cross-examining Ms Morris about attendance at meetings, which was potentially linked to some issues in the list of issues. In the course of the evidence, Ms Morris confirmed that one of the reasons for one of these meetings was to ask the claimant about certain behaviour of the claimant which had been reported to Ms Morris and to get the claimant's side of the story. Shortly after the break referred to in the paragraph above, the claimant declared that she had the previous day been told by the tribunal that she was not to ask questions about performance issues. The judge immediately interjected and corrected her. He had asked her the previous day to move on in relation to questions she was asking about her probation extension in June 2018 (which was not part of the issues of the list of issues) and nothing else. He had not stopped her from asking questions about performance in general. Furthermore, the line of questioning which she had just been pursuing had elicited answers about performance/behaviour and the judge had not stopped the line of questioning because it appeared that it might, at least tangentially, be relevant to issues on the list of issues. The judge asked the claimant if she could now see that distinction. The claimant said that she thought she did.

34. Overall, whilst there were a number of points during her cross-examination of the respondent's witnesses when the claimant became tearful and the tribunal often needed to take a break, these tended to be for self-contained time periods of a few minutes each, from which she appeared to recover fully and quickly to the level of function she was at prior to the tearful episode. The rest of the time the claimant appeared confident and assertive in her cross-examination, which she had clearly prepared in advance and in detail and which was structured. Therefore, whilst we do not for a moment underestimate the huge challenge for a litigant in person with the claimant's disabilities of cross-examining 14 witnesses over a number of days, we do not consider that the claimant was not able fairly to do so.

## Timetable

35. A timetable for the hearing was agreed between the tribunal and the parties. At the start of the hearing, the parties and the tribunal considered the respondent's proposed timetable. The claimant considered that not enough time had been allocated to tribunal reading and the tribunal was inclined to agree. We therefore agreed to allocate an extra day for tribunal reading and pushed the rest of the timetable back by one day. It was agreed that Ms Misra would check with the witnesses whether this would cause any problems. After the tribunal had done its reading, there was further discussion of the timetable and some tweaks to the order of evidence were agreed, the claimant letting the tribunal and the respondent know where she needed more or less time in relation to particular witnesses in the light of the cross-examination questions which she had prepared. Again, Ms Misra needed to check with the witnesses whether these adjustments were ones which they were able to make. However, they were able to accommodate these changes and the timetable was agreed.

36. Ms Misra was concerned that, because the claimant had indicated that she may need more than half a day to cross-examine Ms Morris (who was one of the witnesses giving evidence from Australia) that it may be unfair on Ms Morris, given that it would then be the middle of the night in Australia, if the cross-examination went into the afternoon (in the UK); her concern was that this might impact on her ability to give her evidence properly due to her being over-tired. The claimant agreed, therefore, that if she needed more time and if Ms Morris was unhappy about going on into the afternoon, that she would complete cross-examination the following morning. In fact, although cross-examination of Ms Morris did slip into the afternoon, Ms Morris said that she would prefer to finish her evidence that day rather than return the following morning and that is what therefore happened.

37. On the afternoon of the eighth day of the hearing, the judge discussed at length the witness order for the following day. In the light of the amounts of time the claimant said she needed with the various witnesses, it was agreed between the parties and the tribunal that Dr Watkins' evidence would be brought forward so that he gave evidence on the ninth day of the hearing (he had originally been scheduled to give it on the tenth day). However, this did not affect the order of the other witnesses on the ninth day, with Dr McDermott scheduled to be giving his evidence first in the morning. This order was confirmed with the parties on the afternoon of the eighth day.

38. At the beginning of the ninth day, however, the claimant said that she did not realise that it was Dr McDermott giving evidence first that day. The judge asked if she was well enough prepared to cross-examine him and prepared to continue. The claimant said that she was happy to go ahead and would rather get it over with. The judge asked if she was sure about this. The claimant said she was, but it just might take her a bit longer to find certain references. On that basis the hearing continued with Dr McDermott's evidence. In comparison with her cross-examination of the other respondent's witnesses, the claimant did not appear to be at any disadvantage when cross-examining Dr McDermott.

39. The timetable provided for submissions on the last (eleventh) day of the hearing. As noted, this day was conducted entirely by CVP. Both parties produced written submissions which the tribunal read in advance and then heard oral submissions from the parties.

40. The judge explained in some detail for the benefit of the claimant what submissions were and how the process of giving submissions, both written and oral, operated. He did this on the ninth day of the hearing, prior to the final weekend of the hearing, in case the claimant wanted to use that weekend to work on her submissions. He did so again, at the claimant's request, on the tenth day, after that weekend, and briefly summarised the relevant law at that point too, for the claimant's benefit. The claimant said she was worried about getting her submissions wrong and particularly that she might set out facts which did not accurately reflect the evidence, as she did not have good notes of the evidence and may therefore inadvertently misremember. The judge sought to reassure the claimant; he told her not to worry overly about the format of her submissions in general; and said that, if there were any evidential inaccuracies in them, the tribunal had a note of the evidence and, in addition, Ms Misra would no doubt also flag any such inaccuracies to the tribunal.

41. In the light of the reduction of the hearing to 11 days and the agreed timetable which, through nobody's fault, gave very little time for tribunal deliberation, it was agreed that the decision would be a reserved decision.

42. At the end of the hearing, the claimant thanked the tribunal for the way it conducted the hearing, specifically for the adjustments that were made and for being "super patient", as she put it. She also thanked Ms Misra, in particular for being accommodating about breaks and for being understanding.

## Findings of Fact

43. We make the following findings of fact. In doing so, we do not repeat all of the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues. We first set out a brief overview before going on to make our more detailed findings of fact.

### Overview

44. The claimant was employed by the respondent from 15 January 2018 until 24 September 2019, when she resigned with immediate effect.

45. The claimant was employed as a "Corporate Partnerships Associate" in the respondent's Faculty of Medicine within the Enterprise department (although this job title was updated to "Industry Partnerships and Commercialisation Executive" as part of a general update of titles with effect from 1 March 2019). The role entailed stimulating and supporting the development of strategic research collaborations between business and the respondent, with the end goal of securing funding.

46. Throughout her employment, the claimant worked on a part-time basis three days a week, with her working days being Monday, Tuesday and Thursday.

47. She was initially employed on a six-month fixed term contract due to expire on 14 July 2018 and during the whole of which her employment was probationary.

48. On 27 June 2018, the claimant's fixed term contract was extended until 15 March 2020. On the same date, her probation period was extended for a further 2 ½ months from 14 July 2018 until 1 October 2018.

49. From the start of her employment, the claimant's line manager was Dr Magdalenic-Moussavi. In October 2018, Dr Magdalenic-Moussavi commenced maternity leave (from which she did not return prior to the termination of the claimant's employment). After a short handover period in October 2018, Ms Morris, who was initially employed by the respondent as maternity cover for Dr Magdalenic-Moussavi, took over as the claimant's line manager. Ms Morris remained the claimant's line manager until the point when the claimant went off sick in March 2019.

50. On 10 March 2019, the claimant raised her first grievance, which was against the respondent, Dr Wilson and Ms Morris.

51. On 13 March 2019, the claimant was signed off work by her GP. She remained off work for the remainder of her employment (save for attending for meetings in connection with her grievances).

52. On 3 May 2019, the claimant attended a hearing with Dr McDermott in relation to her first grievance. She was accompanied by her husband, Dr Hayes.

53. On 7 May 2019, the claimant submitted the first claim to the employment tribunal.

54. On 20 June 2019, the claimant received the outcome of the first grievance. Whilst some of the complaints were upheld, the majority were not.

55. On 4 July 2019, the claimant lodged an appeal against the outcome of the first grievance.

56. On 25 July 2019, the hearing of the first grievance appeal took place before Ms Cox. The claimant was accompanied by her husband, Dr Hayes.

57. On 13 August 2019, the claimant lodged her second grievance, which concerned the procedure/handling of the first grievance appeal on 25 July 2019.

58. On 10 September 2019, the respondent provided the outcome of the first grievance appeal to the claimant. The first grievance appeal was not upheld.

59. In early September 2019, Dr Watkins was appointed by the respondent to hear the claimant's second grievance and the claimant was informed of this on 12 September 2019.

60. On 13 September 2019, the claimant's right to contractual sick pay expired; after that, she remained on statutory sick pay only, which would have lasted until 30 September 2019 (had the claimant's employment not terminated prior to that date).

61. On 24 September 2019, the claimant resigned from her employment with immediate effect.

62. Following her resignation, the claimant agreed with the respondent that the second grievance should be dealt with under the respondent's "special procedure" (which meant that it was dealt with by correspondence only).

63. On 21 October 2019, the claimant submitted the second claim to the employment tribunal.

64. The outcome of the second grievance was sent to the claimant on 22 October 2019. The second grievance was not upheld.

Findings regarding the claimant in relation to evidence and approach

65. Before going into our more detailed findings, we make the following findings regarding the claimant. The reason for doing so is that, whilst many of the primary findings of fact we make are undisputed, our findings on those which are disputed are often informed at least in part by these findings which we make regarding the claimant, her approach, and her evidence, in contrast to that of the respondent's witnesses; these inform whose evidence we tend to prefer in relation to those disputed facts.

66. The claimant is an intelligent individual. She has an undergraduate degree in zoology and has spent a substantial amount of time in higher education, studying latterly for an executive MBA. As a litigant in person, she was able to and did prepare for this employment tribunal hearing, which involved a lot of documentation and a long list of issues, and she was able to prepare for and cross-examine in a structured manner 14 witnesses over a number of days.

67. Notwithstanding this, her approach at this tribunal revealed someone who was almost entirely focused on herself, saw everything only from her own perspective and who appeared almost entirely oblivious to the viewpoints and perspectives of others. Furthermore, it also demonstrated someone who (consciously or unconsciously) heard in the evidence only what she wanted to hear as opposed to what the evidence actually was.

68. During the hearing her tone when questioning witnesses was not merely assertive but ranged from sarcastic to angry and at times, combative or even belligerent. She was rude and arrogant in the questioning of various of the respondent's witnesses, often individuals who were more senior to her and more

experienced, on various operational matters where her opinion differed to theirs (for example Dr Wilson in relation to preparations for international marketing events, specifically the BioJapan conference; Dr Blair in relation to how to prepare for and run events, specifically the AYCI event; and Dr Watkins in relation to how to operate a grievance procedure). It was clear that the claimant's view was that "she knew best", even when the accounts given by these various individuals were perfectly reasonable; the claimant seemed to demand an approach from them which did not take into account practical realities or the interests of others apart from herself, but which was centred around her own personal perspective only. She was also particularly aggressive in her cross-examination of Dr Hepworth, Dr Watkins, Ms Lynch and Ms Kelly.

69. The claimant's view of the world, as exemplified in many examples at this hearing, was one where she perceived perfectly ordinary everyday interactions in the workplace as being directed at her personally or as being examples of discrimination. This was out of kilter with reality.

70. This was borne out at this hearing in many ways. We have already noted that the claimant did not answer questions put to her in her evidence but went on to state things which she wanted to say, in other words things from her personal perspective, rather than focus on the question which was being asked of her. By contrast, when she was questioning witnesses, she would often refuse to accept an answer and move on and she repeatedly asked the same questions of them, even though the answers she was getting were consistent, seemingly because those answers did not accord with her own personal view.

71. Her style of questioning and her way of recapping evidence were particularly noticeable. When evidence was given by the respondents' witnesses which was not specifically set out in a document in a bundle, she would dwell on this fact as if, because something had not been set out in a contemporaneous document at the time, that meant it didn't happen. This happened a lot. In a similar vein, even where there was documentation, the claimant cast doubt on its veracity if it was not contemporaneous. The most noticeable example of this was the huge amount of time she spent cross-examining Dr Hepworth about his notes of the conversation which she had with him on 25 February 2019 because, as he openly acknowledged in his witness statement, he put them down on paper a few weeks after the meeting and not on the day of the meeting itself. Without actually suggesting it directly to him, the claimant was inferring that somehow those notes cannot therefore have reflected what happened at the meeting.

72. As to recapping evidence, the claimant would frequently put to a witness of the respondent something which she said had been said in evidence, when it had either not been said or had been said very differently to the way the claimant presented it. Similarly, she would ask questions which did not follow on given the answer that had been given by a witness to the previous question, as if that previous answer had not been given or had been given differently. This was further evidence that, whatever was said to her, by witnesses in their answers to her questions or otherwise, the claimant consciously or unconsciously filtered out anything which did not accord with her own personal preconceived view.

73. This also involved ignoring obvious evidential points. One example, in her cross-examination of Dr Watkins, was her insistence that she had not agreed to use the respondent's "special procedure" (written procedure) in relation to her second grievance when there was clear email evidence in the bundle that she had done exactly that. We have already noted above numerous occasions when she misconstrued things which had been said clearly to her by the tribunal (for example that the tribunal had told her that she couldn't ask any questions related to performance generally when in fact the judge had quite clearly told her merely not to ask further questions about her probationary extension, which was not part of the list of issues; and her insistence that she had not realised that Dr McDermott would be giving his evidence first on the morning of the ninth day of the hearing, despite the clear agreement about witness order the previous day).

74. Her style of questions was also reflective of this. One repeated example concerned clause 8.5 of the respondent's grievance procedure. The claimant considered that Ms Cox had no business to be asking her the various questions which were asked of her at the grievance appeal meeting on 25 July 2019 which form the basis of some of the complaints before this hearing. The respondent's evidence throughout was that the questions were asked in order to assist Ms Cox in making any recommendations and exploring any solutions as a result of the grievance appeal. The claimant took several of the witnesses, including Dr Watkins, Ms Lynch and Ms Cox, to clause 8.5 of the respondent's grievance procedure, which set out what the purpose of a grievance appeal was. That purpose was in three parts, the latter of which was *"to explore potential solutions"*. However, the claimant only read out the earlier part of clause 8.5 which included the purpose of the grievance appeal being to *"review the basis for the earlier decision"* and asked the witnesses how Ms Cox's questions could relate to that, putting it to them that Ms Cox had no basis for asking these questions as part of the grievance appeal. That was not only misleading in terms of the questions to the witnesses but was further evidence of the claimant only seeing and hearing what she wanted to hear rather than having any objective perspective.

75. A further example concerns the grievance hearing on 3 May 2019 conducted by Dr McDermott. There is no complaint in the list of issues about the handling of this hearing, which the claimant's husband, Dr Hayes, described in his witness statement as *"conducted in a reasonably professional manner, with an appropriate approach to questioning, appropriate tone and adjournments when necessary"*. By contrast, the claimant sought on appeal to describe the meeting as *"aggressive"* and overly inquisitorial, which mirrored the exact concerns which she levelled at the grievance appeal hearing. Clearly, therefore, her perception is at odds even with that of her husband, who attended both meetings with her.

76. In summary, therefore, the claimant has complete tunnel vision when it comes to her recollections and to assessing evidence, because of this focus on her own perspective and her inability to see the bigger picture and to view things objectively. Consciously or unconsciously, she cherry picks facts and misconstrues facts. We therefore have serious concerns about the reliability of her evidence.

77. By contrast, without exception, the respondent's 14 witnesses were straightforward in their evidence and answered the questions which were put to them. Whilst they gave context for their answers, they did not go off on a tangent. Furthermore, their evidence was consistent with their own witness statements, with the contemporaneous documents and in all material respects with each other.

78. For these reasons, where there is a conflict of evidence between the claimant and the respondent's witnesses which is not determinable by reference to contemporaneous documentation, we tend to prefer the evidence of the respondent's witnesses.

79. We appreciate that the claimant may not like the findings that we have made in the paragraphs above and may find some of them upsetting. However, she has brought serious allegations of, amongst other things, discrimination and harassment against a large number of individuals, which we are tasked with determining. The findings we have made above are, we consider, necessary to enable us properly and fairly to determine the facts and those allegations and it would not be in the interests of justice to omit them out of consideration for the claimant's feelings.

80. Furthermore, we are not suggesting that the claimant has deliberately misled or sought to mislead either the tribunal or the respondent's witnesses; merely that she has a perception and outlook which means that her evidence is unreliable, and which is exemplified by the examples given above.

81. Finally, we are not making any finding about whether this perception is or is not in any way to do with the claimant's disabilities; we do not have to do this and we do not do this. There is no medical evidence on the subject and indeed, it is not the claimant's case that her perception and outlook is impacted upon by any of the disabilities; rather, her case is that her perception reflects reality and that it is the respondent which has behaved unreasonably and discriminatorily. However, for the purposes of determining the allegations, it is enough for us to identify, as we have done, that the perception and outlook identified by us above exists and that it has the impact on the reliability of the claimant's evidence as set out above.

82. Having set out an overview of the facts above and our findings regarding the claimant's approach and evidence, we now turn to the more detailed fact-finding.

<u>The start of the claimant's employment</u>

83. As noted, the claimant started employment with the respondent on 15 January 2018 as a Corporate Partnerships Associate in the Faculty of Medicine in the respondent's Enterprise department.

84. She was employed on a part-time, fixed term contract, which was due to expire on 14 July 2018. Whilst the contract did not specify which days the

claimant would work, her days of work were agreed so as to align with the days when her line manager, Dr Magdalenic-Moussavi, worked, which were Mondays, Tuesdays and Thursdays.

85. At the time the claimant joined, Dr Magdalenic-Moussavi had two direct reports. These were Dr Alexandra Esteras-Chopo, who worked full-time; and the claimant.

86. As well as Dr Magdalenic-Moussavi, Dr Wilson was also on the original interview panel for the claimant which appointed the claimant to this fixed term role.

87. Dr Magdalenic-Moussavi's team works on Level 2 of the Faculty Building in the respondent's South Kensington campus, just off Exhibition Road. It is a large glass modern office building (it was built about 15 years ago) housing around 400 college staff over four levels of open plan office space. It also has a variety of meeting rooms of different sizes which can be centrally booked by anyone in the college, as well as breakout areas on each level. The meeting rooms are regularly booked up well in advance, so staff tended to conduct small meetings and catch ups in the communal meeting spaces. The staff on each level work in a variety of different teams. The building is open plan, with stairs and lifts in the middle as well as a central atrium which all the levels look down on, and walkways connecting the two sides of floors. The windows cannot be opened but the building is air-conditioned and very open and light. Ventilation is provided through the air conditioning system. However, the building does tend to become quite warm in the summer because it has many windows and a partially glass roof.

88. The Faculty of Medicine desks are on Level 2. The desks were standard office desks, arranged in rows of three or four, facing each other. They were allocated to specific individuals (the respondent did not have a formal hot-desking policy). However, the job was very "mobile" in that employees were often involved in meetings or events in different buildings or campuses, and they had laptops to facilitate this feature of their work, as well as working from home.

89. The role of Corporate Partnerships Associate required the development and nurturing of professional relationships and collaboration between the claimant, her colleagues in the Enterprise division and academics at the respondent, with the ultimate purpose of securing funding. Done well, the role would not involve a great deal of time sitting at a desk but instead attending multiple meetings across different campuses and other locations. Its essence was meeting people, especially academics, to work towards securing funding from corporate partners.

<u>Location/desk arrangements</u>

90. The claimant met Dr Magdalenic-Moussavi on Monday, 18 December 2017, in advance of her starting her employment with the respondent. They met on Level 2 of the Faculty Building. The claimant told Dr Magdalenic-Moussavi that she suffered from asthma and anxiety. Dr Magdalenic-Moussavi understood

from the claimant that her main concern was her desk location, as she needed to feel like she could leave easily in case either of her conditions would be triggered. The claimant mentioned that strong odours could be a trigger for her asthma. Dr Magdalenic-Moussavi took the claimant to see the office area and showed her where she would be sitting. She had originally booked a seat for the claimant that was three seats into one of the rows allocated to the Faculty of Medicine team. The claimant didn't seem too happy about that desk, so after she left and before the official start, Dr Magdalenic-Moussavi enquired about flexible seating options. She was told there was no space other than the desks that had been allocated to the Faculty of Medicine team. The best that she could do at that point was therefore to reshuffle the original seating arrangement to ensure that the claimant sat at the end of the row to allow her most flexibility. This would allow the claimant to exit more quickly if the need arose. Dr Magdalenic-Moussavi implemented this.

91. On 14 January 2018, the day before she started employment, the claimant sent an email to Ms Helen Young, a Senior HR Administrator in the respondent's Support Services. She enclosed the respondent's "personal information" documentation and stated that in it she had disclosed that she had a disability, namely anxiety. She explained that in short, she had issues around personal space, having a level of control of her local environment and her asthma; that it helped to be seated next to a window and not in the middle of a bank of desks so that she did not feel trapped; and she asked Ms Young to treat the information as medical and in confidence. As already noted, Dr Magdalenic-Moussavi had already by this stage changed the desk arrangements so that the claimant was at the end of the row of desks.

92. As part of the claimant's introductory meeting on 15 January 2018, Dr Magdalenic-Moussavi discussed the seating arrangements again. The claimant seemed reasonably happy with her allocated seat for the time being and they discussed that they could look for alternatives once she had settled in.

93. With the claimant's agreement, Ms Young also put the claimant in touch with Ms Kalpna Mistry, an advisor employed by the respondent in its Equality, Diversity, and Inclusion Centre ("EDIC"). The claimant met with Ms Mistry in January 2018 as well. They had discussions regarding modifications and the claimant found Ms Mistry supportive.

94. On 24 January 2018, her sixth working day at the respondent, the claimant self-referred to occupational health and later emailed Dr Magdalenic-Moussavi to ask that she make a manager's referral to occupational health, which she did.

95. Ms Young met the claimant briefly on 25 January 2018. The meeting is summarised in an email of that date from Ms Young to Ms Clare Budden, who was the designated HR contact for Enterprise. Ms Budden is someone whom the claimant, even at this tribunal, repeatedly described as *"lovely"*. In her email to Ms Budden, Ms Young explained that:

"Short summary of her declared disability is that she has severe asthma and related anxiety in terms of space around her. If she is working in the middle of an open-plan office environment, the perfume/aftershave of others etc. means she need to use her inhaler and this makes her feel panicked and it's difficult to concentrate on work."

In her email, Ms Young also outlined discussions about potential desk moves and she referenced that the claimant had described her line manager, Dr Magdalenic-Moussavi, as *"nice but very busy, which sometimes makes it difficult to explain the situation to her"*.

96. By this stage, therefore, the respondent had knowledge of the claimant's asthma and anxiety, but it could only be expected to know that the impact of those conditions upon the claimant was in the ways which she had stated, with a strong interconnection between perfume/aftershave and the need to use an inhaler which may give rise to associated anxiety.

97. At this tribunal, the claimant clarified that there was only one male colleague on Level 2, called "Lee", she thought, who wore aftershave, but did not identify anyone else sitting next to her or nearby who did so. Furthermore, this colleague did not work on Mondays. In addition, the claimant accepted that she could leave the building whenever she wanted to, should she need to, and it would take only a couple of minutes to do so. The claimant did not require medical attention due to an asthma "attack" at any time throughout her entire appointment with the respondent, although she says that she sometimes needed to use her inhaler.

98. On 28 January 2018, the claimant emailed Dr Magdalenic-Moussavi saying that she wished to discuss her disability as she did not *"think she had explained herself very well"*. In that email, she goes into detail, in her own words, about her disability, its impact and suggestions as to how to address this as follows:

**"Disability**
Anxiety and asthma. Perfume and aftershave are triggers that result in me having problems breathing.

**Impact**
I am currently working from home on my days that I am not in the office as I feel comfortable in this environment. Last week I took my inhaler a couple of times in one day.

**What helps me to manage my disability?**
There are several things that help manage my asthma, and my anxiety.
 Flexibility in working space such as the ability to work from home, hot desk and change environments.
 Having physical space and airflow around my desk area.
 Taking ownership of finding a solution.

**In future**
I will attempt to make modifications at the desk that I currently have. It is unlikely that this will be suitable as last week I needed my inhaler several times last week."

The claimant indicated that Ms Mistry had offered practical support.

The claimant's approaches to Ms Kelly

99. On 28 January 2018, the claimant emailed Ms Kelly. She did so in Ms Kelly's capacity as a "Mental Health First Aider". (At this tribunal, the claimant sought to deny this, but it is absolutely clear from the email that she did contact Ms Kelly in her capacity as a Mental Health First Aider (as opposed to as a member of HR)). The claimant explained in her email that she was a new starter with a mental health disability and would appreciate a quick confidential chat. The claimant and Ms Kelly subsequently met. The claimant was quite forthcoming on a number of issues that had impacted her over the course of her life including explaining to Ms Kelly that she had mental health issues, which she was able to manage. She told Ms Kelly that she had discussed these with her manager who was being very supportive and understanding. She explained that she had difficulty with people wearing strong perfume and aftershave, as this affected her breathing, but she was able to manage this. She said that as she would be working in an open plan office, she felt that this would be manageable, particularly as she was required to go to other campuses, and also because she was working part-time. She also told Ms Kelly that she did not like working in confined spaces and that, ideally, she would like to work at the end of the bank of desks rather than in the middle of a bank as this could cause her anxiety. Again, she explained that her manager was aware of this concern and that they were managing this.

100. As a Mental Health First Aider, Ms Kelly was to provide a listening ear and signpost individuals to relevant resources or sources of support. As the claimant had approached her in that capacity (rather than as a member of HR) and on a confidential basis and as the claimant was already in discussions with her manager (who was the most appropriate person to consider this issue), Ms Kelly did not think it was appropriate for her to become further involved nor that there would be much benefit in doing so. She did not, therefore, take the matter further with Dr Magdalenic-Moussavi and, for the reasons above, that was a reasonable decision.

101. On Tuesday 6 February 2018 the claimant emailed Ms Kelly to thank her for their conversation the previous week. She informed her that she had a meeting with occupational health that Thursday, 8 February 2018. She said: *"If you were able to send an email re. perfume and aftershave that would be great, as I needed my inhaler again later last week and find it difficult to breath sometimes when at my desk"*. She also let Ms Kelly know that she had identified a desk that was free on Thursdays and said that she would use this in the short-term.

One-to-one meetings with Dr Magdalenic-Moussavi

102. As part of her line management of the claimant, Dr Magdalenic-Moussavi had informal one-to-one catch ups with the claimant. These normally took place on a weekly basis and normally on a Monday, when both of them were at the Faculty Building. They normally took place at desks or at the communal meeting spaces referred to earlier. They were informal, with no fixed agenda, and were intended to be useful to both manager and employee to

ensure current issues were being dealt with and that everyone was up to date with progress. They were also an opportunity to discuss feedback, performance issues and areas for improvement and to help support welfare as well as performance.

First occupational health report

103. The occupational health appointment was, as already indicated, confirmed for 8 February 2018 and was conducted by Chris Allen, the occupational health adviser, who is also a registered nurse. The occupational health report (the "first occupational health report") was sent to Dr Magdalenic-Moussavi on 13 February 2018. She was away at the time and would not have received it straight away. Her out of office indicated that she would be back on Monday, 19 February 2018.

104. The first occupational health report contains the following:

"I saw Charlotte for assessment today. She has three main health problems — depression, anxiety and asthma. While I think Charlotte's depression is well managed, and her asthma is generally well-controlled, I do have some concerns around her levels of anxiety.

Charlotte is in regular contact with an asthma nurse specialist and has effective treatment when necessary. The observed triggers for her asthma include fur, smoke and most perfumes. She is not exposed to fur or smoke in the usual course of her working day, but can occasionally be affected by perfumes in the workplace. This has been well managed in her past employment by her work space being well ventilated, hot-desking into empty offices or unused, underpopulated work spaces, and her adjacent colleagues being mindful of their own use of perfumes and aftershaves or air fresheners. I believe currently this is being managed at Imperial by a friendly colleague having a discrete word about Charlotte's asthma and people self-moderating use of scents. So far I understand that this strategy has been fairly successful. A gentle reminder to certain colleagues on some occasions may be a reasonable way of managing the situation. Other strategies include regular breaks to leave the building for 3 to 5 minutes to get fresh air, hot-desking to lower populated areas or empty offices, occasional working from home if particularly affected by her triggers. I have advised Charlotte to discuss options for specific allergy testing at her next review with her asthma nurse.

Charlotte's symptoms of depression are managed and treated via her GP who she is in regular contact with. There are no work related triggers for her depression.

Changes in life, such as starting a new job are well recognised and significant triggers for exacerbations of anxiety. Charlotte explains that she endeavoured to notify her line manager prior to commencement that she would need assistance in coping with the new role and change in environment. We discussed the triggers for Charlotte's most recent episodes of anxiety and I think she will benefit from revisiting some treatment for this; She has already made efforts in accessing this. Charlotte will benefit from some flexibility in her start and end times as her anxiety symptoms can include sleeplessness meaning she will occasionally be severely fatigued. I also recommend a Staying Well plan (SWELL) especially in supporting her by recognising and acting on changes in her wellbeing…"

105. Key points which arose out of this first occupational health report were therefore: there were no work-related triggers for depression; the claimant's asthma was generally well-controlled, but the claimant was *"occasionally"* affected by perfume in her workplace and indications were given as to how this had been managed in previous employment and potential strategies going forward including stepping out into the fresh air, hot-desking or *"occasionally"*

working from home *"if particularly affected by the triggers"*; and the claimant's most recent anxiety triggers had been discussed and she would benefit from revisiting some treatment for this. There was no mention at all about not attending meetings or difficulties in attending either internal or external meetings.

106. To be clear, there was never any issue about flexibility of start and finish times during the claimant's employment with the respondent and the respondent's managers were very hands-off about this and indeed about the claimant's work location generally, so long as the claimant kept them informed.

107. The claimant did not at any stage during her employment provide the respondent with any independent medical reports or evidence. The only medical evidence which the respondent had, therefore, was the first occupational health report (and, at a much later stage in the claimant's employment, the second occupational health report of 16 April 2019, which was produced about a month after the claimant had commenced the period of sick leave which would last right through to the end of her employment with the respondent). At no stage did the claimant implement the *"SWELL"* plan referred to in the first occupational health report.

108. By the time Dr Magdalenic-Moussavi received the first occupational health report, the claimant was already working from her desk on Level 2 on Mondays and Tuesdays and hot-desking on Thursday on Level 3 desks near the atrium. The claimant had liaised with others to have access to Level 3. Dr Magdalenic-Moussavi had not been involved with this and the claimant let her know she was doing this after it had been arranged. However, Dr Magdalenic-Moussavi did not have any objection to this. Level 3 is where the Faculty of Natural Sciences is based.

<u>Further email correspondence with Ms Kelly in February 2018</u>

109. On 14 February 2018, Ms Kelly responded to the claimant's email to her of 6 February 2018. She asked if occupational health had made any recommendations that they could take forward. With regard to the perfume and aftershave, Ms Kelly told her that she had discussed this with occupational health (after the claimant had asked about sending an email out to all staff) and that they were of the view that this might be difficult to enforce. Her conversation with occupational health was separate from the claimant's occupational health referral. Ms Kelly said that she would have a word with Dr Chris Watkins when he was back in the office. Ms Kelly did discuss this matter with Dr Watkins as he was the Faculty Operating Officer. They have regular one-to-ones and it was during one of these that she mentioned that there was an employee in Enterprise susceptible to strong perfumes and scents, and that she was interested to see whether he had any suggestions about how that could be reasonably managed. However, they were aware of the potential challenges of asking people not to wear perfume and aftershave for the reasons already referred to. She was also aware that these matters were being discussed with the claimant's manager, Dr Magdalenic-Moussavi, and her HR contact, Ms Budden, who she understood would be taking the recommendations from the claimant's occupational health report forward with the claimant. In light of the occupational health report process

being underway, she did not therefore send an email to the whole Faculty. As noted above, all the right people were involved, and Ms Kelly assumed the occupational health report would capture this issue and she did not want to pre-empt or undermine that process.

110. The claimant responded to Ms Kelly on 15 February 2018 attaching a copy of the first occupational health report. Ms Kelly did not discuss the occupational health report further with the claimant. She believed that Ms Budden was taking this forward, and it would therefore have been inappropriate for her to intervene as Ms Budden was her HR contact. She spoke to Ms Budden, and they agreed that Ms Budden would manage this matter as the claimant had come to Ms Kelly as a Mental Health First Aider, not in her HR capacity. Also, it was important that not too many people were involved as it can cause confusion and duplication of work and effort.

111. In her 15 February 2018 email to Ms Kelly, the claimant also told Ms Kelly that she had got a desk on Level 3 which was better ventilated and minimised the effects of any perfume and she thanked her for all her help.

Period subsequent to first occupational health report

112. In an email of 22 February 2018 to Dr Magdalenic-Moussavi and Ms Budden (which she copied to Ms Mistry), the claimant wrote:

"Re. space.

Currently the position is that at times I require my inhaler at my desk several times due to lack of air flow and perfumes/ aftershaves (which increases my anxiety).

Current position:
Monday: Level 2
Tuesday: Level 2
Thursday: Level 3 (ongoing until FoN require)

I appreciate this is an issue that may take some time to address. As a practical suggestion I would like to suggest working from Hammersmith hospital campus every other Tuesday (library) and from home every other Tuesday. This would also give me the opportunity to spend some time on site with academic and contracts colleagues. This would be in line with the OH suggestions.

Happy to discuss further at any point re. thoughts/suggestions. Ann Kelly (Head of FoM HR) has been very helpful. I initially chatted to Ann in the capacity of mental health first aider. Alison has also been extremely helpful in attempting to secure a longer term solution in FoNs where several hot desks are located. In terms of cross departmental working I have found it useful to spend time up here."

113. "FoNs" is a reference to the Faculty of Natural Sciences, which was based on Level 3. The email is demonstrative of a number of things. First, the claimant was proactively seeking out solutions on her own, independent of her line manager. Secondly, she was doing so with a large number of people. Thirdly, she appeared happy with the support that she was getting. Fourthly, she was already working on Thursdays from Level 3 but acknowledged that her ability to do so on a continuing basis was contingent upon whether or not the Faculty of Natural Sciences might in future require the desk space which she was

using. As a matter of fact, however, that desk space at no point ceased to be available to her and the claimant continued to use it on Thursdays throughout her employment (until the point at which she went off sick in March 2019). When she was on Level 3 on Thursdays, the claimant sat behind Dr Wilson's desk in the Natural Sciences section of Level 3. They had a friendly relationship. As the claimant acknowledges in her email, she found it useful to spend time there in terms of cross-departmental working.

114. Dr Magdalenic-Moussavi did not have any objection to the claimant's change in arrangements (nor, in due course, did she have any objection to any of the work location arrangements which were implemented for the claimant). However, she did email later that day to ask her if she could please *"inform me of your intentions in advance of informing the wider team"*. Her line manager wanted to know in advance what the arrangements were. It is entirely reasonable that, as her line manager, she should want and expect to know this. Notwithstanding that, the claimant forwarded the email to Ms Mistry, stating that this email *"made me upset to be honest. I am not sure if I can face a meeting in half an hour"*. It is another example of a disproportionate reaction by the claimant to a reasonable and normal work request.

115. At the respondent, the process of agreeing adjustments in relation to disabilities is one which is done between the employee and the line manager, managed by HR. This is not unusual. Indeed, it is unsurprising that there should be line manager involvement given that part of the process of agreeing adjustments which are reasonable involves an assessment of whether the adjustments are operationally practicable.

116. A formal meeting was therefore set up to discuss the occupational health report and any necessary adjustments, due to take place on 8 March 2018.

117. On 6 March 2018, Dr Magdalenic-Moussavi caught up with the claimant at her desk. As already indicated, this in itself was an entirely normal and not unusual practice. In addition, there was nobody else around at the time. During the conversation, Dr Magdalenic-Moussavi confirmed the meeting on 8 March 2018 and briefly enquired about the claimant's desk arrangement. She did not say anything about the purpose of the 8 March meeting, only that they were meeting, and did not touch upon anything confidential or sensitive.

118. Later that day, the claimant emailed Ms Budden to ask if they could have a chat in advance of the 8 March 2018 meeting. Ms Budden was not available that day (and the following day was not a working day for the claimant), so they met briefly on 8 March 2018 in advance of the meeting with Dr Magdalenic-Moussavi. The claimant suggested to Ms Budden that Dr Magdalenic-Moussavi was not being proactive or very accessible to discuss her disability and adjustments and the claimant indicated in this respect that she had completed her own occupational health referral form herself (which was not in fact unusual). Ms Budden indicated that, if the claimant had any concerns, they could discuss them at the formal meeting that day, the purpose of which was to discuss the occupational health report and put in place appropriate adjustments.

8 March 2018 meeting

119. Dr Magdalenic-Moussavi and the claimant were present at the formal meeting on 8 March 2018, as was Ms Budden. The contents of the meeting were summarised in a detailed letter from Ms Budden to the claimant of 14 March 2018. That letter is as follows:

"Thank you for attending the meeting on 8th March 2018 with your line manager, Dr Vjera Magdalenic-Moussavi and myself. I checked whether you were happy to attend the meeting unaccompanied and you confirmed you were. In the meeting we discussed the advice in your Occupational Health (OH) report, its recommendations and adjustments that could be put in place to support you at work. I am writing to confirm the main discussions in the meeting that I noted down for our mutual records.

The main points from the OH report were referred to. It was outlined that you have three main health problems, depression, anxiety and asthma. Chris had assessed that your depression is well-managed and your asthma is generally well-controlled, although he had some concerns around your levels of anxiety. One asthma trigger is perfume, which you can occasionally be affected by in the workplace. Chris believes this is currently being managed by a colleague having a discreet word about your asthma and people self-moderating use of scent, which had been fairly successful. A gentle reminder to certain colleagues on some occasions may be needed. You explained that this can be difficult to put in place because with the best will people can forget to not put scent on and in your experience it hasn't worked when others have been asked. There is someone who sits nearby you who wears strong aftershave and you are affected by this, which meant that you are not focusing on what you are doing and having to use your inhaler, which takes 15 minutes to work.

You explained that you are affected by the working conditions in the Faculty Building, as you found it was hot and previously you have had to strip down to your vest top and drink lots of water. Vjera noted that there are many people in the Faculty Building who also experience difficulties with the conditions. She referred to somebody else having asthma and other people experiencing difficulties such as having dry eyes.

We discussed whether you felt you have a disability and you confirmed that you felt your asthma and anxiety combined meant you were disabled. I outlined to Vjera that this meant you have added protection under disability legislation and as such it was the College's responsibility to ensure that reasonable adjustments are put in place for you to accommodate your condition, based on the requirements of your role.

Chris had outlined in his report other recommended strategies including taking regular breaks to leave the building for 3 to 5 minutes to get fresh air, hot desking to lower populated areas or empty offices and occasional working from home when you are particularly affected by your triggers.

Vjera suggested that you could use your laptop on Level 4 Faculty Building which was the least populated area. You stated that this was a short term solution as it wouldn't be great working conditions for you to be hunched over a low table and chairs.

Vjera explained that she has a very high workload and is in a lot of meetings, as well as working part time and she hasn't always been aware of where you were located. You asked how you should log your location and Vjera confirmed that she would like you to input your whereabouts in Outlook by sending her meeting invites. Vjera said she was very flexible about where you work and she doesn't mind if you need to make last-minute changes, as long as you make her aware of where you will be based as previously she hadn't always known where you were. She explained that you are new to the job and so she wants to ensure that you are settling well into the role. She stated that she has a work phone so you can call or text her to inform her if you were in a different location.

I asked you if it was likely that you would need to make last-minute changes to your desk location or whether you would prefer to know where your location would be each day. You confirmed that it was preferable for you to know where you should be located at fixed times and you didn't think it would be often that you would need to move at the last minute.

It was confirmed that on a Monday your work colleague who wears aftershave is not at work and so you are able to work at your desk on level two Faculty Building, although you noted that the Medicine staff are always coming and going and you don't know who you will sit next to and if they will be wearing perfume. On a Tuesday you will be trying working from home and working in the Hammersmith campus library on alternate Tuesdays if you have no meetings and on a Thursday you are currently hot-desking on level three Faculty Building, subject to Faculty of Natural Sciences requirements. Vjera noted she hadn't been included in making this arrangement and you explained that this had come about because your work colleague had looked into alternative desk locations on your behalf. The Faculty of Natural Sciences had said they had a free seat and there had been a discussion around how the arrangement was agreed and Viera had been kept in the loop.

Vjera explained that your role will involve more meetings and your base will be less of an issue if you are out and about in meetings. There was the possibility of a base at Paddington and Viera was discussing this with the School of Public Health. Vjera noted the requirement for flexibility in the role as it involves meeting with academics on different campuses and you confirmed that you are fine with this.

You explained that your anxiety gets worse with your asthma. You are currently undertaking CBT and we discussed the possibility of meditation and yoga at the College. Vjera referred to your Staying Well at Work (SWELL) plan and you confirmed that you will type this up and send it to her.

Vjera confirmed that you would both review how the arrangements are working based on the requirements of the job. Vjera said she would rather you over inform her and you explained that you had tried not to send lots of emails and updates as you know how busy she is. It was also discussed that you have a regular Monday morning catch-up together.

I asked if there was any other support that you felt you needed and you would like to discuss and you confirmed that there was not at this time. Upon re-reviewing the OH report I have noted that Chris outlined that he felt you will benefit from some flexibility in your start and end times because your anxiety symptoms can include sleeplessness meaning you will occasionally be severely fatigued.

Please do not hesitate to get in touch with Vjera or I if you wish to discuss the situation further."

120. The meeting therefore resulted in an agreed plan. The claimant had a suitable working location for each of the three days she normally worked, and her line manager was flexible as to where she was based as long as she was informed so that she knew. This meant the claimant working generally on Mondays on Level 2 with a regular catch up with Dr Magdalenic-Moussavi; on Tuesdays alternately at home or on the Hammersmith campus library; and on Thursdays hot-desking on Level 3 in the Faculty of Natural Sciences. The colleague with the aftershave did not work on Monday, so Level 2 was appropriate for Mondays. The arrangements for Tuesday indicate that the respondent agreed to exactly the suggestion for Tuesdays which the claimant had made in her earlier email of 22 February 2018. Furthermore, it was acknowledged that the claimant's role involved lots of meetings so a base would be less of an issue in any event and the claimant acknowledged the requirements for flexibility in the role as it involved meeting with academics on different campuses.

121. The claimant's view at this tribunal was that this was not a permanent solution. However, both Dr Magdalenic-Moussavi and Ms Budden considered that it was, both at the time and in their evidence before this tribunal. At no time after the 8 March 2018 meeting did the claimant tell Dr Magdalenic-Moussavi that the adjustments put in place were not working or that they had ceased to be effective. There are various references in the months following the 8 March 2018 meeting to investigations looking for other work space solutions for the claimant, for example work space in Paddington in the Faculty of Public Health. However, Ms Budden was absolutely clear in her evidence that these were only because of the possibility that the Faculty of Natural Sciences might in future need the space on Level 3 where the claimant worked on Thursdays and an alternative would need to be found. Ms Budden was absolutely clear that the arrangements for Monday and Tuesday were permanent ones. This ties in with the concerns about the potential temporary nature of the Level 3 hot-desking arrangements, as referred to for example in the claimant's email of 22 February 2018. In the light of this, and in the light of our findings of the respective reliability of the witnesses' evidence, we accept that the arrangements agreed at the 8 March 2018 meeting were and were intended to be permanent, subject to the single possibility that the Thursday arrangements might need to change if the Faculty of Natural Sciences ceased to keep the desks on Level 3 available to the claimant. As it happened, those desks were always available to the claimant throughout her employment, so this eventuality never occurred.

122. On 9 March 2018, the claimant emailed Ms Budden, thanking her for the meeting the previous day and asking for a quick chat. She also stated in her email that she wanted to express *"concern and upset at some of the language that was used to discuss my disability and comparisons made"*. When Ms Budden enquired further as to what she was referring to, the claimant included in her next email, on 10 March 2018:

"[in relation to the unsuitability of the faculty building in general]. "I have dry eyes…" I found the apparent comparison of a low level irritation to anxiety, depression and asthma that requires daily medication and is sometimes debilitating upsetting.

- The references to the unsuitability of the building and the fact there were four hundred people in the building and it is what it is. I felt as though other individuals were being used to justify a poor situation.

No-one in the room was informed or qualified to discuss the problems other people have, disability or otherwise. The meeting was to discuss my disability and modifications that can be easily made."

123. Ms Budden did not relay the claimant's concerns to Dr Magdalenic-Moussavi but suggested to the claimant when they next met on 12 March 2018 that she should discuss them with Dr Magdalenic-Moussavi herself. However, the claimant did not do so. Dr Magdalenic-Moussavi was therefore unaware until these proceedings of this concern raised by the claimant.

124. Both Ms Budden and Dr Magdalenic-Moussavi acknowledge that Dr Magdalenic-Moussavi made the "dry eyes" comment. However, they were both unaware at the time of the meeting that there should be any cause for concern that the claimant might be upset or offended by it. The comment arose at a point

in the meeting when they were discussing the temperature of the Faculty Building, which, as noted, can get warm. Dr Magdalenic-Moussavi simply said that there were other people in the building who also suffered from asthma and dry eyes and that she was aware of another individual who suffered from asthma too. She was acknowledging that the building had its challenges and that other colleagues had experienced difficulties around its temperature. It was, as Ms Budden put in her witness statement *"well-meaning and Vyera was trying to establish common ground"*. It quite clearly did not and was not intended to diminish the claimant's disability in any way, as the claimant has suggested. We consider that this is, therefore, another of those many examples of the claimant unreasonably (albeit genuinely) taking offence at an entirely innocuous comment.

Claimant's email of 17 April 2018 to Ms Budden

125. On 12 April 2018, the claimant forwarded to Ms Budden an email which she had sent to Dr Magdalenic-Moussavi in which she had stated, in relation to her desk arrangements, *"At the moment I am happy with the arrangements"*.

126. She sent a further email to Ms Budden on 17 April 2018, copying in Ms Mistry. In it she said *"I am a little concerned as I have been informed that I may be losing my desk on level two, due to lack of space"*. The desk on Level 2 was the claimant's substantive desk. This was the desk that the claimant was originally unhappy with because she found the environment hot and a colleague wore strong aftershave, but she sat there on a Mondays because that colleague did not work there on Mondays. However, the claimant's desk location on Level 2 was not in fact changed at this point or at all and she sat at the same desk on Mondays until the point when she went off sick in March 2019.

Performance concerns

127. Dr Magdalenic-Moussavi had some concerns about the claimant's performance. She relayed these to her during their weekly one-to-one meetings and they were part of the reason why her probationary period was extended. Although they do not form part of the issues of the claim, the nature of some of those concerns is relevant to the background to several of the issues which do.

128. Specifically, the concerns which are relevant were that: the claimant was not very engaged in internal team discussions on Enterprise/Corporate Partnerships business and did not seem to get involved in broader projects; she did not participate greatly in the team's administrative workload; she was quite negative about Enterprise and its processes; she was not working as collegiately or proactively with other departments as Dr Magdalenic-Moussavi would have hoped (which Dr Magdalenic-Moussavi saw as a useful opportunity for the claimant to raise her profile and get involved); she often sent emails to internal and external contacts without copying her line manager in or letting her know that she had done so, which made it difficult to keep track of the relationships and the discussions with them, which in turn risked duplication of work; and she needed to improve on the quality and openness of her communication with colleagues.

Run-up to BioJapan conference

129. Dr Magdalenic-Moussavi went on maternity leave on 12 October 2018. Ms Morris commenced employment with the respondent on 1 October 2018 and, after a brief handover period in early October 2018, took over Dr Magdalenic-Moussavi's role on 12 October 2018, including line management of the claimant.

130. Before commencing maternity leave, Dr Magdalenic-Moussavi handed over to the claimant representation of Corporate Partnerships for the Faculty of Medicine at a symposium and conference in Japan (a symposium in Tokyo and the BioJapan Conference in Yokohama). Dr Magdalenic-Moussavi normally attended, but with the conference taking place in the second week of October 2018 and her imminent maternity leave, she could not travel and attend this important event on behalf of the respondent. Dr Wilson, who was then the Head of Corporate Partnerships in the Faculty of Natural Sciences, and Dr Rebeca Santamaria-Fernandez, who was in the same position in the Faculty of Engineering, were also to attend.

131. The three heads (Dr Magdalenic-Moussavi, Dr Wilson and Dr Santamaria-Fernandez) had previously participated in a mediation in 2017, the subject-matter of which was poor communication in cross-faculty relations. The mediation had been successful. The claimant has been determined at this tribunal to rely on this mediation, to which she frequently referred (often misleadingly), as evidence that Dr Wilson was generally aggressive in her communication style. There is no evidence of this other than the claimant's assertion and, as noted above, the mediation was about communication cross-faculty rather than the personal style of Dr Wilson. None of the other witnesses considered Dr Wilson was aggressive nor is there any evidence in the bundle to suggest that she was; furthermore, she gave lengthy evidence before this tribunal and there was no indication from that that she might in any way be aggressive; rather, she was calm and measured in response to questioning from the claimant which was at times sarcastic, belligerent and aggressive. Furthermore, as noted, the claimant sat behind Dr Wilson's desk on Level 3 on Thursdays, and they had a friendly relationship. We do not, therefore, consider that Dr Wilson was aggressive generally or, as we shall come to, aggressive in any of the specific ways which the claimant alleges.

132. We have heard a great deal of evidence about the run up to the BioJapan conference. It is not necessary to repeat it all, as the focus of the claimant's complaint in the list of issues is simply about the tone and volume of the emails between her and the various heads in the run-up to the trip. It is important to note the context of the fact that the claimant has been contemptuous about the respondent's planning of this trip, both at the time and particularly in these tribunal proceedings (all for reasons which have nothing to do with her disabilities but because she felt that it was not being organised in accordance with what she regarded as "standard business practice"). There were a lot of emails in the run-up to this important conference and there was a lot to do. However, we have seen those emails and there is nothing objectionable in any of them. They simply indicate that there was a lot to do and that a lot of it, as is not uncommon, was done late in the day. When it came to it, the claimant's evidence

as to what it was that was objectionable about Dr Wilson's communication (tone or frequency of emails) was extremely vague. She was unable to point to a single inappropriate email of which she was a recipient. The emails do not appear in any way inappropriate, either in terms of tone, content or (in the context of the busy run up to the event) frequency.

133. What was evident was that it was the claimant herself who was significantly contributing to the difficulties which the team had because she was deviating from the agreed mode of pulling together planning information in a Teams spreadsheet and was in effect working in a silo. Both Dr Santamaria-Fernandez and Dr Wilson had, during late August and September 2018, in the run-up to the event, expressed concerns to Dr Magdalenic-Moussavi that the claimant was not working in a collaborative way and, in particular, not keeping the wider team sufficiently informed about what she had done and what she was working on. Dr Santamaria-Fernandez had described the claimant as *"going solo"* and Dr Wilson flagged that the claimant was not keeping the group spreadsheet up-to-date, running the risk that the respondent might be doubling up contact with partners.

134. The claimant spoke to Dr Magdalenic-Moussavi in early October 2018 about Dr Wilson and said that she found the tone of Dr Wilson's emails difficult. She was also concerned about the number of emails; however, that was just the nature of the project in the run-up to the conference. Dr Magdalenic-Moussavi tried to manage this as best as possible. She agreed to and did have a word with Dr Wilson about the concerns raised by the claimant. The claimant has alleged at this tribunal that Dr Magdalenic-Moussavi said that she and Dr Wilson *"did not care"* about how the claimant perceived Dr Wilson's tone. However, for the reasons of respective reliability referred to earlier on, we accept Dr Magdalenic-Moussavi's evidence that this is not something that she would have said and that she did not say it.

135. The biggest issue which the claimant seems to have in relation to the run-up this event concerned the taking of marketing materials and a banner to Japan, which was being discussed between her and Dr Wilson and Dr Santamaria-Fernandez on the evening of Friday, 5 October 2018, prior to their departure for Japan later that weekend. Normally, those going would divide the materials among themselves and take them in their hand luggage. However, the claimant refused to do so. The claimant's approach was completely lacking in collegiality, compromise or common sense. She had arranged for her own flights to be booked and to take a holiday in Japan after the business trip. Like her two senior colleagues this involved using public transport. She was going to stay in a hotel in Tokyo whereas her colleagues were travelling straight to the event from the airport. Dr Wilson gave cogent evidence as to why it was suggested that the three of them share some materials in hand luggage. The claimant refused (despite saying the banner was light to carry and eventually changing her evidence from an assertion that someone had surreptitiously put marketing materials in her bag to accepting that the materials had been divided into three tote bags one of which it was hoped she would take) and it was left to her colleagues to carry everything.

5 October 2018 discussion with Dr Hepworth

136. At this point, neither Dr Wilson nor Dr Santamaria-Fernandez had been told anything by the claimant or anyone else about her disabilities. However, following the discussions about the transport of marketing materials, the claimant chose to speak to Dr Simon Hepworth (who was the line manager of Dr Wilson, Dr Santamaria-Fernandez and Dr Magdalenic-Moussavi), catching him on his way out of the office on the evening of Friday, 5 October 2018.

137. During this conversation, the claimant told Dr Hepworth that she suffered from anxiety and depression (he was unaware of this up to this point) and that the number of emails she had received were making her levels of anxiety worse. She did not go into much more detail on this, and Dr Hepworth did not press her. She seemed distressed and was tearful.

138. At the end of their conversation, Dr Hepworth encouraged the claimant to raise her concerns with her colleagues and suggest ways in which they could communicate with her in a way which would not cause her undue stress or anxiety. He did not consider that the behaviour which she had described (lots of emails being sent in a short period of time ahead of the trip) was unreasonable or out of the ordinary, so felt quite sure that the team members would not be aware that anything they had said or done would have been upsetting or difficult for the claimant (which was the case).

139. After the meeting, Dr Hepworth decided informally to raise the matter with Dr Wilson. He felt that this was in line with the claimant's wishes, and he did it with the purpose of being supportive in helping to ensure that the claimant felt happy and relaxed on the trip and that any tensions or misunderstandings did not endure.

140. Dr Hepworth was candid in his evidence that he could not remember whether he specifically asked the claimant whether he could talk to Dr Wilson about it, although he said that it would have been uncharacteristic of him not to do so given that it involved discussing someone's personal matters. However, his evidence that he decided to raise the matter with Ms Wilson *"after the meeting"* with the claimant indicates that on the balance of probabilities he did not ask her permission; if he had asked the claimant if it was okay for him to talk to Dr Wilson, he would have been contemplating speaking to Dr Wilson whilst he was meeting with the claimant, rather than deciding to do so only afterwards. We accept, therefore, on the balance of probabilities, that he did not ask the claimant whether he could talk to Dr Wilson about the matter generally. Furthermore, we find on the balance of probabilities that Dr Hepworth did not ask the claimant the even more specific question as to whether or not the claimant was happy for him to disclose to Dr Wilson in this context that the claimant suffered from mental health disabilities and the impact that she said the events leading up to the BioJapan conference had on those disabilities. However, we do accept that Dr Hepworth genuinely believed that this was what the claimant expected him to do; otherwise, how could he possibly provide a solution to the issues which the claimant had raised with him. Furthermore, given the duty of care which he and the respondent had to the claimant and the distress which the claimant appeared

to have been in, it was an understandable and reasonable decision, done with the best of intentions, to speak to Dr Wilson and to speak to her quickly given that they were just about to fly out to Japan, albeit it would have been far better to have got that specific permission from the claimant first. Dr Hepworth was clear in his evidence that he would have done the same in respect of any employee who had come to him in this type of situation. We have no reason to doubt this and accept that that would have been the case.

141. Dr Hepworth duly contacted Dr Wilson by telephone that weekend. He told her that the claimant had told him that she suffered from mental health disabilities and how that impacted on her ability to communicate across the team. This was the first time that Dr Wilson was made aware that the claimant suffered from a mental health disability. Dr Hepworth did not, however, disclose the nature of those disabilities. Dr Hepworth recommended that they should make allowances for the claimant and that the claimant wished to talk to Dr Wilson about it in Japan.

142. The claimant was not very welcoming to Dr Wilson when she arrived in Japan. Furthermore, Dr Wilson was surprised when the claimant made negative (and inaccurate) comments about the respondent in front of third parties at the symposium itself. However, on 11 October 2018 Dr Wilson did offer to take some time away from the conference so that they could get lunch together and, as she had promised Dr Hepworth, had a discussion with the claimant. During this discussion, however, the claimant expressed critical views about working with other colleagues in Corporate Partnerships, including Dr Magdalenic-Moussavi and Dr Esteras-Chopo. However, the discussion was otherwise pleasant and candid. Dr Wilson asked the claimant about communication methods and processes and sought to find a way to communicate that would suit her and asked her what would best accommodate her. During the conversation, the claimant said that she wanted to work more with the Faculty of Natural Sciences. Given that that was where Dr Wilson worked, it would have been an unusual request to make if the claimant at that time thought that Dr Wilson was someone who was aggressive to her. We therefore find that, at this point, the claimant did not have any significant issue with Dr Wilson and that her opinion of her only changed later in connection with the outcome of the claimant's application for the role of Full Time Corporate Partnerships Associate.

Ms Morris's management of the claimant

143. As noted, Ms Morris had become the claimant's line manager when Dr Magdalenic-Moussavi went on maternity leave with effect from 12 October 2018. There appear not to have been any relationship difficulties. In an email on 6 November 2018, the claimant expressed the view that Ms Morris *"seems very nice"*. At no time did Ms Morris do anything to undermine the adjustments agreed in the light of the first occupational health report at the meeting of 8 March 2018.

144. The tone of Ms Morris' emails with the claimant is professional, friendly and open. Ms Morris had regular one-to-one meetings with the claimant on Level 2 in the breakout area. This was similar to the arrangements regarding such

meetings which the claimant had had with Dr Magdalenic-Moussavi. Until the relatively short period of time from the point at which she realised that she had not been appointed to the Full Time Corporate Partnerships Associate role on 22 January 2019 to the point when she went permanently on sick leave with effect from 13 March 2019 (which we return to later), the claimant never suggested that this was a difficulty for her.

PRDP

145. The claimant had commenced work on her Performance Review and Development Plan ("PRDP") for 2019 with Dr Magdalenic-Moussavi before Ms Morris took over as her line manager. On 4 December 2018, Ms Morris inserted into the claimant's PRDP that she should consider how her focus sits with the wider Corporate Partnerships and Research Strategy teams and continue working with the head of the team and wider Corporate Partnerships team to ensure alignment. The issue which Ms Morris had was that the claimant had a tendency to do her own thing and not overlap with the respondent and the wider Enterprise strategy.

146. At a one-to-one meeting around the time of finalising the PRDP, the claimant queried the reference to the strategy and said she didn't understand what it meant. Ms Morris referred her to the Enterprise Five Year Plan. The Enterprise Five Year Plan was developed between approximately May and September 2018 and shared across the Enterprise team via Microsoft Teams. Early in May 2018, Dr Hepworth had posted the Five Year Plan version at that time on the Enterprise section of Teams, of which the claimant was a member, and concurrently co-ordinated a series of workshops to discuss the Five Year Plan content (one of which the claimant signed up for). The claimant did acknowledge to Ms Morris that she knew what the Five Year Plan was but said *"I would hardly call that a strategy"*.

147. However, Ms Morris's inclusion of the reference to this strategy was simply to try and ensure that the claimant's work was aligned with the overall strategy of the team, which is something that everyone working in Enterprise was expected to do.

Copy of first occupational health report sent to Ms Morris

148. On 17 January 2019, Ms Morris emailed Ms Budden to send her a copy of the claimant's PRDP before it was finalised. She asked her to review it to ensure that the performance objectives were sound and in line with the claimant's documented disabilities. She wanted to be sure that none of the objectives which she had set were unachievable given the claimant's disability as she knew very little about it and how it impacted on her work. Ms Budden replied on 18 January 2019 and explained that the discussions regarding the claimant's disability had largely been around office location and strong perfumes, so the main requirement was to ensure the objectives allowed her to undertake work in an appropriate environment. Ms Budden offered to share a copy of the first occupational health report, in the event that Ms Morris had not seen it already (which she had not), and Ms Morris replied to say that she would very much

appreciate seeing a copy. Ms Morris had at that stage only seen the 14 March 2018 letter sent by Ms Budden summarising the meeting of 8 March 2018 about the first occupational health report. Ms Budden therefore sent Ms Morris a copy of the first occupational health report on 22 January 2019.

Application for vacant Full Time Corporate Partnerships Associate role

149. In December 2018, Dr Esteras-Chopo resigned from the respondent. Her last day was due to be and was 7 February 2019. This meant there was a vacancy for a Full Time Corporate Partnerships Associate for the Faculty of Medicine. The respondent ran a competitive recruitment process for Dr Esteras-Chopo's replacement, which was in line with the respondent's usual approach. As the manager of the team, Ms Morris was in charge of the recruitment process for this role.

150. Ms Morris had not expected the claimant to apply for the post because the claimant had told her previously that she wanted to work part-time and did not want a full-time role.

151. The interview panel for the role was Ms Morris, Dr Wilson, Dr Blair and Dr O'Regan. Ms Morris and Dr Wilson were to carry out the process of shortlisting candidates for interview. The interviews were then carried out by all four members of the panel. It is not necessary for us to go through the reasons why each of these individuals were part of the panel but there were good reasons for the inclusion of each of the members of the panel. In any event, the panel was selected prior to Ms Morris even being aware that the claimant had applied for the role. Dr O'Regan had no prior knowledge of the claimant and Dr Blair had very limited knowledge of her.

152. There were 21 applicants for the role. The claimant spent a long time at this tribunal asking questions about the shortlisting process. However, the claimant was shortlisted for interview, so suffered no detrimental treatment in this respect, and there is no issue in the list of issues about the decision on shortlisting; rather the issue is about the outcome of the interviews. It is not, therefore, necessary to go into great detail about the shortlisting process. However, having seen so much evidence about it, we do not consider that there was anything particularly unusual about the shortlisting process.

153. On 3 January 2019, however, Dr Wilson sent an email to Ms Morris from her holiday in Rome in which she identified five candidates whom she felt should be put forward for interview, four candidates whom she felt were "maybes" and 11 candidates whom she felt should not be interviewed. She did not include the claimant on the list and instead stated the following at the start of her email:

"Not sure what to say about Charlie. I would prefer not to interview but I am not sure of policy/how this will impact you given her current role and disability? I have given low scores for collaboration/relationships/comms and delivery that could be used for feedback."

154. Under the scoring criteria which Dr Wilson used, the claimant was a middle ranking candidate who was joint ninth out of 21 applicants. She was effectively borderline between whether she was a "no" or a "maybe" for interview

using the scoring alone. Even if she was shortlisted for interview, Dr Wilson could not see how she would ultimately get the role given the high quality of some of the other candidates. However, Dr Wilson was concerned because what she already knew about the claimant as a colleague meant that she did not think that she would be a suitable person for the role; in Dr Wilson's experience the claimant was not a good team player, was not a good advocate for the college and had already told her (in Japan) that she did not like working in the team she was in. Dr Wilson's view was, therefore, that she should not be interviewed.

155. However, and this is the reason for the references to *"her current role and disability"* in the email, Dr Wilson did not know whether there was a policy of interviewing someone who was already performing a similar role in the team and she was also concerned as she was aware that the claimant suffered from anxiety and depression about whether not getting put forward for interview or selected for the role would negatively impact on her health. Furthermore, Dr Wilson could see that if she did not get the role (which she thought was unlikely) it could be a difficult situation for Ms Morris as her manager. We accept that these were the reasons for these references in Dr Wilson's email and we reject the claimant's suggestion that Dr Wilson's view as expressed in the email was that the claimant should not be put forward for interview because of her disability; that neither accords with a plain reading of the words of the email nor does it accord with the cogent reasons for and explanation of the context of that email given by Dr Wilson, which we accept.

156. Ms Morris, however, ranked the claimant joint fourth and she recommended that she should be put forward for interview. When she received Dr Wilson's email of 3 January 2019, she appreciated her point of view but felt that it was her decision to make, and she thought that the claimant should be interviewed. In the light of Dr Wilson's email, she spoke to Glemma Edwards, Recruitment Administrator, about shortlisting the claimant and emphasised that the claimant's application had met the essential criteria for the role. Ms Edwards advised her that the respondent operated a policy whereby anyone who records themselves as having a disability should be automatically offered an interview if they met the essential criteria for the role. Therefore, Ms Morris considered that, regardless of Dr Wilson's view, the claimant should be offered an interview, which she was.

157. The interviews for the role took place on 17 and 18 January 2019.

158. Prior to the interview, candidates were asked to prepare a one-page summary on how they would encourage and assist academic researchers to work with industry, and they needed to be prepared to give the panel a short overview of the summary at the interview. Ms Morris devised standardised questions for the interviews. The various questions were divided up between the four interviewers and, at the interviews, each interviewer asked the same set of questions of the interviewees. Each interviewer had the same sheet containing standardised questions with columns for them to indicate whether the criteria being tested had been met.

159. After each interview, the four interviewers discussed the candidate. Ms Morris always asked Dr O'Regan and Dr Blair to provide their feedback first before asking Dr Wilson and then giving her own feedback.

160. The claimant did not perform well during her interview. She was very negative in her responses, making negative reflections on her colleagues in the working environment. She made other surprising statements too, such as that she described herself as unique and the only person in the team with technical ability and intellectual property knowledge, which was incorrect as most people in the team have technical ability and intellectual property knowledge, including Dr Wilson and Ms Morris. Furthermore, during the interview, the claimant avoided making eye contact with Ms Morris and with Dr Wilson and spoke mainly to Dr Blair and Dr O'Regan.

161. The claimant has alleged at this tribunal that Dr Wilson "rolled her eyes" at her during the interview. Given the negative answers which the claimant gave during the interview, there may well have been good reason for any of the interviewers to roll their eyes in surprise at some of her answers. However, none of the other interviewers noticed anything of the sort and all gave evidence that the interview was conducted entirely properly and professionally. Dr Wilson's evidence was that she was not aware that she rolled her eyes at the claimant during her interview and that she did not believe that she did so. By contrast, the claimant's evidence on the matter varied: at one point her evidence was that Dr Wilson rolled her eyes once; at another that she did so many times; and at another that she did so more than once (in her submissions). In the light of that and our earlier findings on the reliability of the claimant's evidence, we find that on the balance of probabilities Dr Wilson did not roll her eyes at any stage during the claimant's interview.

162. Even if we were wrong in that finding and Dr Wilson did at any point inadvertently roll her eyes, her doing so would not have been anything to do with the claimant's disability; rather, it would have been because of the negative answers which the claimant gave during the interview.

163. Candidates, including the claimant, were scored based on their performance in interview. Dr Wilson was candid in her evidence that she sought to score the claimant objectively, but she accepted that any person may struggle to completely divorce from their assessment their first-hand knowledge of someone's performance or behaviours (and Dr Wilson had first-hand knowledge of the claimant's negative behaviours based in particular on her behaviour in and around the Japan trip). However, she did not influence the panel and, as noted, the two external panellists (Dr Blair and Dr O'Regan) were invited to comment first when discussing candidates. The interview notes are sufficiently detailed to reveal that the claimant did not impress as a top tier candidate and that her scores were something of a mixed bag. All four of the interviewers were clear in their evidence that they were not under any pressure from any of the other interviewers in terms of their decisions. Furthermore, all four were unanimous that there were two outstanding candidates (A1 and A2), each of whom were well ahead of the claimant. Candidate A1 was appointed to the role.

164. On 22 January 2019, the claimant was informed, by Glemma Edwards of HR, that she had been unsuccessful at interview. From this point on, the claimant's behaviour went downhill very rapidly, which is exemplified in many of the facts set out below.

Post interview decision interactions

165. In her response on 22 January 2019 to Ms Edwards' email informing her that her application had been unsuccessful, the claimant raised concerns about how the interview was conducted and the presence of someone on the panel *"who has been involved in concerns surrounding bullying in the past"*. Ms Edwards forwarded this email to Ms Morris. Ms Morris did not know to whom the claimant was referring.

166. On the same day, the claimant emailed Ms Morris directly asking for feedback.

167. Ms Morris replied to the claimant and suggested that they discuss the feedback that day, but they could not arrange a time to meet that worked for them both until 31 January 2019, when they already had a one-to-one meeting booked in.

168. On 23 January 2019, the claimant emailed Ms Edwards again asking her to forward her email to a more senior member of the HR team and stating that *"the individual concerned continues to express bullying behaviours"*. Later in the email she states: *"There is little or no thought given to the mental or physical well-being of individuals subjected to these behaviours on a regular basis"*.

169. On 23 January 2019, the claimant emailed Ms Morris as follows:

"I have expressed my concerns to HR that Rebecca Wilson was on the interview panel. I find a lot of Becky's behaviour is very aggressive and raised this with Simon and Verja (sic) prior to BioJapan.

I did not feel able to raise this prior to interview, for obvious reasons.

Since HR have asked if the e-mail can be forwarded to you below are my comments:

"Thanks for letting me know. I have asked for feedback, which I am sure will be very helpful.

I do have some concerns regarding how the interview was conducted. Namely the presence on the panel of a member of the team who has been involved in concerns surrounding bullying in the past.

I have also experienced some of these behaviours, having cried on the Director of the Faculty prior to the Christmas break and openly admitted these behaviours impact on my pre-existing mental health issues.

Whilst the above remains confidential. i do not think it is appropriate to have these individuals partake in interview panels and indeed they were rolling their eyes to a few responses. A point I flagged to our administrator post interview. This should be a point that HR take forward into future interview processes, even if not this one. Especially in light of the fact that in my own faculty there has been a suicide related to bullying and mental health issues.

Obviously since this relates to a disability and my experiences of being at Imperial with said disability this is confidential. But I would appreciate the opportunity to feedback to HR face to face.""

170. Meanwhile, on 22 January 2019, Dr Esteras-Chopo separately told Ms Morris that she had concerns about the claimant. Dr Esteras-Chopo was in full hand over mode as her departure was weeks away. She told Ms Morris that she felt unable to rely on the claimant for support and help. She said that the claimant was not engaging in general handover activities and also not undertaking requested activities for the upcoming All You Can Innovate ("AYCI") event.

171. On 28 January 2019, Dr Wilson emailed Dr Hepworth and Ms Morris to report that her direct report, Fiona Jamieson, had heard the claimant talk at an industry impact training event on 23 January 2019 and say that there was *"poor internal communication at Imperial"* and that she received little support on developing a pipeline.

Ms Morris' request that the claimant work from the office on 12 February 2019

172. Ms Morris was due to be abroad for two weeks from 4 February to 15 February 2019, returning to the office on 18 February 2019. Dr Esteras-Chopo's last day at the respondent was 7 February 2019 which meant the claimant was going to be the only Corporate Partnerships team member available for the week commencing 11 February 2019. Before Ms Morris went away (sometime during the week commencing Monday 28 January 2019), she asked the claimant whether she would please come into work on Tuesday 12 February 2019, a day she was earmarked to work from home (subject to meetings), so that colleagues from Enterprise and the Faculty of Medicine had a face-to-face point of contact for the team that week. The claimant agreed to this.

173. The claimant has at this tribunal since asserted that this was a short notice change which failed to take into account her disability. However, this was not the case. The claimant's working from home arrangement was subject to change from time to time when meetings or events arose which necessitated her being in the office or elsewhere. Furthermore, she was given over a week's notice of this requested change. Finally, she agreed to come in and did not raise any concerns about it at the time. It was a perfectly reasonable management request in the light of the absence of both Ms Morris and Dr Esteras-Chopo and was nothing to do with her disabilities nor did it undermine the working arrangements put in place on 8 March 2018.

31 January 2019 meeting

174. As arranged, on 31 January 2019 the claimant and Ms Morris met in a campus coffeeshop for their one-to-one, one reason for which was to discuss the interview feedback. Ms Morris went through the feedback from the interview with the claimant.

175. They then went on to have a separate and distinct discussion focused on how the respondent could help the claimant to succeed in her current role

going forwards. They agreed on three immediate areas of focus: increased communications, both amount and frequency, particularly within and across the Corporate Partnerships team. They discussed the importance of considering team colleagues as external customers in addition to college academics. They then discussed the claimant's attendance at key meetings, including team meetings and the need for increased visibility and presence. Finally, they discussed how the claimant could sign her first deal.

176. The claimant has since asserted that "visibility" was a factor that was used as part of the recruitment for the full-time Corporate Partnerships Associate role. However, this was not the case. The issue of "visibility" was something that was discussed separately in relation to the claimant's performance in her existing role. Ms Morris' contemporaneous notes of the meeting back this up. Furthermore, given the nature of the claimant's existing role, it is unsurprising that "visibility" would be a factor of importance in the proper performance of that role.

177. After that, the conversation then turned at the claimant's instigation to concerns she said she had about a *"bullying and hostile"* environment in relation to Dr Wilson and Dr Santamaria-Fernandez. The claimant in due course became upset when she was discussing these issues. Ms Morris asked the claimant to give examples of how she felt the environment was bullying and hostile. The claimant referred to the Corporate Partnerships meetings at which the claimant said Dr Santamaria-Fernandez would go on "long monologues" and she said that she did not like the relationship between Dr Wilson and Dr Santamaria-Fernandez and that the two of them should be separated at meetings. The claimant said she was thinking about making a formal complaint about Dr Wilson. Ms Morris asked if the claimant wanted to raise a formal complaint, but she said that she did not want to at that time. Ms Morris asked whether she wanted her to raise the claimant's concerns with Dr Hepworth as her line manager and the line manager of Dr Wilson and Dr Santamaria-Fernandez, but the claimant again declined. At no point during this conversation did the claimant express any displeasure with Ms Morris personally and, as far as Ms Morris was concerned, she thought that they had a good working relationship at that time.

178. As noted, Ms Morris was on holiday from 4 to 18 February 2019. On 7 February 2019, the claimant emailed Ms Morris whilst she was on holiday. In her email she accused Dr Wilson of demonstrating favouritism in A1's appointment to the Full Time Corporate Partnerships Associate role. Ms Morris forwarded the email to Dr Hepworth. The context of the claimant's email was that she had attended Dr Esteras-Chopo's leaving drinks that evening, which A1 had also attended. In fact, at those drinks, the claimant had spoken to A1 and had told A1 that the team which she was joining had a toxic environment. Some months later, A1 told Ms Morris that she had been concerned about what the claimant had said that evening and that she had seriously considered rejecting the role as a result.

Claimant's email of 8 February 2019 to Ms Budden

179. On 8 February 2019, the claimant emailed Ms Budden as follows. The email runs to several paragraphs, but the section which appears to be relevant to the list of issues (issue 7.2.6, first part) is as follows:

"In advance of when we meet next week. I would like to chat about:
- Bullying.
- Modifications for a disability.
- Potentially challenging the recent recruitment process where the individual exhibiting bullying behaviour was on the interview panel. …

… If I am working at home as a modification, I should not be expected to come in. …"

180. The claimant subsequently met Ms Budden on 14 February 2019. One allegation in the list of issues (7.2.6, second part) is that at this meeting the claimant did a protected act for the purposes of her victimisation complaints (albeit the alleged protected act in this second part of issue 7.2.6 is expressed only in very general terms). Ms Budden accepts, however, that the claimant raised general concerns at this meeting about being asked to attend the office when she was due to work from home (Ms Budden's witness statement at paragraph 47).

181. The claimant subsequently sent Ms Budden an email on 18 February 2019 in which she set out concerns about initiating a formal grievance process. Amongst other things, she stated that *"I am not convinced that bullying and harassment are being taken seriously in our department"*.

21 February 2019 meeting with Ms Morris

182. Ms Morris returned from holiday on 18 February 2019. On Monday 18 and Tuesday 19 February 2019, the respondent was due to host the flagship All You Can Innovate ("AYCI") event, which was organised by Dr Blair. Setup was due on 18 February 2019 with the event taking place on 19 February 2019. Furthermore, there was a Corporate Partnerships team meeting scheduled on 18 February 2019. We have heard a lot of evidence about all this, which it is not necessary to go into great detail about. However, in summary, the claimant did not attend the Corporate Teams meeting, which Ms Morris would have expected her to do. Furthermore, she was expected to assist Dr Blair with the AYCI event but gave less than optimal assistance to her in connection with it despite having been asked to prioritise it. She did not, therefore, in this respect take on board what Ms Morris had said to her during their meeting on 31 January 2019.

183. On Tuesday, 19 February 2019, Ms Morris therefore sent the claimant an email invitation at 8:14 AM for a meeting at 9:30 AM on Thursday 21 February 19 entitled *"Charlie & Stephanie catch up"*. The location Ms Morris proposed was the Level 2 breakout area, an area on the open plan second floor of the Faculty Building where there are tables and chairs in front of the communal kitchenette. She therefore gave the claimant two days' notice of this meeting. Furthermore, the venue for the meeting was not an unusual one and the claimant made no objection to the venue at the time.

184. Ms Morris asked for the meeting for several reasons. First, she wanted to catch up with the claimant given that she had not had the opportunity to meet since returning from abroad (which she would have done with any direct report). Secondly, she was aware of the claimant's non-attendance at the Corporate Partnerships team meeting on 18 February 2019 and at the setup for the AYCI event that day and wanted to understand where she was that day. Thirdly, she was also concerned about reports that she was receiving about the claimant's behaviour, as various individuals had reported to her that the claimant had, at Dr Esteras-Chopo's farewell drinks on 7 February 2019, made negative comments about her job, her colleagues and the respondent. In due course, she also learned that the claimant had not been helpful to Dr Blair in relation to the AYCI event itself on 19 February 2019.

185. The meeting duly took place on 21 February 2019. It did not go well. Ms Morris introduced the meeting as a follow-up from their previous meeting on 31 January 2019, at which they had discussed visibility and team participation. She said that she had noticed that the claimant had not attended the Corporate Partnerships team meeting on 18 February 2019 nor was she present at the setup for the AYCI event. She asked, as her line manager, what had happened. She also mentioned the concerns which had been raised with her about the negative comments allegedly made by the claimant at Dr Esteras-Chopo's leaving drinks and the fact that Dr Blair had informed her that the claimant had not undertaken tasks requested of her in relation to the AYCI event with the claimant allegedly having said that another colleague should do it.

186. The claimant responded rudely, aggressively and insubordinately. She did not let Ms Morris finish and spoke over the top of her. By contrast, Ms Morris remained calm and professional. The claimant told Ms Morris that she was meeting with Dr Hepworth on 25 February 2019 to "follow up her complaint". The claimant then complained about having to work in the office on her working from home day during the previous week (Tuesday, 12 February 2019) (which Ms Morris had asked her to do because she was on holiday and Dr Esteras-Chopo had left by then and which the claimant had agreed to do). The claimant said that asking her to come in to work on a day she would usually be working from home was a *"breach of the disability act"*. Ms Morris was a bit shocked by this and asked the claimant to clarify. The claimant stood up, raised her hands at Ms Morris and said *"I don't have to put up with this"* and walked away. The meeting lasted around five minutes in total. The claimant was distressed as she walked away from the meeting.

187. The claimant then went to speak to Ms Budden after the meeting with Ms Morris. The claimant raised with Ms Budden concerns about Ms Morris. Her concerns were related to feedback she had been provided about her interview, in particular the "visibility" issue which she had wrongly considered was part of the feedback from the interview as opposed to a separate recommendation aimed to assist the claimant in her existing job.

188. Ms Budden's witness statement does not set out any concerns raised by the claimant at their meeting on 21 February 2019 beyond these. The claimant

later that day sent Ms Budden an email setting out a long list of bullet point concerns, one of which was *"I did not attend a CP meeting on Monday. I was aggressively questioned as to why I was "working from home". The facts were not ascertained prior to this being asserted in an open plan environment. I was not working from home I was at the SK site as per my usual working pattern."* There is nothing in the claimant's email which suggests or asserts that she had raised all these points with Ms Budden at the meeting earlier that day. Furthermore, the claimant did not put it to her in cross-examination that concerns beyond the "visibility" issue were raised by her with Ms Budden at that meeting. We therefore find on the balance of probabilities that the claimant did not raise concerns beyond the "visibility" issue with Ms Budden at that meeting, including not raising the point about being questioned on her reasons for home working.

189. As the claimant was distressed following the meeting with Ms Morris, Ms Budden suggested that she went home for the rest of the day, which she did.

190. Later, on the afternoon of 21 February 2019, Ms Morris spoke to Dr Hepworth and reported to him what had happened during the meeting with the claimant that day. Ms Morris told him that the meeting didn't go well, and that the claimant had been very aggressive and defensive. She also explained that she had lost confidence in the claimant and reiterated the behaviours which had been the reason for the setting up of the 21 February 2019 meeting which were of concern, including not turning up to team meetings or agreeing to carry out tasks in support of the AYCI event and making negative comments.

191. The claimant had already, at her request, arranged to have a meeting with Dr Hepworth on 25 February 2019. However, in the light of what Ms Morris told him on 21 February 2019, Dr Hepworth sought advice from Ms Shola Alabi of HR in advance of that meeting.

<u>25 February 2019 meeting with Dr Hepworth</u>

192. The meeting took place in Dr Hepworth's office. The claimant spoke for about half an hour. She had prepared a written list of issues she wanted to bring to Dr Hepworth's attention and went through this list during the meeting. She also told him during the meeting that she had raised a subject access request and was planning on submitting more (see below). The claimant ran through a number of issues which she was unhappy about: the outcome of the full-time Corporate Partnerships Associate recruitment process and Dr Wilson's inclusion on the panel; feedback she received from Ms Morris in relation to it and her mistaken perception that "visibility" was one of the criteria used in assessing her for the role; the BioJapan conference; and issues regarding desk location and one-to-one meetings at what she said was short notice.

193. Dr Hepworth did not say much during the meeting as it was clear that the claimant had a lot of things to say and he listened (which was the primary piece of advice which HR had given him in relation to the meeting). However, he did raise the matter of the claimant having walked away from the one-to-one meeting with Ms Morris and that he understood that Ms Morris had wanted to speak about some issues of concern regarding the claimant's behaviour relating

to matters already discussed. He suggested that the claimant meet again with Ms Morris to talk through the various issues and stressed that it was important that this conversation should take place. He also made it clear during this meeting that Ms Morris had some concerns about the claimant's performance and that the claimant should meet with Ms Morris to discuss them. The claimant was surprised at these comments.

194. Dr Hepworth's evidence is that it was a memorable meeting and that he was particularly struck by the claimant's tone and attitude throughout, which he found to be quite aggressive. In the light of what we have seen of the claimant at this tribunal, we do not find that assessment to be surprising and we accept Dr Hepworth's evidence that that was indeed the claimant's tone and attitude throughout the meeting.

195. Dr Hepworth spoke to Ms Morris after the meeting to let her know what he had discussed with the claimant and that he had advised the claimant to meet with Ms Morris again to work through the areas of concern.

196. On 28 March 2019, Dr Hepworth drafted a summary of the meeting of 25 February 2019 with the claimant and the further information he had since collected which was relevant to the concerns that the claimant had raised. He updated it again on 30 March 2019. He prepared the note when he did because at that stage it had become clear that things were moving towards more formal processes, and he wanted to record the discussion so that he could refer back to it. The note was based on his recollection of the conversation which he had with the claimant on 25 February 2019 and also included some further comment and reflection from Dr Hepworth on the situation based on what he had learned from others. We make these findings only because the claimant has made so much of this note, because it was not made contemporaneously. However, Dr Hepworth was completely open and honest about the fact that it was made at a later date and that it also included reflections after the date of the meeting itself (which is clear from the note itself). We have no reason to doubt its accuracy.

<u>February 2019 subject access request ("SAR")</u>

197. On 20 February 2019, the claimant had submitted a subject access request ("SAR") by email. The SAR asked for all material pertaining to the claimant's recent application for the role of Full Time Corporate Partnerships Associate in December 2018 / January 2019 and emails in which she was named between various individuals at certain dates. On 25 February 2019, she subsequently added two further categories to her original request namely: emails between Dr Magdalenic-Moussavi and Dr Hepworth from 1 February 2018 to 20 February 2019; and emails between Ms Morris and Dr Hepworth from 1 November 2018 to 26 February 2019.

198. The SAR was dealt with by the respondent's Information Access Team ("IAT"), which is a separate department which deals specifically with information matters such as SARs. There is no evidence that any of the members of IAT who dealt with it (or the claimant's subsequent March 2019 SAR) had any

previous knowledge of the claimant or her disabilities and we therefore find that they did not have any such knowledge.

199. Ms Catherine Mitchell, the member of IAT who dealt with the February 2019 SAR, emailed Ms Morris on 21 February 2019 to let her know that a request had come in for some documents which Ms Morris (as chair of the interview panel) had custody of and asked her to send them over by 4 March 2019, so that Ms Mitchell could review them to determine what was disclosable and what was not. On the same day, Ms Morris duly emailed Dr Wilson, Dr Blair and Dr O'Regan to let them know, as a courtesy note, that she had been asked to provide copies of the notes that they had made during the process.

200. Ms Mitchell subsequently delivered the documents in response to this SAR via email on 20 March 2019. The documents were redacted to protect third-party information and were password protected.

25 February chase up email from Ms Morris

201. On 25 February 2019, Ms Morris emailed the claimant at 12.45 asking her to circulate details of a call to relevant academics, Heads of Department and research managers "as soon as possible" and for her to let her know once the communication had been sent. The claimant responded at 13.01 to say that she was happy to do this but asked a query about the task, to which Ms Morris responded at 14:14 and asked that she copy her in when the email was sent. As she did not receive such confirmation, Ms Morris by email that day at 16:23 asked the claimant to confirm whether the details had been circulated and, if not, if she could do so by close of business. She did so as this had been an outstanding request with the claimant for some time and it was time sensitive. Ms Morris had originally made the request on 23 January 2019. She had discussed it with the claimant again in the post-interview feedback as a way to bring in some corporate funding. The claimant had still not acted on this over one month later and more and more open innovation calls were coming out.

202. The claimant responded at 17.27 the following day, 26 February 2019, to say that she had not circulated the information as she could not open the relevant file. Ms Morris emailed her on 27 February 2019 to confirm that she could open the file and therefore she would send out the information. Ms Morris therefore did the job herself. She did not want to delay the matter any further.

Claimant's email of 26 February 2019 to Ms Budden

203. On 26 February 2019, the claimant sent Ms Budden an email headed *"URGENT VICTIMISATION STARTING TO OCCUR"*. In it she expressed concerns about comments made by Dr Hepworth at the meeting on 25 February 2019. Specifically, she said that he had mentioned that they had concerns about her performance and that this was the first time that performance issues had ever been mentioned to her. As noted, it was not true that performance issues had never been mentioned to the claimant before. Furthermore, Dr Hepworth had not said that he had performance concerns with her that but that he was aware that Ms Morris did, and that the claimant should discuss them with her.

Ms Morris' team seating email (26 February 2019)

204. Until early 2019, the respondent used to commercialise its intellectual property via a third party entity called Imperial Innovations, (under an exclusive Technology Pipeline Agreement) which operated out of 52 Prince's Gate on the South Kensington campus. On 28 February 2019, the Technology Pipeline Agreement was terminated and staff from Imperial Innovations transferred to the respondent, and this resulted in a number of people joining Ms Morris' newly named team of Industry Partnerships and Commercialisation (IPC), Faculty of Medicine. Ms Morris was very conscious that she now had a larger team split over two different sites and she wanted to encourage team members to get to know each other. On 26 February 2019, she sent an email to the whole to-be IPC Faculty of Medicine team stating that she was looking forward to becoming one team and working much closer together. Because it was not possible at that time for all IPC Faculty of Medicine team members to be seated at desks near each other, she circulated a "Space Suggestion from 4 March", encouraging everyone to pair with different colleagues to gain insight into each other's role and become more familiar with new areas. The email stated that it was a rough schedule to last until the end of April and was suggested as a guide. Ms Morris did not receive a response from the claimant.

205. The claimant has alleged that this was a requirement for her to change her working location without consultation. However, that is not correct. There was no requirement for the claimant to change her desk and Ms Morris proactively invited comments. For example, she said in the email of 26 February 2019 that her proposal was a *"rough schedule"*, *"by no means is it concrete, rather it is a suggested guide"* and *"there will no doubt be changes and flexibility will be required"*. The email ended *"Keen to have your thoughts on this"*.

206. Not only was there no requirement for the claimant to change her working location but this email was only a proposal and one which was sent to a number of individuals in order to garner their thoughts on it. However, in keeping with her tendency to see everything from her own point of view, the claimant has interpreted this as if it was directed to her personally and as if, contrary to what is actually the case, a decision had been taken to change her desk location without her consent. There is no consideration by her of the fact that Ms Morris also had to manage the relocation of the new people joining the team.

28 February 2019 meeting with Ms Morris

207. The claimant and Ms Morris had a one-to-one meeting in the diary scheduled for Thursday, 28 February 2019. As a result of the meeting on 21 February 2019, Ms Morris suggested bringing this forward to Monday, 25 February 2019, but the claimant declined because she understood that Ms Morris wanted to discuss performance issues. She said that she would like HR present, and the meeting was therefore confirmed for 28 February 2019 with Ms Budden in attendance.

208. On 28 February 2019, the claimant advised them that she was not well and it was unlikely she would be able to attend the meeting. They thanked her for letting them know and recommended that she focus on recovery and take the day as sick leave. Ms Morris cancelled the meeting. However, the claimant then advised later in the day that she wanted to attend the meeting and it subsequently went ahead.

209. During the meeting, the claimant again raised concerns about "visibility" being judged as a criterion at the interview for the Full Time Corporate Partnerships Assistant role. Ms Morris confirmed to her again that it was not one of the criteria. They spoke about how the claimant could improve relationships with peers, for example through increased communication (including with Ms Morris). At the meeting, there was a constructive discussion and action points were agreed.

210. Ms Morris told the claimant that absences from her had not gone unnoticed and raised concerns about a lack of attendance at some key meetings.

211. Ms Morris explained that the reason that the meeting on 21 February 2019 was not in a private room was because she had not expected it to be so hostile. Ms Morris told the claimant that she felt that the claimant was hostile during the meeting on 21 February 2019 and that she had found her behaviour unacceptable. While the claimant said that she felt that Ms Morris had escalated the meeting by referring to her modifying working from home (which was untrue as it was the claimant who raised this point in the meeting of 21 February 2019), the claimant accepted that she (the claimant) did "escalate" in the meeting of 21 February 2019.

212. The claimant explained, with reference to the 21 February 2019 meeting, that she felt it made her anxiety worse if she did not know the reason for a meeting. Ms Morris said that she was not aware of that, and it was not her intention to make the claimant feel "door-stepped" (which is the claimant's expression which she used at the time and has used repeatedly at this tribunal), but that Ms Morris wanted to support her.

213. They agreed a way forward. They acknowledged that there had been misunderstandings on both parts. Ms Morris agreed that she would provide as much notice as possible for future one-to-one meetings, book a private room and let the claimant know the reason for the meeting. The claimant would set up regular catch ups and provide an update on what she was working on (the claimant in fact never set these up so Ms Morris did so on 11 March 2019 together with an agenda and a board meeting room (see below)). The claimant also confirmed that she would like a further occupational health referral, which Ms Budden offered to take forward.

214. Up until this point, neither Ms Morris nor Ms Budden were aware that the claimant wished to have longer notice of meetings, identification in advance of what the meetings were about, and for them not to be held in the usual places where they had previously been held during the claimant's employment (such as breakout areas and coffee shops).

Submission of the claimant's first grievance

215. As already noted, the claimant submitted her first grievance on 10 March 2019. She submitted it to Ms Budden, who forwarded it to Ms Alabi and to Ms Lynch. The grievance was expressed to be against the respondent, Dr Wilson and Ms Morris (and no one else). The grievance was a lengthy document, running to some 139 paragraphs over 14 pages. One of the outcomes which the claimant sought at the end was that both Dr Wilson and Ms Morris should be disciplined.

216. Ms Budden acknowledged receipt of the claimant's grievance on 11 March 2019. She explained to her that she was in the process of providing her grievance to the Employee Relations Team to take it forward. She explained that Dr Hepworth would be notified of the grievance and that discussions would take place to appoint an investigation team comprising a manager as the investigating officer (that manager would have no prior involvement with the issues the claimant was raising) and an HR representative. Ms Budden also stated that the claimant's grievance would be provided to the managers she raised complaints about and that they would be given an opportunity to respond in writing, which she would receive.

217. In response to Ms Budden, the claimant stated that she did not think it appropriate that Dr Hepworth had any input into the investigation team given that he was named in the grievance. (To be clear, Dr Hepworth was not named as someone against whom the grievance was brought although his name did appear given that the claimant had had conversations with him which formed part of the background to the lengthy grievance which she had brought.) Ms Budden explained that they would need to notify him as the director of Enterprise that she had submitted a grievance.

218. We will return to the first grievance in due course.

Meetings on 11 March 2019

219. In early March 2019, a meeting was arranged for 12 March 2019 at 9:00 AM, which was to involve Ms Morris, the claimant and several others, to discuss a particular project. Another employee then on 1 March 2019 sent the meeting invitation for this meeting, but for 11 March 2019 at 8:30 AM. Ms Morris was not involved in this meeting invitation and does not know why it was changed to 8:30 AM on 11 March 2019 but imagines that it had something to do with the availability of the other attendees, which we accept as being the most likely explanation for the change in time and date. Ms Morris attended this meeting. The claimant did not attend it.

220. On the morning of 11 March 2019, Ms Morris also emailed the claimant to let her know that she had set up one-to-one catch-up meetings on a regular basis starting the following week for the next three months (she did this because the claimant, contrary to what was agreed by her at the meeting of 28 February 2019, had failed to do this herself). In her email Ms Morris stated *"Attached is an*

*Agenda to start with. If you have time today at 1:30pm* (sic)*, we can meet to go over this in advance."* She also sent a meeting invitation the description of which was *"Run through of 1:1 weekly catch ups"*; in other words its purpose was simply to agree other meetings going forwards. It was originally scheduled for 15 minutes at 12.30 PM on 11 March 2019.

221. At 12.19 PM on 11 March 2019, the claimant emailed Ms Morris as follows: *"Could we do this later in the day please, I only just spotted this. I have another meeting at this time with EQD. They can only fit me in at 12:30."*

*222.* Ms Morris replied within 10 minutes of the claimant's email: *"Sure, we can either make it 5pm today or if that is too late then would 10am tomorrow be suitable?"*

223. At 15.26 PM that day the claimant replied: *"I can do 5.00 today, if that works for you."*

224. The meeting duly took place at 5:00 PM that day. As the original invitation had indicated, it was indeed very short, and they simply briefly discussed how future one-to-ones would be formatted/structured. It took place in a private room and was amicable. The claimant agreed with and endorsed almost everything discussed, which was a reiteration of the arrangements agreed at the 28 January 2019 meeting.

225. Unknown to Ms Morris, however, the claimant had at 12.18 that day (a minute before her first email to Ms Morris), emailed Ms Budden and Ms Lynch, coping in Ms Mistry, as follows:

"Please could Imperial College London…please…please…please…..stop Stephanie Morris from door stepping me for meetings. I consider this to be harassment.

Repeatedly I have explained the impact of being door stepped on my disability and repeatedly this has been ignored - For the third time in less than a two week period I have been invited to a meeting with less than a hour's notice. It has been made clear and features in your own summary of the meeting that took place on Thursday 28th of February what the impact of this is on my disability.

Why does Imperial College keep ignoring this? This is totally unacceptable and taking place in full knowledge of my disability, with full disclosure of all the details.

I am unable to attend this meeting as I already have one with the disability advisor."

226. Ms Mistry then replied to Ms Budden and Ms Lynch (but did not copy in the claimant) as follows:

"Given the seriousness of this situation and the fact that even today the door stopping and short notice of meetings has continued, thus leading to further harassment and disability discrimination, please would you stop Stephanie from communicating with Charlie and have any further (necessary) communication channelled through yourselves. Please could this be done with urgency and immediately effect."

227. Two points arise from this exchange. First, it was not the case that Ms Morris had been repeatedly inviting the claimant to meetings at short notice since

the claimant had made her and Ms Budden aware at the meeting of 28 February 2019 that she considered this a problem. From 28 February up until 11 March 2019, she had not done so at all. As far as the meeting on 11 March 2019 itself is concerned, this was simply a short catch-up to run through a schedule of proposed meetings going forward and was not anything substantive. Its limited purpose was clear from the meeting invitation and Ms Morris' email of that day. As is clear from Ms Morris' email, the claimant only needed to attend then if it suited her and, when she said it didn't, Ms Morris changed the time for her. The claimant's allegation that this amounted to *"door stepping"* and was something she considered *"to be harassment"* is therefore utterly disproportionate. It is another example of the claimant viewing reasonable management behaviour not only as unfair but as an act of discrimination/harassment. It should also be noted that, even though this is an allegation in the list of issues for this tribunal, the claimant did not cross-examine Ms Morris on it at all.

228. The second point is Ms Mistry's response. Ms Mistry was, as noted, a source of considerable support for the claimant. However, the extent of her knowledge was only what the claimant told her. She never, for example, had Ms Morris' side of the story. Nevertheless, the email which she wrote to Ms Budden and Ms Lynch asserts (by the use of the word "further") that there has already been *"harassment and disability discrimination"* of the claimant and that Ms Mistry is concerned that there should be no further harassment and discrimination; she has effectively asserted that Ms Morris has already harassed and discriminated against the claimant because of her disability. We fully accept Ms Misra's submission that Ms Mistry had manifestly lost sight of objectivity in her emails and that she had overlooked the need to seek management's version of events before making sweeping assertions of this nature.

229. The consequences of this have been considerable. Whilst the claimant did not see the email at the time, it was of course disclosed to her during the tribunal disclosure process. Ms Mistry can offer no evidential support as she was not a witness to any of the events which the claimant now says were acts of discrimination. However, the claimant clung to this email again and again in her cross-examination of witnesses at this tribunal. Why? Because it is the one thing that tells her what she wants to hear but what she is not hearing from anyone else at the respondent: affirmation that she has been discriminated against. For someone who, as we have noted, sees the world almost entirely from her own perspective only and sees the most ordinary management actions as acts of discrimination against her, it is doubly detrimental to receive an affirmation of this nature, as confirmation of this kind makes it even less likely that she might see those management actions for the ordinary events they really are. It is a clear example of the dangerous consequences when members of staff do lose their objectivity in the way that Ms Mistry did.

<u>Appointment of Dr McDermott as grievance investigator</u>

230. On 11 March 2019, Ms Alabi of HR informed Dr Hepworth that the claimant had raised a grievance against Dr Wilson and Ms Morris. Dr Hepworth suggested Dr McDermott as being someone suitable to carry out the grievance investigation. Dr McDermott reported to Dr Hepworth. However, he was the

director of Science Led Services and, although this did fall within the umbrella of the Enterprise division, he was not close to anyone involved in the grievance and had no prior involvement with any of the events which were the subject of that grievance. Ms Alabi took up this suggestion and the grievance therefore proceeded with Dr McDermott as the investigator. Although the claimant subsequently complained about the appointment of Dr McDermott (see below), Dr Hepworth had no further involvement in the issue of whether or not Dr McDermott should continue as investigator of the grievance or recuse himself.

231. Dr Hepworth informed Ms Morris that the claimant had raised a grievance on the evening of 11 March 2019 (although there is no evidence that he went into the contents or detail of that lengthy grievance in that call) and he confirmed this in an email to Ms Morris early on 12 March 2019. In that brief email and a similar email to Dr Wilson on 12 March 2019, Dr Hepworth asked Ms Morris and Dr Wilson, in the light of the claimant's grievance against them, to ensure that the contact time between themselves and the claimant should be minimised. This was duly done and a separate interim line manager for the claimant was duly appointed (although in fact there was limited requirement for such management as the claimant went on sick leave on 13 March 2019).

Ms Morris' email of 12 March 2019

232. Ms Morris had sent an email to the claimant at 16:12 PM on 12 March 2019 about a work matter and had received the claimant's automatic email reply stating that she was currently away from the office. This was surprising as the claimant was due to be working until 5 PM that day. Ms Morris therefore emailed the claimant, stating that she was a little confused as to why her auto message was on and asking her to confirm. The reason Ms Morris did so was because she was concerned as to where the claimant was and as her line manager had a duty of care to staff reporting to her. That motivation is evident from an email which Ms Morris wrote to Dr Hepworth later that day where she explained what had happened and stated that it was *"concerning from an OH&S perspective"*.

The claimant's sick leave

233. Ms Morris' concerns proved to be prescient. The claimant commenced sick leave the next day (13 March 2019) and never returned to work again (save for grievance and appeal meetings).

234. The claimant had previously had a good sickness record.

The claimant's first complaint about Dr McDermott's appointment

235. Ms Watt was the member of HR who was appointed to assist in relation to the claimant's first grievance. On 14 March 2019, the claimant emailed Ms Watt and stated that she had a concern about Dr McDermott's appointment as grievance investigator, in summary because Dr McDermott's department was now part of Enterprise, which Dr Hepworth was the head of. Ms Watt discussed the matter with Dr McDermott.

236. Dr McDermott did not agree that any of his professional connections were such that it would impact on his ability to objectively review the matters that the claimant had complained about. He noted that Dr Hepworth was not the subject of any complaint although he was a potential witness (as the claimant had had a discussion with him in October 2018 prior to the BioJapan conference and had met with him again on 25 February 2019). However, there was no complaint about Dr Hepworth's behaviour.

237. In an email of 15 March 2019, therefore, Ms Watt replied to the claimant stating that she had discussed the case with Dr McDermott and that he was *"satisfied that he is able to objectively review the matters detailed in your complaint, is the right level and does not feel compromised by any of his professional relationships"*. The claimant did not raise the matter again until 14 May 2019, after her grievance hearing had taken place.

March 2019 SAR

238. The claimant submitted a further SAR on 29 March 2019. In this she requested "Material to which I am entitled contained in correspondence from/to: Ms Morris and Dr Magdalenic-Moussavi October 2018 to April 2019; Ms Morris and Dr Wilson October 2018 to April 2019; Ms Morris and Dr Esteras-Chopo October 2018 to April 2019; and Ms Morris and Dr Blair November 2018 to April 2019*"*.

239. The request was again dealt with by Ms Mitchell. She followed the same process of contacting all relevant individuals to ask them to provide the requested information. On 30 April 2019, Ms Mitchell sent the claimant the response to the March SAR.

Dr Wilson's response to the claimant's first grievance

240. As noted, both Ms Morris and Dr Wilson were asked to provide a response to the allegations in the claimant's first grievance. Dr Wilson provided a response on 22 March 2019. Dr Wilson had been shocked to find that the claimant had made the allegations against her which she had. Dr Wilson's response is a detailed document in which she sets out her account of what happened. Before going through the various accusations, she states that *"I am naturally taking this very seriously and I have found this upsetting and disturbing from a personal perspective"*.

241. In the course of going through the various accusations, Dr Wilson gave her account of the BioJapan trip and the point during that trip at which the claimant came up to her during the conference to speak to her. Dr Wilson states in her response that the claimant *"then sat down and proceeded to tell me why she was so stressed the previous week about coming to BioJapan as she suffered from anxiety and depression and found the planning activities difficult"*. This quotation forms one of the allegations in the list of issues and the claimant is clearly very sensitive to any suggestion that she finds planning activities difficult, as she made clear several times during the hearing that she considered that this was something she was good at. Similarly, Dr Wilson states in her response that

during the lunch which they had in Japan the claimant had said to her that she sometimes *"found it difficult to cope with the workload, our communication methods and other processes"*.

242. All Dr Wilson is doing at this point in her response document is to set out her recollection of what the claimant told her in Japan. It is not an assessment of the claimant or of the impact of her disabilities. It is also worth noting that, typically, the claimant in the list of issues quotes out of context in a way which is adverse to the respondent; her quote is simply *"she suffered from anxiety and depression and the found planning activities difficult"*. This misleadingly makes it sound as if Dr Wilson was stating her own opinion as opposed to merely reporting what she recalled the claimant had said to her.

Second occupational health report (16 April 2019)

243. As agreed at the 28 February 2019 meeting, Ms Budden had drafted an occupational health referral and sent it to the claimant for approval on 14 March 2019. However, she did not hear back from the claimant and therefore followed up on 28 March 2019 to make sure that she had received it. The claimant then gave her consent to the referral, which Ms Budden then submitted. The claimant attended an occupational health meeting on 16 April 2019 and a report was issued, by Dr Anna Stern, on the same date.

244. The report includes the following:

"Advice

This lady suffers from background medical conditions which in my opinion are likely to be considered disabilities under the Equality Act, due to the long-term nature of the conditions and their negative impact on her functional status. Please note that the Act discounts the effect of treatment and without treatment significantly worse functional impairment would be likely.

As far as I can ascertain she has sought and complied with appropriate medical treatment and advice.

This lady is fit to for work with the following adjustments:

• She should work only in well ventilated areas. She should be provided with sufficient space as recommended in the HSE guidance.
• She should be allowed to work from home, as far as practical, in order to be able to control and optimise her own environment.

Clearly I cannot comment on the validity of her work related concerns however this appears to be a management and not a medical issue and should be dealt with as such.

Assuming the matters can be resolved to the satisfaction of all parties, I see no reason why she should not successfully return to work and provide reliable attendance and performance at work in the future. However if she returns to work without any changes being made and continues to perceive that she is bullied or discriminated against, then further psychological ill-health is likely.

In my opinion she is fit to attend and take part in formal and informal meetings with the following provisos:

• Management should take into account her current mental health status.
• Meetings should take place at a mutually neutral location.

• She should be supplied in advance, where possible, with written material to allow time to take this in.
• She should be accompanied by an appropriate party.
• If she becomes distressed during a meeting she should be allowed a break.
• She should not necessarily be required to answer questions "on the spot", but rather be given sufficient time to formulate a response taking into account her psychological symptoms.
• Meetings should be chaired and attended by appropriate parties taking into account her concerns regarding perceived bullying and discrimination at work."

245. The relevance of what is in this report is much more limited because at no stage after it was produced did the claimant come back to work. Therefore, the recommendations which the report makes could never be implemented in the workplace. It's relevance, as it turned out, therefore, was only to the extent that it impacted upon the grievance and appeal meetings which the claimant attended.

3 May 2019 first grievance meeting with the claimant

246. The grievance meeting with the claimant took place on 3 May 2019. As noted, the claimant was accompanied by her husband, Dr Hayes. Dr McDermott was present, as was Ms Watt in her HR capacity, and there was a separate note taker.

247. There is no complaint in the list of issues about the conduct of this meeting and it is not therefore necessary to go into a great deal of detail about it. However, the meeting lasted over 3½ hours because there was a lot of material to cover. The claimant had provided a lot of information in her grievance letter and appendices and Dr McDermott was keen to use the time at the meeting to get a clearer understanding of the claimant's concerns and how they could be resolved going forwards.

248. There were two short adjournments requested by the claimant during which she stepped outside with Dr Hayes. One of the reasons for a break was that the claimant got upset and Dr McDermott and Ms Watt were concerned for her welfare. That the claimant got upset is consistent with the fact that she got upset in previous internal meetings (as detailed above) and in due course at the first grievance appeal meeting and indeed on several occasions at this tribunal. However, as noted, Dr Hayes described this meeting as professional and appropriate. As noted, in contrast to her husband, the claimant sought on appeal to describe this meeting as "aggressive" and overly inquisitorial. However, she never put it to Dr McDermott that he had acted inappropriately in either the conduct of the hearing he chaired (or in the detailed grievance outcome letter he produced). We therefore have no hesitation in accepting Dr McDermott's evidence that he thought that he and Ms Watt conducted the meeting in a gentle and calm manner, giving space for the claimant to say what she wanted to say. It was the length it was because of the large number of complaints made by the claimant and the fact that Dr McDermott wanted to ensure that she was able to explain in her own time what those complaints were. We therefore find that the meeting was conducted entirely appropriately and certainly not in an "aggressive" manner as the claimant has subsequently alleged. By contrast, its duration showed how seriously Dr McDermott took the complaints and how thorough his approach to investigating them was.

249. At the end of the meeting, Dr McDermott asked the claimant what she would like to see as a resolution to these issues. The claimant said that she would like to leave the respondent or leave the Corporate Partnerships team. She said that she had felt that Dr Wilson had discriminated against her and that this showed a pattern which needed action taking across the respondent. She expressed concern that the respondent promoted people like Dr Wilson. She said that she felt that the problem could not be fixed without massive changes such as removing certain people from the department, and she confirmed that she was not open to mediation with either Ms Morris or Dr Wilson.

250. After the meeting, the claimant sent Dr McDermott, via Ms Watt, the documents she had received as a result of her SAR for him to review. She also provided a 12-page rebuttal to Ms Morris's written response and a 10-page rebuttal to Dr Wilson's written response. Dr McDermott considered these as part of the grievance too.

251. Dr McDermott then met Dr Wilson on 14 May 2019.

The claimant's second complaint about Dr McDermott's appointment

252. In the meantime, the claimant had trawled through the Microsoft Teams calendars of Dr McDermott, Ms Morris and Dr Wilson to see if they had attended any meetings in common. On 14 May 2019, the claimant wrote to Ms Watt to say that she was concerned that Dr McDermott sat on working groups with Dr Wilson and Ms Morris and that this constituted a conflict of interest: she had noted that they were scheduled to attend an "Imperial in China Working Group" meeting on 16 May 2019. Ms Watt referred this to Dr McDermott.

253. In fact, there were 25 people invited to attend that particular meeting, not all of them from Enterprise. Furthermore, to put Dr McDermott's working relationship with the parties connected to the grievance in context, Enterprise had over 100 members of staff and Dr Wilson and Ms Morris were, like Dr McDermott, line managed by Dr Hepworth along with six other members of staff. Dr McDermott did not have substantive projects with Dr Wilson or Ms Morris and the only time that he had met with either of them on a one-to-one basis around the time was Ms Morris' induction on 30 October 2018, a couple of days before his own role was transferred to the respondent. He had never met the claimant before the grievance meeting. He did not feel at all constrained by the fact that these individuals were his peers and he had dealt with complaints related to peers in the past.

254. Having discussed this with Dr McDermott, Ms Watt replied to the claimant as follows:

"You have now raised the issue of Alistair attending an Imperial in China working group on 16th May. Stephanie Morris (provisional) and Rebecca Wilson are also showing in their diaries as attending. I have spoken with Alistair who has confirmed that the meeting was a presentation from the China-Britain Business Council of which Imperial are members. Alistair has confirmed that over 25 people were invited to attend the presentation (not all from Enterprise).

Alistair has reviewed more widely his interactions with both parties and confirmed that he does attend meetings where Rebecca and Stephanie will be present as they are part of the same department but not in a 1:1 situation; they all attend the Enterprise Leadership Meeting on a monthly basis with 14 other attendees. Alistair has confirmed that he is not compromised by any reporting arrangements to either party and hence does not feel that there is a conflict of interest."

255. Dr McDermott then continued his investigation with meetings with: Ms Morris on 20 May 2019; Ms Budden on 30 May 2019; Dr Blair on 3 June 2019; and Dr Hepworth on 5 June 2019. He also received written answers to questions from Dr Magdalenic-Moussavi (who was on maternity leave at the time) on 30 May 2019.

256. Both Ms Morris and Dr Wilson confirmed to Dr McDermott that they would be prepared to undertake mediation with the claimant.

257. In the light of the claimant's also raising issues about her SARs, Dr McDermott also subsequently contacted Mr Scott, the respondent's Data Protection Officer, about the details of how the claimant's complaints were addressed by his team.

258. The claimant had also made several complaints to the IAT team in relation to her SARs, which culminated in a letter of complaint from her to Mr Scott of 17 June 2019. As there was an overlap between these complaints and the extensive subject matter of the claimant's first grievance, it was necessary for Mr Scott and Dr McDermott to liaise with each other in this respect.

<u>The claimant's third complaint about Dr McDermott's appointment</u>

259. On 7 June 2019, the claimant again raised concerns about Dr McDermott's professional connections with Dr Hepworth, Ms Morris and Dr Wilson alleging (wrongly) that he had regular contact with them. The allegations are a rehash of previous concerns, but the claimant had again been through the relevant Microsoft teams diaries and this time noted that Dr McDermott had had a one-to-one meeting with Dr Hepworth immediately after his meeting with Dr Blair in relation to her grievance. That meeting was, however, Dr McDermott's regular monthly one-to-one with Dr Hepworth. It was not about the claimant's grievance, and they did not discuss the claimant's grievance at it. Once again, therefore, Dr McDermott did not consider that it was appropriate or necessary to recuse himself.

<u>First grievance outcome</u>

260. Dr McDermott produced his outcome to the claimant's first grievance on 21 June 2019. His report is a detailed and thorough document. Dr McDermott partially upheld a couple of the claimant's allegations but did not uphold the majority of them. He did not find that any of the respondent's actions amounted to harassment or discrimination.

261. Dr McDermott made a number of sensible recommendations at the end of his report. The first of these was:

"I would recommend that mediation takes place between SM and CM, and RW and CM. I understand that mediation is voluntary and would request that all parties review and commit to this process to improve their professional relationship. I note at interview that both RW and SM confirmed that they would be prepared to undertake mediation. SM indicating that she wanted CM 'to succeed' and RW confirming that there 'were lots of opportunity for CM' at imperial. I do believe that they are both committed to supporting CM return to the workplace and participate in a resolution. I would encourage CM to review her position with regards to mediation."

The claimant's complaints regarding her SARs

262. On 5 June 2019, the claimant emailed Ms Watt and said that she had been disappointed with several areas of the investigation to date. She referenced some points arising from her SARs including Ms Morris's actions in contacting the interview panel to state that the claimant had made an SAR. Ms Watt replied to the claimant on 6 June 2019. Ms Watt told her that she was advised that the claimant should speak to the IAT team in the first instance.

263. The claimant had also made complaints to the IAT team in relation to the handling of her SARs, culminating in a letter of 17 June 2019 from her to Mr Scott. It was necessary for Mr Scott and Dr McDermott to liaise with each other in a limited way as there was overlap between the issues in these complaints and in the extensive subject matter of the claimant's first grievance. Mr Scott responded to the claimant's complaint of 17 June 2019 in a letter of 11 July 2019. The claimant was unhappy with his responses and replied to him on 12 July 2019. He was on annual leave when this was received and therefore did not respond until 8 August 2019. It is not necessary to go into the details save to say that, as with Dr McDermott's handling of the claimant's first grievance, Mr Scott clearly took his responsibilities very seriously and replied fully and thoroughly to the claimant's complaints.

First grievance appeal

264. On 4 July 2019, the claimant wrote to Ms Kelly to appeal against Dr McDermott's decision in relation to her first grievance. Ms Cox was appointed to hear the appeal, assisted by Ms Lynch in HR.

265. As already noted, Ms Cox is and was at the time a Mental Health Champion for the respondent (and had completed Mental Health First Aider training) and Ms Lynch is and was at the time a qualified Mental Health First Aider. The initial role of a Mental Health Champion was to raise awareness of mental ill health and reduce stigma across the respondent. As a senior officer of the respondent, Ms Cox is often involved in policy development and training provision in this respect and commonly learns through these avenues in addition to specific training courses.

266. Neither Ms Cox nor Ms Lynch knew or had any prior dealings with the claimant.

Room for first grievance appeal meeting

267. A date for a grievance appeal meeting with the claimant was set for 25 July 2019. Ms Lynch had asked the claimant about adjustments that might be necessary for the meeting and the claimant had referred her to the second occupational health report. Ms Lynch was then on holiday for a week and, when she returned on 22 July 2019, she was informed by a colleague of hers that she had only been able to secure one particular room for the meeting (which was the only room available on the respondent's room booking server). Ms Lynch had used this room on several occasions previously and knew that it was a small room which had poor soundproofing and was not well ventilated. Ms Lynch was conscious of the recommendations in the second occupational health report and considered the room unsuitable. She was also conscious that Ms Cox was due to be on annual leave from 1 August until 26 August 2019. She therefore suggested to the claimant by email on 22 July 2019 that, as it was proving difficult to find a suitable room, the meeting take place after 26 August 2019 when Ms Cox returned from annual leave. The claimant responded the same day to say that her husband had already booked the time off. She also said that 26 August 2019 onwards would not be a reasonable timeframe and said that she would prefer to stick to the date initially proposed. Ms Lynch responded immediately to inform her that she would continue sourcing a room.

268. Ms Lynch spoke to Ms Cox. Ms Cox was able to source a room that had not been available to Ms Lynch on the respondent's room booking system. The room was a suitable room. On 23 July 2019, therefore, Ms Lynch informed the claimant that she had secured a room and that the meeting would indeed be going ahead on 25 July 2019.

The grievance appeal meeting on 25 July 2019

269. The grievance appeal meeting duly took place on 25 July 2019. The claimant was accompanied by her husband, Dr Hayes. Ms Cox and Ms Lynch were present, as was a notetaker.

270. The allegations which the claimant makes in the list of issues in relation to the grievance appeal meeting focus on a particular set of comments made by Ms Cox. It is not, therefore, necessary to go into great detail about the whole of the meeting although the context and background in relation to those comments is important.

271. The claimant's grievance appeal document was lengthy and diffuse. It ran to some 115 paragraphs over 16 pages, together with various attachments. Having reviewed the papers, Ms Cox was not entirely clear what the precise reasons for the claimant's appeal were and she did find the appeal documents a little confusing. However, it was clear to her that the claimant felt strongly about her grievance and had invested a great deal of time in the process. With that in mind, Ms Cox's plan was to approach the meeting in an open way and try to get a good understanding of the claimant's concerns and focus on the key issues. As she stated in her evidence before the tribunal, Ms Cox was trying "desperately" to understand the appeal and she saw the purpose of the hearing

as reviewing the grievance decision made as well as looking at solutions or recommendations which would include ways of bringing the claimant back to work if she was medically fit to do so.

272. There was therefore a twofold purpose to the grievance appeal. This was entirely in accordance with the respondent's policy which states at paragraph 8.5:

"The purpose of the meeting will be to understand the on-going nature of the grievance, to review the basis for the earlier decision and to explore potential solutions…".

As already noted, the claimant on several occasions chose not to read out the whole of this sentence in the policy when questioning witnesses and putting to them that questions asked at the appeal which were designed to explore potential recommendations and solutions were outside the scope of the policy and not part of the purpose of the appeal. Consciously or unconsciously, this was misleading.

273. Ms Cox made it clear at the start of the meeting that one of the purposes of the meeting was to look at outcomes and possible solutions. She was particularly interested in understanding how the issues could be fixed, and keen to understand what the claimant thought that the respondent could be doing to enable her to come back to work and resolve the ongoing difficulties. Ms Cox noted the timeline of events, and that the claimant was referencing incidents that had happened from the start of her employment in 2018 onwards. Ms Cox was keen to understand what had changed over the course of time and what was now different that resulted in her being unable to return to work (the claimant had, by that stage, been absent from work on sick leave for over two months).

274. At the start of the meeting, before introductions and during the meeting, the claimant made a number of serious accusations about the respondent including that it was *"displaying mental health posters"* while *"… doing nothing"* and *"trying to sweep things under the carpet"*. She said that no action had been taken following the grievance outcome. It was her view that the respondent had found it difficult to understand what she needed in terms of adjustments because of *"ignorance"* and she said *"people don't listen and don't understand"*. These were serious allegations that did not, from what Ms Cox had read so far, appear to her to reflect the process to date: to her mind Dr McDermott's investigation and report was thorough and thoughtful and the recommendations seemed to offer a fair and sensible way forward (a conclusion which the tribunal has also subsequently drawn).

275. Ms Cox was keen to understand what was behind the claimant's enduring sense of grievance, and to make sure she hadn't missed something important that wasn't apparent in the papers, which Dr McDermott may have also missed or misjudged. She too (as the tribunal has at this hearing) noted that many of the actions or behaviours which the claimant described as constituting bullying or discriminatory behaviour seemed to represent reasonable behaviour in the workplace, such as inviting colleagues to meetings without a great deal of notice or sending lots of emails on a project which was approaching a deadline.

These seemed to Ms Cox like normal parts of the working day and aspects of working life that an employee, particularly at the claimant's level of seniority, should be able to manage. Using her experience, Ms Cox considered that the claimant's disability may be part of the explanation for this and that it was therefore an area which they needed to discuss at the meeting. She considered that it was important to the appeal to understand why this behaviour had been perceived so negatively by the claimant and what its impact had been.

276. This is the background to the questions which Ms Cox asked which are the subject of the claimant's allegations in the list of issues. We turn to these in a moment. However, before we do so, it is worth noting that we have seen the notes of the meeting. The notes were taken by the respondent's notetaker and sent to the claimant after the meeting. The claimant then added her own comments to the notes, which are set out in pink on the document that we have seen. Some of these comments were accepted by the respondent; others were not. For the reasons already given in relation to the reliability of the claimant's evidence, we prefer the respondent's version in all cases.

277. Ms Cox asked the claimant if it was possible that her anxiety and disability affected her perception of others' actions. The claimant said no and that she found that that question was *"offensive behaviour"*. Ms Cox therefore tried to rephrase the question and asked the claimant whether she believed that her health may affect her such as to perceive things differently from one day to another, adding that some days maybe *"good days"* and others may be *"bad days"*. In response, the claimant said that she could not believe that Ms Cox had asked that question. She became upset and she asked to take a short break outside with her husband. On returning, she specifically requested that the discussion prior to the adjournment be documented in the notes and said that she thought that Ms Cox was taking *"an aggressive approach to her medical condition by suggesting that health issues are the reason for the incidents"*.

278. The claimant had clearly misunderstood what Ms Cox was saying. She had certainly not suggested that the claimant's health issues were the reason for the incidents. She was merely trying to understand whether her conditions in any way affected her perception of other people's actions. This was unsurprising given the disproportionate reaction which the claimant appeared to have had in response to trivial everyday workplace occurrences on many occasions, which she saw as bullying, harassment and discrimination. Given that one of the purposes of the meeting was to try and explore solutions to the issues and to make recommendations, it was not unreasonable for Ms Cox to address this issue and to ask these questions; by contrast, from the point of view of someone who was genuinely trying to find a solution and enable the claimant to come back to work, it was unsurprising that she asked these questions.

279. Ms Cox therefore tried to rephrase the question in a softer way. She explained that only the claimant would understand what her triggers were and how her conditions impacted on relationships. She clarified that she did not wish to offend the claimant and was only seeking to understand whether her medical condition affected or might affect how she received communications in the workplace. She did not conclude whether it did or not; she was simply seeking to

gain a fuller understanding of events and experiences. The claimant answered no and asked Ms Cox to "move on", which she did.

280. One thing that struck Ms Cox from the incidents which the claimant described was the fact that on the one hand the claimant wanted those working with her to change their behaviours but on the other hand she did not expect to discuss with them what she wanted them to change. Ms Cox tried to raise this point with the claimant and the claimant said that she did not feel able to talk to her line manager about her needs because she found her line manager to be aggressive, and then added that she also found Ms Cox to be aggressive as well. She added later (in stark contrast, as we have noted, to her husband's view) that she found the grievance investigation led by Dr McDermott and Ms Watt to have been aggressive too. To be clear, we do not find any of these individuals were aggressive in their dealings with the claimant but that, by contrast, the claimant was the one who was aggressive. We will return to this below.

281. Ms Cox's evidence is that she felt an underlying hostility from the claimant through the meeting and that it was a difficult meeting. Ms Cox did not leave with much of a clearer idea about what the claimant was unhappy about and what she wanted to be done. She found the claimant's manner at times to be quite obstructive and rude. For example, at one point in the meeting the claimant said to her husband *"…can't believe she said that..." "…have you got it…" "write it down… it's discrimination"*. Ms Cox was left with the impression that the claimant did not want to come back to work or certainly that she was not open to considering solutions to try and make this possible. For example, she was not able to say where she wanted her desk to be located which, had she done so, could then have enabled Ms Cox to go away and look to see if that was possible.

282. At the end of the meeting, however, the claimant shook Ms Cox's hand, thanked her, and said that she planned to enjoy the afternoon at the nearby museums. Although she had become agitated a couple of times during the meeting, including when she requested the adjournment referred to above, she seemed okay overall and was able to engage throughout. This pattern of sudden upset or tears lasting for a very short duration, with the claimant then returning to full engagement, and at the end of sessions concluding amicably and sometimes even making jokes, was a feature of the employment tribunal hearing. We have no hesitation, therefore, in concluding that that is what happened at the grievance appeal hearing as well and that, despite short periods of upset, the meeting did conclude in this amicable way.

283. Ms Lynch's evidence of the claimant's tone and attitude at the meeting corroborates Ms Cox's.

284. Apart from the claimant, the reliability of whose evidence we doubt, only her husband Dr Hayes disagrees. His evidence to the tribunal was that the appeal hearing *"was not conducted in [the] same professional manner"* as the initial grievance hearing and that *"although the meeting concluded reasonably amicably, [the claimant] was left upset and distressed by the conduct and tone of the meeting and [Ms Cox's] adversarial approach to questioning, for some time*

*after we departed"*. Most of his assessment, therefore, is about the claimant's perception in terms of how she felt in relation to the way the meeting was conducted. In terms of direct criticism, Dr Hayes allegation is one of general unprofessional conduct and, more specifically, of what he saw as an "adversarial approach" by Ms Cox. We can understand why, as the claimant's husband, he obviously looks out for her best interests and may have perceived some of Ms Cox's questions as "adversarial". However, for the reasons set out above, and whether or not Dr Hayes appreciated this or not, they were reasonable questions to ask. The fact that Ms Cox repeated or rephrased them was as a result of the claimant's unwillingness to engage with those questions.

285. We do not, therefore, accept that the meeting was conducted unprofessionally or in an adversarial manner by Ms Cox or otherwise unreasonably.

286. By contrast, we do find that the claimant acted in a dismissive manner in the meeting and set a negative tone and was at times rude and aggressive. We have seen enough evidence of that sort of behaviour by the claimant at this employment tribunal hearing and we do not repeat all of that here. However, in the light of that behaviour, we have no hesitation in accepting the evidence of Ms Cox and Ms Lynch as to how the claimant conducted herself at the grievance appeal meeting.

Ms Cox's email of 9 August 2019 to Ms Lynch

287. On 9 August 2019, Ms Cox wrote to Ms Lynch with her headline points for the draft decision. It was Ms Cox's initial view that the claimant had not provided any new evidence or information which would impact on Dr McDermott's findings in the grievance.

288. One section of that email states as follows:

"It was unfortunate that Charlotte would not accept any challenges on her submission. Choosing to leave the room for a break and then not wanting to answer the question/s.

Nobody knows her disabilities like she does and what triggers what etc. I would fully expect a level 4 staff member with these less severe disabilities to secure the best working environment. She was very content with the plans in place before she went off on sick leave and nobody attempted to alter her working plan or take anything away from her."

289. In the first paragraph above, Ms Cox meant that the meeting with the claimant had not given her an opportunity properly to understand the claimant's complaints and so that, even at the end of the meeting, she was still not completely able to understand the root of the claimant's discontent or how a resolution might be achieved. This was largely because of the claimant's attitude and the fact that she did not accept any challenges on what she had written and didn't want to answer questions put to her which aimed to try and help achieve solutions. This was in turn disappointing.

290. Ms Cox's reference in the second paragraph above to *"less severe disabilities"* was because, in the light of her experience with the claimant and the

evidence in the occupational health reports, although the claimant did face obstacles in her day-to-day life as a result of her disabilities, they were not at the most severe end of the spectrum. The occupational health reports which Ms Cox had reviewed had stated that the claimant's depression was well-managed and her asthma usually well-controlled and the second occupational health report said that there was evidence of moderate anxiety and depression. That is why Ms Cox used the expression *"less severe disabilities"*. She was not in any way discounting or dismissing the claimant's disabilities and her concern was to understand how it could be in all the circumstances that such an impasse had been reached.

291. Ms Cox then went on to conduct further appropriate investigations in relation to the first grievance appeal and began the process of finalising the outcome to the first grievance appeal.

The claimant's second grievance

292. In the meantime, on 13 August 2019, the claimant emailed the respondent complaining about the first grievance appeal hearing on 25 July 2019. In it, the claimant stated: *"I found the manner in which the meeting was conducted unnecessarily inquisitorial and aggressive which was in line with the overly aggressive and inquisitorial manner that the original grievance was conducted."* It then went into a lot more detail, which it is not necessary to repeat here, but much of which was contained under the heading *"Further Discrimination"*. However, the main points are that the claimant then went on to complain that Ms Cox had asked about her health and repeated certain questions, as well as about Ms Lynch's correspondence in advance of the meeting about the potential need for a change of date because of room availability.

293. The claimant's email of 13 August 2019 was sent to Ms Kelly and to the then director of HR and Organisational Change at the respondent, Louise Lindsay. It was not copied to Ms Lynch. Ms Kelly and Ms Lindsay were on holiday at the time the email was sent to them. The claimant sent a further email to them just over a week later on 22 August 2019 noting that she had not received an acknowledgement. Ms Lindsay replied to the claimant to confirm receipt that day. She explained that she and Ms Kelly had both been on annual leave when the claimant's first email arrived, that she had returned on 20 August 2019 and that Ms Kelly would be back the following week and would arrange for a response to the email. Ms Lindsay also forwarded the claimant's email to Ms Watt. Ms Watt wrote to the claimant on 22 August 2019 and also advised her that Ms Kelly was on leave and asked the claimant to get in touch with her (Ms Watt) if she had any questions or required any further information. Ms Kelly then took up matters when she got back from annual leave.

294. Ms Kelly suggested a pragmatic approach was for Ms Cox to respond to the claimant's concerns in writing. Ms Cox indicated to Ms Kelly that she was happy with this approach which she thought was a practical way forward and Ms Kelly made that suggestion to the claimant in an email of 29 August 2019. By email of 30 August 2019 to Ms Kelly, however, the claimant stated that she would

like this complaint *"handling formally, in accordance with the [respondent's] formal grievance policy to allow each point to be addressed, investigated and the relevant material reviewed and read"*. Ms Kelly forwarded this email to Ms Cox and Ms Lynch. This complaint was therefore treated as the claimant's "second grievance".

295. On 30 August 2019, Ms Cox emailed Ms Lynch as follows:

"In light of Ms Milnes' complaint about the appeal hearing, I will amend my outcome letter. I think it important now to include or make reference to her dismissive approach throughout much of the meeting thus making it very difficult for proper consideration of her concerns.

For example, when I asked her, "what is different now with your health or disabilities that you are off sick for four months and unable to work"? She replies, "I don't think I need to answer that, move on"."

296. Ms Cox had not originally intended in her grievance appeal outcome to place a lot of emphasis on the claimant's dismissive approach at the grievance appeal meeting, not least because of her concern that this would have an adverse impact on the claimant. That might in turn have an adverse impact on the possibility of trying to facilitate the claimant's return to the workplace. In short, she was being kind to the claimant. However, as noted, the basis of the claimant's complaint of 13 August 2019 was that Ms Cox's approach was "adversarial". The reason that Ms Cox therefore thought that it was now important to include this was to note that the claimant's approach (such as saying *"move on"*) had made the meeting, at times, challenging and to go some way to explain why there had been occasions where she had had to repeat or rephrase a question. By including those details, therefore, Ms Cox was simply answering the charges made against her by the claimant. That was a reasonable thing to do.

297. Later in the day on 30 August 2019, the claimant sent an email to the respondent, which was copied to Ms Kelly and Ms Lynch, in which she stated that unless she received a response to her grievance appeal in writing before 10 September 2019, she would resign.

298. On 4 September 2019, the claimant provided her comments and edits to the meeting notes of the grievance appeal meeting.

299. Thereafter, Ms Cox finalised the outcome report, which was sent to the claimant on 10 September 2019. Ms Cox went through the points of the grievance appeal so far as she was able to ascertain them. She did not uphold any of them. One allegation made by the claimant was that Dr McDermott should have interviewed Ms Mistry as part of the grievance investigation. Ms Cox did not uphold this ground of complaint because she *"found no evidence that [Ms Mistry] witnessed any of the allegations and concerns you raised but instead heard about them from you"*. It was therefore reasonable for Dr McDermott not to have interviewed Ms Mistry; she could add nothing to the evidence but could only repeat what the claimant had told her.

300. In her outcome report, Ms Cox repeated the recommendations that Dr McDermott had made in his grievance outcome, which she thought were sensible and fair. She was keen to make workable recommendations that would help the claimant get back to work and improve her working relationships with Dr Wilson and Ms Morris, so that was the focus of her conclusion.

301. In light of the claimant's subsequent complaint, Ms Cox also thought it was important to clarify that the purpose of asking questions about her absence from work and health conditions was to help inform her recommendations to assist with the claimant's return to work and she did so:

"At the meeting I asked you what was different now about your health conditions such that you feel unable to work. You declined to answer. My objective in asking this question was to establish clear facts to help and make recommendations to assist your return to work…"

302. As already noted, Dr Watkins was appointed on 12 September 2019 to hear the claimant's second grievance. After the claimant's subsequent resignation, the claimant agreed that this should be dealt with in writing under the respondent's special procedure and it duly was. The second grievance was not upheld. Despite the emphasis placed on it by the claimant in her cross-examination of Dr Watkins in particular, there are no complaints about the second grievance in the list of issues, save in respect of the paragraph below. Subject to that, therefore, it is not necessary to go into any further detail regarding the second grievance.

303. As part of the process of the second grievance, Ms Kelly asked Ms Cox and Ms Lynch to provide a joint response to the second grievance. They duly did so and sent their draft response to Ms Kelly on 18 September 2019. At one point during the document, they state:

"Ms Milnes claims that I deliberately asked questions that focused on her mental health and she was therefore treated differently to an individual without a disability; I disagree with the assertion. Mental health, on a spectrum from diagnosed serious conditions to work related stress, is extremely relevant in grievances for people with or without a disability. Poor mental health can change perceptions and behaviors; that is a fact, temporarily or long term."

<u>The claimant's resignation</u>

304. The claimant resigned by email on 24 September 2019 with immediate effect. She stated that: *"Considering my recent experiences regarding ongoing discrimination and poor treatment meted out by the [respondent] I feel I have no choice but to leave"*.

305. In that email she also stated that treatment by the respondent over a course of time included *"failure to implement modifications for a disability"*, which is untrue; the respondent did implement adjustments for the claimant. She also stated that *"As a result of its internal processes the [respondent] has upheld several of my initial grievances, including those pertaining to discrimination"*. That statement is also untrue: a couple of the claimant's many grievance allegations were partially upheld, but no allegation of discrimination was upheld.

She then went on to refer to her second grievance and contended that the respondent had *"normalised"* discrimination.

306. In her claim form, the claimant's case is that she resigned in response to direct disability discrimination as alleged in the second claim, so her case stands or falls with those defended claims in terms of whether there was a constructive dismissal. We accept Ms Misra's submission that there is an inherent tension in then claiming that if there was a constructive dismissal it contravened section 103A ERA because it was for the sole or principal reason that the claimant had made protected disclosures. There cannot have been more than one sole or principal reason.

307. Furthermore, it is striking that the claimant has not advanced her claim of detriment or dismissal on the alleged basis of protected disclosures at the hearing at all or with any witness of the respondent. Indeed, in her submissions, she only addressed the protected disclosure complaints orally in response to Ms Misra's submissions on them and only did so in the following terms:

"Regarding whistleblowing and protected disclosures, I don't understand enough about it. What I do know is to say that the respondent did not comply with its public sector equality duty and I refer to whistleblowing in some emails to Ms Budden. So whilst I did not refer to it, there is a public element. I did not have the mental bandwidth to provide every argument."

308. With no disrespect to the claimant, who is not an employment lawyer, that statement in itself shows that the claimant does not even understand what a protected disclosure complaint is, let alone what is required to establish a protected disclosure complaint. It is perhaps unsurprising, therefore, that she has made no attempt to establish such a complaint at this hearing, either in the evidence she has brought, in questions to the respondent's witnesses or in submissions. That is tantamount to abandoning the protected disclosure detriment and dismissal complaints.

## The Law

### Direct Disability Discrimination

309. Under section 13(1) of the Equality Act 2010 (the Act), a person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. This is commonly referred to as direct discrimination. Disability is a protected characteristic in relation to direct discrimination.

310. For the purposes of the comparison required in relation to direct discrimination between B and an actual or hypothetical comparator, there must be no material difference between the circumstances relating to B and the comparator.

### Harassment Related to Disability

311. Under section 26(1) of the Act, a person (A) harasses another person (B) if A engages in unwanted conduct related to a relevant protected

characteristic and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. Disability is a protected characteristic in relation to harassment.

312. In deciding whether conduct has the effect referred to above (but not the purpose referred to above), each of the following must be taken into account: the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.

313. During her cross-examination of the respondent's witnesses, it appeared that the claimant may have misunderstood how the definition of harassment operated. This became clear when she was cross-examining Ms Lynch and put it to her that whether something was harassment was a matter only of the perception of the alleged victim. This was obviously an impermissible premise to a question to a witness, as it was premised on an incorrect statement of what the law was. The judge therefore interjected at this point to explain for the benefit of the claimant and the witness what the correct definition of harassment was and, in particular, that in considering the effect of the conduct on the alleged victim, there was an objective element to consider as well and not just the subjective perception of the alleged victim.

314. In Richmond Pharmacology v Dhaliwal 2009 ICR 724 EAT Mr Justice Underhill, then President of the EAT, said: *'Not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended'*. The EAT affirmed this view in Betsi Cadwaladr University Health Board v Hughes and ors EAT 0179/13. The EAT observed that 'the word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence'. Indeed, the Court of Appeal in HM Land Registry v Grant (Equality and Human Rights Commission intervening) 2011 ICR 1390 further stated in this context that *'tribunals must not cheapen the significance of these words since they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment'*.

Discrimination arising out of disability

315. Section 15 of the Act 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.

However, A does not discriminate if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Reasonable adjustments

316. The law relating to the duty to make reasonable adjustments is set out principally in the Act at s.20-22 and Schedule 8. The Act imposes a duty on employers to make reasonable adjustments in certain circumstances in connection with any of three requirements. The requirements relevant in this case are the requirements, where a provision criterion or practice of an employer or 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.

317. A failure to comply with such a requirement is a failure to comply with the duty to make reasonable adjustments. If the employer fails to comply with that duty in relation to a disabled person, the employer discriminates against that person. However, the employer is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know, that the disabled person has a disability or is likely to be placed at the disadvantage referred to.

Victimisation

318. Section 27 of the Act provides that a person (A) discriminates against another person (B) if A subjects B to a detriment because B does a protected act or A believes that B has done or may do a protected act. Each of the following is a protected act: the bringing of proceedings under the Act, giving evidence or information in connection with proceedings under the Act, doing any other thing for the purposes of or in connection with the Act; and making an allegation, whether express or not, that A or another person has contravened the Act.

319. A detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage; an unjustified sense of grievance cannot amount to a detriment (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL).

320. The making of the protected act need not be the sole or principal reason for the detriment in order to amount to an act of victimisation. It is enough if it has a "significant influence". The Court of Appeal in Igen Limited and Others v Wong [2005] ICR 931 confirmed that a "significant influence" is one that is merely "more than trivial".

321. The detriment must have been meted out "because of" a protected act. In Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065 HL, the House of Lords rejected a "but for" approach to causation in victimisation claims. In that case the Chief Constable maintained that he had refused to give a reference to the police force to which the claimant had applied for a post because he did not want to prejudice his position in the claimant's pending race discrimination claim against West Yorkshire Police. The Court of Appeal held that the refusal was by reason of the fact that the claimant had brought proceedings in the sense that, had the claimant not brought the proceedings, he would have been provided with a reference. However, the House of Lords

rejected this "but for" approach to victimisation. While it was true that the reference was withheld by reason that the claimant had brought the race discrimination claim in the strict causative sense, Lord Scott said that the language used in the legislation was not the language of strict causation. Rather, it required the tribunal to identify *"the real reason, the core reason, the causa causans, the motive"* for the treatment complained of. Lord Scott concluded that the real reason for the refusal to provide a reference was that the provision of a reference might compromise the Chief Constable's handling of the case being brought against the West Yorkshire Police, which was a legitimate reason for refusing to accede to the request. Their Lordships were unanimous in their conclusion that the claimant had not been refused a reference because he had done a protected act: employers who act *"honestly and reasonably"* ought to be able to take steps to preserve their position in pending discrimination proceedings without laying themselves open to a charge of victimisation.

Burden of proof

322. In respect of the above provisions, the burden of proof rests initially on the employee to prove on the balance of probabilities facts from which the tribunal could decide, in the absence of any other explanation, that the employer did contravene one of these provisions. To do so the employee must show more than merely that he was subjected to detrimental treatment by the employer and that the relevant protected characteristic applied; there must be "something more" to indicate a connection between the two (Madarassy v Nomura International plc [2007] IRLR 246). If the employee can establish this, the burden of proof shifts to the employer to show that on the balance of probabilities it did not contravene that provision. If the employer is unable to do so, we must hold that the provision was contravened and discrimination did occur.

323. However, if the tribunal can make clear positive findings as to an employer's motivation, then it need not revert to the burden of proof (Martin v Devonshires Solicitors [2001] ICR 352 (EAT)).

Constructive unfair dismissal/protective disclosures

324. In order successfully to make a complaint of unfair dismissal an employee must first prove on the balance of probabilities that he or she was dismissed by the employer. Section 95(1)(c) of the Employment Rights Act 1996 states that:

"there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct."

325. This form of dismissal is commonly referred to as constructive dismissal. In the leading case on the subject, Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA, the Court of Appeal ruled that the employer's conduct which gives rise to a constructive dismissal must involve a repudiatory breach of contract. In order to claim constructive dismissal the employee must establish on the balance of probabilities that:

(i) There was a fundamental breach of contract on the part of the employer;

(ii) The employer's breach caused the employee to resign;

(iii) The employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.

326. Individual actions by an employer that do not in themselves constitute fundamental breaches of any contractual term may have the cumulative effect of, for example, undermining the trust and confidence inherent in every contract of employment. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a "last straw" incident, even though the "last straw" by itself does not amount to a breach of contract or even unreasonable conduct (although it would be rare for objectively reasonable conduct to constitute a "last straw"). It suffices if it contributes to the employer's earlier breaches (if any) and/or cumulatively undermines trust and confidence.

327. An employer must not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee (Malik v Bank of Credit and Commerce International SA [1997] ICR 606.

328. Employees with less than 2 years' continuous employment do not have the right to claim unfair dismissal except in certain circumstances. One of these circumstances is set out at section 103A ERA, where the sole or principal reason for the dismissal is that the claimant made a protected disclosure or disclosures.

329. For such a complaint to succeed, an employee must first prove on the balance of probabilities that he or she made a protected disclosure.

330. To do this the employee must first prove that he or she made a qualifying disclosure under s.43B of the ERA. A qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of six categories set out at s.43B (a-f). By way of example, these include:

(a) That a criminal offence has been committed, is being committed or is likely to be committed; and

(b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

331. The case of Cavendish Munro Professional Risks Services Ltd v Geduld [2010] IRLR 38 EAT indicates that there is a distinction between "information" and an "allegation". The ordinary meaning of "information" is "conveying facts" and that is what is required to fall within s.43B. A mere allegation will not suffice. However, the two are not mutually exclusive; a protected disclosure may contain both information and allegation (see Kilraine v London Borough of Wandsworth [2016] IRLR 422, EAT).

332. Crucially, it is not the happening of a matter within one of the above categories which is relevant to the establishment of the qualifying disclosure but merely whether the employee has a reasonable belief in its having happened, happening or the likelihood of its happening. A belief may still be objectively reasonable even where the belief is wrong or does not on its facts fall within one of the categories outlined about.

333. The same reasonable belief test applies to the public interest test incorporated into s.43B ERA and referred to above (see Chesterton Global Ltd and another v Nurmohamed [2015] UK EAT/0335/14). Nurmohamed established that the test is whether an individual has a reasonable belief that the disclosure is in the public interest. Further, on the facts in Nurmohamed, the EAT upheld a finding that the protected disclosures, which concerned the manipulation of the employer's accounts such as to affect adversely 100 senior managers, were in the public interest. The sole purpose of the amendment to section 43B(1) introducing the "public interest" test was to reverse the effect of Parkins v Sodexho Ltd [2002] IRLR 109. The words "in the public interest" were introduced to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. In Nurmohamed, the breach affected other people as well as the claimant.

334. If the employee establishes that he or she made a qualifying disclosure, he or she must then prove that it was a protected disclosure. This can be done in a number of ways in accordance with s.43C-43H of the ERA. A disclosure made to an employer, as set out in s.43C, is one such way in which a qualifying disclosure can be a protected disclosure as well.

335. If the above is established, the employee has made a protected disclosure.

Protected disclosure detriment (47B ERA)

336. Section 47B(1) ERA provides that: *"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure"*. Again, for such a complaint to succeed, an employee must first prove on the balance of probabilities that he or she made a protected disclosure (as described above).

337. Following the case of NHS Manchester v Fecitt and others [2011] EWCA Civ 1190, it is established that in terms of causation the disclosure must be a material influence (in the sense of being more than a trivial influence) in the employer's subjecting the claimant to a detriment. Under s.48(2) ERA, it is for the employer to prove on the balance of probabilities the ground on which the act, or deliberate failure, complained of was done.

Polkey

338. Under the case of Polkey v AE Dayton [1987] IRLR 503 HL, where a dismissal is unfair, but the tribunal considers that an employee would still have been dismissed or would have left employment anyway, even if there had been no unfairness, it may reduce the normal amount of compensation by an amount representing the chance that the employee would still have lost or left his or her employment.

Time Limits/Jurisdiction

339. The Act provides that a complaint under the Act may not be brought after the end of the period of three months (subject to adjustments as a result of time spent in ACAS Early Conciliation) starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable.

340. It further provides that conduct extending over a period is to be treated as done at the end of the period and that a failure to do something is to be treated as occurring when the person in question decided on it.

341. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA, the Court of Appeal stated that, in determining whether there was "an act extending over a period", as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed, the focus should be on the substance of the complaints that the employer was responsible for an ongoing situation or a continuing state of affairs. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as the indicia of "an act extending over a period". The burden is on the claimant to prove, either by direct evidence or by inference from primary facts, that alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period".

342. As to whether it is just and equitable to extend time, it is for the claimant to persuade the tribunal that it is just and equitable to do so and the exercise of the discretion is thus the exception rather than the rule. There is no presumption that time will be extended, see Robertson v Bexley Community Centre [2003] IRLR 434 CA. The tribunal takes into account anything which it judges to be relevant. This is the exercise of a wide, general discretion and may include the date from which a claimant first became aware of the right to present a complaint.

343. As regards reasonable adjustments, in the case of Kingston-upon-Hull City Council Matuszowicz [2009] ICR 1170, CA, the Court of Appeal decided, in analysing Section 123(4) of the Act, that the legislation provides two alternatives for defining the point when the person is to be taken as having decided upon the omission for the purposes of reasonable adjustments complaints. The first of these, which is when the person acts inconsistently with the omitted act, is fairly

self-explanatory. The second option, however, requires an enquiry that is by no means straightforward. It pre-supposes that the person in question has carried on for a time without doing anything inconsistent with doing the omitted act, and it then requires consideration of the period within which he might reasonably have been expected to do the omitted act if it was to be done. In terms of the duty to make reasonable adjustments, that seems to require an enquiry as to when, if the employer had been acting reasonably, it would have made the reasonable adjustment. That is not at all the same as enquiring whether the employer did in fact decide upon doing it at that time.

344. For the protected disclosure detriment complaints under the ERA, the primary time limit is the end of the period of three months (subject to adjustments as a result of time spent in ACAS Early Conciliation) beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure to act is part of a series of similar acts or failures, the last of them.

345. Time can be extended only if the tribunal considers that it was not reasonably practicable for the complaint to have been presented before the end of the period of three months and the complaint is presented within such further period as was reasonable. Otherwise, the tribunal does not have jurisdiction to hear the complaint.

## Conclusions on the issues

346. We make the following conclusions, applying the law to the facts found in relation to the agreed issues. In doing so, we address the allegations in the order in which they are set out in the agreed list of issues, with the exception of the time limit/limitation issues which we leave to the end. Where we state in the paragraphs below that a complaint has failed, therefore, that is subject to whether or not the tribunal actually has jurisdiction to hear that complaint in the light of the conclusions which we subsequently set out in relation to the time limit/limitation issues.

### Direct disability discrimination

3.1.1 Dr Simon Hepworth sharing personal data with his subordinate, Dr Rebecca Wilson, without the claimant's knowledge or consent on 5 October 2018.

347. As set out in our findings of fact, we found that on the balance of probabilities Dr Hepworth did not have the claimant's express consent to speak to Dr Wilson or to disclose to her that the claimant suffered from mental health disabilities. That was, however, what Dr Hepworth genuinely believed that the claimant expected him to do and his decision to do so was an understandable and reasonable one in the circumstances for the reasons set out in our findings of fact. Furthermore, he did so without disclosing the nature of the claimant's disabilities. Dr Hepworth was clear in his evidence that he would have done the same in respect of any employee who had come to him in this type of situation. Without needing to apply the burden of proof, therefore, we find that the reason why he did so was not because of the claimant's disability or disabilities but in order to provide a solution to the issues which the claimant had raised with him.

Furthermore, as Dr Hepworth would have done the same for another employee in the same circumstances but who did not have the claimant's disabilities, there was no less favourable treatment of the claimant because of the claimant's disabilities. This complaint of direct discrimination therefore fails.

3.1.2 Dr Wilson allegedly rolling her eyes during the Claimant's interview on 17 January 2019.

348. As we have found in our findings of fact, Dr Wilson did not roll her eyes during the claimant's interview on 17 January 2019. This allegation is not therefore made out and this complaint therefore fails.

349. Even if we had accepted that Dr Wilson rolled her eyes during the interview, the reason for that would have been the negative answers which the claimant gave during the interview and not the fact that she was disabled. The complaint would therefore have failed on that basis too.

3.1.3 Not appointing the Claimant to the post of Corporate Partnerships Associate through the competitive selection process. The Claimant was informed of the decision on 22 January 2019. The decision was taken between 17 and 22 January 2019. The interview panel comprised Dr Declan O'Regan, Dr Shona Blair, Dr Rebecca Wilson and Stephanie Morris.

350. We accept Ms Misra's submission that there is no prima facie case that the reason for not appointing the claimant to this role was her disability or disabilities and we note that the claimant did not even put it to any of the four members of the interview panel that discrimination was part of the motivation for their decision. By contrast, there is ample evidence that two candidates were far better than the claimant, one of whom was appointed to the role. The claimant was not turned down for the role because of her disability or disabilities; rather it was because the candidate who was appointed was a far better candidate. This complaint therefore fails.

3.1.4 Sharing the Claimant's Occupational Health reports and / or personal data without consent on 22 January 2019.

351. Ms Budden did offer to share a copy of the first occupational health report with Ms Morris in the event that she had not seen it already and Ms Morris replied to say that she would appreciate seeing a copy. Ms Budden therefore sent it to her. Ms Budden did not get express consent from the claimant at the time. However, consent had previously been given the previous year for the report to be provided to the claimant's then line manager, Dr Magdalenic-Moussavi. Ms Morris stepped into the shoes of Dr Magdalenic-Moussavi as the claimant's line manager when Dr Magdalenic-Moussavi went on maternity leave. We therefore accept Ms Misra's submission that there was implied consent for the report to be shared with the new line manager as express consent been given in relation to the original line manager. The factual basis of this allegation is not therefore made out and the complaint therefore fails.

352. However, if we are wrong about that, it is nevertheless the case that there were very good reasons (in the claimant's own interests) for Ms Morris to see the report. Furthermore, the claimant never suggested to Ms Budden (whom

she has described as *"lovely"*) that her motivation in disclosing the report to Ms Morris was discriminatory. It manifestly was not. The reason for disclosing the report was to help Ms Morris do her job and fulfil her responsibilities to the claimant as her line manager and not because the claimant was disabled. The complaint therefore fails.

353. For the avoidance of doubt, despite the reference in the allegation to "reports" plural, Ms Budden only shared one report with Ms Morris on 22 January 2019.

3.1.5 In Dr Rebecca Wilson referring to the Claimant's disability negatively on or around 22 March 2019, for example: "she suffered from anxiety and depression and found the planning activities difficult"; "the pressure hard to cope with" in her formal response to the Claimant's First Grievance.

354. The exact quotations from Dr Wilson's response to the claimant's grievance are as set out in our findings of fact above. As noted, the claimant's partial quotation is misleading and makes it sound as if Dr Wilson was expressing her opinion of the claimant as opposed to merely setting out her recollection of what the claimant said to her in Japan, which is what Dr Wilson was actually doing in that response document. Dr Wilson did not, therefore, refer to the claimant's disability negatively in making these statements as she was merely setting out her recollection of what the claimant had said to her and not expressing any opinion of her own. The factual basis of the allegation is not therefore made out and the complaint fails for that reason alone. Furthermore, there was no detrimental treatment, and the complaint fails for that reason as well.

355. In any event, it was not put to Dr Wilson that she would have acted any differently in responding to a similar grievance from someone who did not share the claimant's disabilities. Dr Wilson did not set out these comments because the claimant was disabled. Rather, she did so to give her honest recollection of what happened and, as she had been asked to do, to set out her recollection of events in response to the allegations in the claimant's grievance. The complaint fails for that reason too.

3.1.6 Comments made by Ms Lynne Cox on 25 July 2019 during the First Grievance appeal hearing: "Some days [the Claimant] will have good days and other days not so good days".

356. The quotation as set out by the claimant in the list of issues is not accurate and we refer to our findings of fact to the actual quotation and its context. Ms Cox accepts, however, that she did refer to good and bad days in order to try and get an understanding of whether the claimant's conditions in any way affected her perception of other people's actions. She did not do this because of the claimant's disability or disabilities; rather, she did so in order to try and obtain that understanding. As the reason was not in any way because of the claimant's disability or disabilities, this complaint fails.

3.1.7 Comments made by Ms Lynne Cox by e-mail on 9 August 2019 to Maria Lynch: "I would fully expect a level 4 staff member with these less severe disabilities to secure the best working

environment" and "It was unfortunate that [the Claimant] would not accept any challenges on her submission. Choosing to leave the room for a break …"

357. We refer to our findings of fact above for the full context of these quotations. However, to the extent that these quotations make statements of fact, they merely reflect what happened at the grievance appeal meeting on 25 July 2019. Furthermore, in terms of the statements of opinion they contain, Ms Cox had seen and relied on the occupational health reports and made the comments in the context of the claimant's seniority and her observations of the claimant's behaviour at that grievance appeal meeting. Her description of the claimant as having *"less severe disabilities"* in no way sought to diminish or minimise the claimant's disabilities and was not an unreasonable description in the light of the evidence before her, and it was a necessary part of the analysis which led to her opinion that she would have expected the claimant to have secured the *"best working environment"* for herself. The comments were not directed at the claimant (rather, they were in a private email to Ms Lynch which the claimant only became aware of through a subsequent SAR response). They were not made because of the claimant's disability or disabilities but rather as part of Ms Cox's analysis in determining the claimant's grievance appeal (which is what she had been tasked to do). As the comments were not made because of the claimant's disability or disabilities, this complaint fails.

3.1.8 Comments made by Ms Lynne Cox and/or Maria Lynch by e-mail on 18 September 2019 "Poor mental health can change perceptions and behaviours; that is a fact, temporarily or long term."

358. Again, the quotation in the list of issues is set out without the full context of the quotation which we have set out in our findings of fact above. Both Ms Cox and Ms Lynch are Mental Health First Aiders and this statement was made in response to complaints from the claimant in her second grievance about the way that they conducted the grievance appeal meeting, specifically about questions which Ms Cox asked about the claimant's health and perceptions of other people's behaviour. We have already set out in our findings of fact above why we do not consider it was inappropriate for Ms Cox to have asked these questions. The context of this particular quotation is the claimant's assumption that the fact that Ms Cox asked questions about her health must amount to disability discrimination. That is self-evidently not the case and what Ms Cox and Ms Lynch are doing in this document is explaining why issues of mental health are relevant to grievances in general and potentially to this one in particular and that they do not accept that simply asking these questions, which they had good reasons for doing, amounts to disability discrimination. We agree with their analysis. The comment made appears to us to be uncontroversial. More to the point, the reason for making it was to explain why Ms Cox asked those questions in the grievance appeal meeting; it was not because the claimant was disabled. This complaint therefore fails.

3.2 Was this treatment less favourable treatment i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others in not materially different circumstances? The Claimant relies on a hypothetical comparator i.e. a person working in the Corporate Partnerships Associate role on a fixed-term and part-time basis with the same

experience and qualifications as the Claimant but who does not have the same disabilities, i.e. depression and anxiety.

359. This issue has been touched upon to an extent in our analysis of the individual allegations above. However, for completeness, we accept Ms Misra's submission that, with all the allegations of direct disability discrimination, the claimant has not made out a case by reference to an actual or hypothetical comparator who must be in the same material position as the claimant. The hypothetical comparator must also be behaving like the claimant and their qualifications and experience are not the only factors to construct hypothetically.

3.3 If so, was this because of the Claimant's depression and anxiety? If the burden of proof shifts to the Respondent under section 136 EqA 2010 the Respondent must show a non-discriminatory reason for the treatment.

360. Again, this issue has been dealt with in our analysis of the individual allegations above. However, for completeness' sake, the claimant has not proved facts from which we could conclude that there was discrimination on the part of the respondent. In any event, the respondent has given a non-discriminatory reason for all of the above scenarios.

*Summary – direct disability discrimination*

361. In summary, all of the complaints of direct disability discrimination fail.

<u>Discrimination arising from disability</u>

4.1 Did the following things arise in consequence of the Claimant's disability?

4.1.1 The Claimant needed to work flexibly / from home as a consequence of fatigue caused by anxiety. The Claimant says that this impacted on her visibility at work, including her attendance at key meetings.

362. There was no instance of the claimant needing to work from home due to fatigue. The first occupational health report stated that she might need flexibility in start and finish times. However, homeworking was not linked to anxiety other than insofar as that was linked to her reaction to strong smells such as perfume and aftershave. Furthermore, there was no evidence that the claimant ever stated that she was fatigued to any manager or to HR. This is, therefore, a false premise on which to base any of the allegations of discrimination arising from disability in the list of issues and none of those allegations can succeed based on this premise.

4.1.2 The Claimant needed to have control of physical, spatial and temporal elements of her working environment as a consequence of her anxiety and/or depression and/or asthma.

363. Neither of the two occupational health reports, nor the claimant's email of 28 January 2018 to Dr Magdalenic-Moussavi, which is the one in which she goes into detail in her own words about her disability, its impact and suggestions as to how to address it, support this assertion. Furthermore, the claimant's own

witness statement does not support this assertion. This assertion is not therefore proven. Therefore, none of the allegations of discrimination arising from disability set out in the list of issues can succeed based on this premise either.

364. What this means is that, even at this early stage, all the complaints of discrimination arising from disability in the list of issues must fail. However, for completeness' sake, we nonetheless go through the individual allegations themselves.

4.2.1 Dr Simon Hepworth sharing personal data with his subordinate, Dr Rebecca Wilson, without the Claimant's knowledge or consent on 5 October 2018.

365. As set out in our findings of fact, we found that on the balance of probabilities Dr Hepworth did not have the claimant's express consent to speak to Dr Wilson or to disclose to her that the claimant suffered from mental health disabilities. That was, however, what Dr Hepworth genuinely believed that the claimant expected him to do and his decision to do so was an understandable and reasonable one in the circumstances for the reasons set out in our findings of fact. Furthermore, he did so without disclosing the nature of the claimant's disabilities. Dr Hepworth was clear in his evidence that he would have done the same in respect of any employee who had come to him in this type of situation. Without needing to apply the burden of proof, therefore, we find that the reason why he did so was not because anything arising in consequence the claimant's disability or disabilities but in order to provide a solution to the issues which the claimant had raised with him. This complaint of discrimination arising from disability therefore fails.

4.2.2 Not appointing the Claimant to the post of Corporate Partnerships Associate on 22 January 2019.

366. We accept Ms Misra's submission that there is no prima facie case that the reason for not appointing the claimant to this role was anything arising in consequence of her disability or disabilities, and we note that the claimant did not even put it to any of the four members of the interview panel that discrimination of any sort was part of the motivation for their decision. By contrast, there is ample evidence that two candidates were far better than the claimant, one of whom was appointed to the role. The claimant was not turned down for the role because of anything arising in consequence of her disability or disabilities; rather it was because the candidate who was appointed was a far better candidate. This complaint therefore fails.

4.2.3 Sharing Occupational Health reports by Human Resources without the Claimant's consent on 22 January 2019.

367. Ms Budden did offer to share a copy of the first occupational health report with Ms Morris in the event that she had not seen it already and Ms Morris replied to say that she would appreciate seeing a copy. Ms Budden therefore sent it to her. Ms Budden did not get express consent from the claimant at the time. However, consent had previously been given the previous year for the report to be provided to the claimant's then line manager, Dr Magdalenic-

Moussavi. Ms Morris stepped into the shoes of Dr Magdalenic-Moussavi as the claimant's line manager when Dr Magdalenic-Moussavi went on maternity leave. We therefore accept Ms Misra's submission that there was implied consent for the report to be shared with the new line manager as express consent been given in relation to the original line manager. The factual basis of this allegation is not therefore made out and the complaint therefore fails.

368. However, if we are wrong about that, it is nevertheless the case that there were very good reasons (in the claimant's own interests) for Ms Morris to see the report. Furthermore, the claimant never suggested to Ms Budden (whom she has described as *"lovely"*) that her motivation in disclosing the report to Ms Morris was discriminatory. It manifestly was not. The reason for disclosing the report was to help Ms Morris do her job and fulfil her responsibilities to the claimant as her line manager and not because of anything arising in consequence of her disability or disabilities. The complaint therefore fails.

369. For the avoidance of doubt, despite the reference in the allegation to "reports" plural, Ms Budden only shared one report with Ms Morris on 22 January 2019.

4.2.4 Ms Catherine Mitchell circulating information submitted in a subject access request to Ms Stephanie Morris on 21 February 2019 and via Ms Morris to the interview panel for the Corporate Partnerships Associate role on 21 February 2019 alongside disclosure of the Claimant's personal details.

370. There are two parts to this allegation. In relation to the first one, there was no unfavourable treatment by Ms Mitchell in circulating the claimant's SAR to Ms Morris; she had to do this in order to obtain the relevant information which the claimant had asked for as part of her SAR, which Ms Morris had; this was clearly in the claimant's interest because it was the information which she sought under her SAR. This part of the allegation therefore fails.

371. As regards the second part of the allegation, we refer in full to our findings of fact above. Ms Morris was clear that she only shared the information with the panel out of courtesy as she was going to be disclosing their handwritten notes. The claimant may have considered this unfavourable treatment, but we do not; rather, we consider that that is an unjustified sense of grievance on the claimant's part.

372. However, be that as it may, Ms Morris did it out of courtesy to the other panel members; she did not do it because of anything arising in consequence of the claimant's disability or disabilities. This allegation therefore also fails.

4.2.5 Ms Stephanie Morris's failure to consider the Claimant's disability when making short notice changes to proposed working locations on week commencing 27 January 2019 (concerns raised with Ms Clare Budden in a meeting request sent 7 February 2019) and 28 February 2019.

373. This allegation appears to be a reference to Ms Morris having asked the claimant if she would come into work on Tuesday, 12 February 2019, which was a day she was earmarked to work from home. Ms Morris did this because she

was going to be away on holiday and Dr Esteras-Chopo would have left the organisation by that date, and she did so because she wanted colleagues from Enterprise and the Faculty of Medicine to have a face-to-face point of contact for the team that week. The claimant agreed to it. Ms Morris made a perfectly reasonable management request, which the claimant agreed to. We do not, therefore, considerate it even to be unfavourable treatment and the complaint therefore fails for that reason.

374. Furthermore, the claimant's disabilities did not prevent her from attending meetings and from being flexible as to her working days. She was fully aware of the need to be flexible, which had been stressed and agreed with her when the adjustments in relation to her work location were agreed back on 8 March 2018. Ms Morris could only act on what she knew and what she had learned from the first occupational health report. The issue was to do with the impact of strong scents and that did not prevent the claimant from being able to come into the office on a particular day (had there been someone there who was wearing a strong scent, the claimant could have moved location or stepped outside as she always could). Furthermore, she could have said no to Ms Morris's request, but she did not. Ms Morris making this request was not, therefore, unfavourable treatment because of something arising in consequence of the claimant's disability or disabilities. This complaint therefore fails.

4.2.6 The failure of the Respondent to properly consider the concerns raised by the Claimant regarding the appointment of Dr Alistair McDermott to chair the First Grievance meeting, specifically with reference to:

(a) on 11 March 2019 at 09.46 the email from the Claimant to Ms Clare Budden;

(b) on 14 March 2019 the email at 18.00 from the Claimant to Ms Catherine Watt;

(c) on 14 May 2019 the email at 18.56 from the Claimant to Ms Catherine Watt; and

(d) on 7 June 2019 the email at 13.55 from the Claimant to Ms Catherine Watt and Ms Ann Kelly.

375. We refer to our findings of fact in full in relation to these various issues. However, in summary, the concerns raised by the claimant were considered properly by the respondent, at each of the stages when the claimant raised them (as set out in the subparagraphs above). The respondent simply took a different view of matters to that of the claimant and that view was not an unreasonable one. The alleged unfavourable treatment is therefore not established, and this complaint therefore fails.

376. In any event, there is no discernible link between the respondent's consideration of these matters and anything said to arise from the claimant's disabilities. This complaint therefore fails for that reason too.

4.2.7 The Respondent's failure to properly deal with the Claimant's data subject access request, specifically with reference to:

(a) the alleged act at 4.2.4;

(b) Ms Catherine Watt and Ms Ann Kelly's email on 6 June 2019 at 09.22 in response to the Claimant's email of 5 June 2019 at 23.22; and

(c) Mr Robert Scott's response of 11 July 2019 to the Claimant's letter of complaint dated 17 June 2019.

377. We refer in full to our findings of fact above in relation to these allegations. The handling of the claimant's SARs had nothing to do with the claimant's disabilities or anything arising in consequence of them. This complaint therefore fails.

4.2.8 The Respondent's proposal to postpone the First Grievance appeal meeting proposed for 25 July 2019 (Ms Maria Lynch 23 July 2019).

378. Again, we refer to our findings of fact above for the full context of this allegation. However, the fact that Ms Lynch suggested that the meeting should be postponed was because she had been unable to find a suitable room. Indeed, in doing so she was acting in the claimant's own interests in making this suggestion. There was therefore no unfavourable treatment. The complaint fails for that reason alone.

379. Furthermore, there is no link whatsoever between Ms Lynch's taking this action and the matters relied on by the claimant as arising in consequence of the claimant's disabilities for the purposes of these discrimination arising from disability complaints. The complaint fails for that reason too.

4.2.9 The Respondent's failure to follow Occupational Health guidelines as set out on 16 April 2019 when conducting the meeting with the Claimant on 25 July 2019.

380. The respondent did follow the occupational health guidelines set out in the second occupational report when conducting the first grievance appeal meeting on 25 July 2019. This factual allegation is not therefore made out and the complaint fails for that reason.

381. In any case, even if the respondent had failed to do so in any respect, there is no link between that and the matters relied on by the claimant as arising in consequence of her disabilities for the purposes of these discrimination arising from disability complaints. The complaint therefore fails for that reason too.

4.2.10 The comments made by Ms Lynne Cox during the meeting of 25 July 2019: "some days [the Claimant] will have good days and other days not so good days."

382. The quotation as set out by the claimant in the list of issues is not accurate and we refer to our findings of fact to the actual quotation and its context. Ms Cox accepts, however, that she did refer to good and bad days in order to try and get an understanding of whether the claimant's conditions in any way affected her perception of other people's actions. She did not do this because of the claimant's disability or disabilities; rather, she did so in order to try and obtain that understanding. There is no link between that and the matters relied on by the claimant as arising in consequence of her disabilities for the purposes of these discrimination arising from disability complaints. This complaint therefore fails.

4.2.11 The comments made by Ms Lynne Cox by e-mail on 9 August 2019 to Ms Maria Lynch: "I would fully expect a level 4 staff member with these less severe disabilities to secure the best

working environment" and "It was unfortunate that Charlotte would not accept any challenges on her submission. Choosing to leave the room for a break….".

383. We refer to our findings of fact above for the full context of these quotations. However, to the extent that these quotations make statements of fact, they merely reflect what happened at the grievance appeal meeting on 25 July 2019. Furthermore, in terms of the statements of opinion they contain, Ms Cox had seen and relied on the occupational health reports and made the comments in the context of the claimant's seniority and her observations of the claimant's behaviour at that grievance appeal meeting. Her description of the claimant as having *"less severe disabilities"* in no way sought to diminish or minimise the claimant's disabilities and was not an unreasonable description in the light of the evidence before her and it was a necessary part of the analysis which led to her opinion that she would have expected the claimant to have secured the *"best working environment"* for herself. The comments were not directed at the claimant (rather, they were in a private email to Ms Lynch which the claimant only became aware of through a subsequent SAR response). They were not made because of the claimant's disability or disabilities but rather as part of Ms Cox's analysis in determining the claimant's grievance appeal (which is what she had been tasked to do). There is no link between them and the matters relied on by the claimant as arising in consequence of her disabilities for the purposes of these discrimination arising from disability complaints. This complaint therefore fails.

4.3 Did the Respondent treat the Claimant unfavourably because of any of those things?
The Claimant says that 4.2.2 was because of 4.1.1. She says all the other treatment (listed at 4.2.1, 4.2.3 to 4.2.11) was because of 4.1.1 and 4.1.2.

384. The issue of whether or not there was unfavourable treatment is considered in relation to each of the individual allegations above. However, as set out above, whether or not there was unfavourable treatment, any treatment was not linked to the matters which the claimant has claimed arose out of her disabilities for the purposes of these discrimination arising from disability complaints; all of these complaints therefore fail.

4.4 If so, has the Respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim?

385. As all the complaints of discrimination arising from disability have failed, it is not strictly necessary to consider the justification defence. However, we do so for completeness' sake.

386. The claimant has not addressed this issue. However, Ms Misra submits that, if and to the extent it is necessary, the respondent will say that it was seeking to manage its business and the claimant's employment with such occupational advice as it received and to take steps to facilitate the claimant working effectively in her role and with others and that the ways in which it did so (as set out above) were wholly proportionate.

387. It is self-evident that the respondent seeking to manage its business and the claimant's employment with such occupational advice as it received and to take steps to facilitate the claimant working effectively in her role was a legitimate aim and, for the reasons set out in our findings of fact above, we find that that is what the respondent was seeking to do.

388. Furthermore, whilst it is not necessary or proportionate for us here to go through the reasons why, in the case of each of the many allegations above, the respondent acted proportionately in pursuing that legitimate aim, it is enough to say that, on the facts set out in relation to each such allegation, the respondent did indeed act proportionately.

*Summary – discrimination arising from disability*

389. In summary, all the complaints of discrimination arising from disability fail.

Reasonable adjustments

5.1 Did the Respondent have the following provisions, criteria or practices ('PCPs')?
5.1.1 Arranging meetings with minimal or no notice (PCP1).

390. During the claimant's employment, catch up meetings were arranged on an ad hoc basis and may sometimes have been on short notice, so this PCP is made out. However, none were ever imposed on the claimant when she could not attend. Furthermore, this practice changed after the point when the claimant at the meeting on 28 February 2019 told Ms Morris and Ms Budden that it was something which she considered was an issue for her.

5.1.2 Not providing content in meeting requests sent by email (PCP2).

391. During the claimant's employment, invitations for catch up meetings and one-to-one meetings with management often did not include the content of the meetings, so this PCP is made out. However, this was standard practice both for the claimant and other employees and is unsurprising. Furthermore, this practice changed (in relation to the claimant) after the point when the claimant at the meeting on 28 February 2019 told Ms Morris and Ms Budden that it was something which she considered was an issue for her.

5.1.3 Holding meetings to discuss potentially confidential or upsetting material in public areas (PCP3).

392. The respondent did not hold meetings in order to discuss potentially confidential or upsetting material in public areas. Various meetings were, not inappropriately, held in public areas, as was common practice at the respondent. Furthermore, on occasion the claimant got upset (for example at the meeting of 21 February 2019 with Ms Morris) although that was usually because of the claimant's own behaviour at the meeting in question or because the claimant took the meeting down an avenue which upset her. However, as it was never the

purpose of the respondent to hold meetings to discuss potentially confidential or upsetting material, this PCP is not made out.

5.1.4 Not providing meeting agendas or information regarding meetings (PCP4).

393. During the claimant's employment, agendas or information regarding meetings were not provided in advance in relation to catch up meetings, so this PCP is made out. However, this was standard practice both for the claimant and other employees and is unsurprising. Furthermore, this practice changed (in relation to the claimant) after the point when the claimant at the meeting on 28 February 2019 told Ms Morris and Ms Budden that it was something which she considered was an issue for her.

5.1.5 Requesting alterations to work locations / conditions without consultation and circulating such requests (PCP5).

394. This is a very vaguely worded alleged PCP and the claimant provided no further clarity to it at any stage during the hearing. However, we think on balance it must be a reference to Ms Morris' email of 26 February 2019 regarding team seating. We refer to our findings of fact above in full for the context of this email. However, in summary, it did not contain a request to alter work locations/conditions without consultation; by the very nature of the way it was phrased, it is a proposal seeking views from others. In other words, it is an example of consultation. This PCP is not therefore made out.

5.1.6 Alterations of working conditions without enough notice (PCP6).

395. Again, this is a very vaguely worded alleged PCP and the claimant provided no further clarity to it at any stage during the hearing. In view of the vast amount of material covered at this hearing, the tribunal cannot reasonably be expected to second-guess what the claimant might be referring to here. This PCP is not therefore made out.

5.1.7 Expectations that part-time employees will alter their working conditions / patterns without consultation and with minimal notice (PCP7).

396. Again, this is a very vaguely worded alleged PCP and the claimant provided no further clarity to it at any stage during the hearing. In view of the vast amount of material covered at this hearing, the tribunal cannot reasonably be expected to second-guess what the claimant might be referring to here. However, the one thing that we consider it might be a reference to is to Ms Morris's request that the claimant come into the office on 12 February 2019 so that there was someone from her team present in the office (at a time when Ms Morris would be away on holiday and Dr Esteras-Chopo would have left the organisation). However, Ms Morris did consult with the claimant about this as she asked her in advance whether she would do this, and the claimant agreed to do so. Furthermore, she asked her well over a week in advance, so she was not only given minimal notice. This PCP is not therefore made out.

397. It follows that none of the complaints of a failure to make reasonable adjustments which are based on the PCPs which have not been established (PCPs 3, 5, 6, and 7) can succeed.

5.2 Did the Claimant's workplace have the following physical features? The Claimant alleges that her workplace was not ventilated, and she had minimal control over her environment including temperature, air flow and exposure to allergens.

398. The claimant's workplace was ventilated, and we accept Ms Misra's submission that it would have been extraordinary if it had not been ventilated. It had air conditioning which is a form of ventilation. This alleged physical feature is not therefore established.

399. The respondent accepts that the claimant had limited control over temperature (albeit that does not appear to be relevant to the reasonable adjustments complaints), airflow or allergens in the form of perfume or aftershave worn by others, so these physical features are made out.

5.3 Did any such PCP or physical feature put the Claimant at substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time insofar that:

5.3.1 these PCPs exacerbated her anxiety and depression?

400. There is no evidence that, as the claimant states it in this alleged substantial disadvantage, the PCPs or physical features established exacerbated the claimant's *"anxiety and depression"*. We refer again to the occupational health reports and to the claimant's own clear account, in her email of 28 January 2018 to Dr Magdalenic-Moussavi, of her disabilities, their impact and suggestions as to how to address this, where the focus is on the perfume and aftershave issues. Depression did not feature at all in this respect. Furthermore, anxiety was only linked in part to asthma and the impact on the claimant's asthma of the perfume/aftershave triggers. It cannot therefore be said that these PCPs/physical features exacerbated the claimant's *"anxiety and depression"* and certainly not in a way that put her at a "substantial disadvantage". This substantial disadvantage is not therefore made out.

401. This alleged substantial disadvantage is the only one which the claimant has sought to establish in relation to the PCPs (as opposed to in relation to the physical features). The effect of our finding in the paragraph above is therefore that any complaints of a failure to make reasonable adjustments which rely on the established PCPs fail because no substantial disadvantage has been established in relation to those PCPs.

5.3.2 these physical features exacerbated her asthma and anxiety?

402. The respondent accepts that in part it is correct that the physical features established (minimal control over her environment including airflow and exposure to allergens) exacerbated the claimant's asthma, which could in turn have an impact on her anxiety. The respondent has not argued that the disadvantage which this put the claimant to was not "substantial" and we accept

that, as "substantial" is defined as "more than minor or trivial", that the claimant was placed at a substantial disadvantage in this respect.

5.4 If so, did the Respondent know or could it reasonably be expected to know that the Claimant was likely to be placed at any such disadvantage?

403. The respondent accepts that it could be expected to know about the claimant's issues with allergens. It was aware of this from the first occupational health report and the claimant's email of 28 January 2018.

404. To be clear, the respondent did not and could not be expected to know that the claimant considered that she had any issues regarding meetings at short notice or without prior knowledge of the content or an agenda (in other words anything relating to the only established PCPs (1, 2 and 4) until the point at which the claimant made Ms Morris and Ms Budden aware of this at the meeting of 28 February 2019. (We set this out for completeness only; any complaints of a failure to make reasonable adjustments based on the established PCPs have already failed by this stage in any case because of our finding that the claimant did not establish substantial disadvantage in relation to paragraph 5.3.1, which is the only alleged substantial disadvantage which relates to the PCPs as opposed to the physical features which the claimant relies on.)

5.5 If so, were there steps which were not taken which could have been taken by the Respondent to avoid any such disadvantage?
In respect of the PCPs (on 21 & 28 February 2019 save for PCP6):

PCP1: Being provided with sufficient notice of meetings.

PCP2: Being provided with advanced notice of the reason for meetings.

PCP3: Being exempted from having to attend all meetings and having a break during meetings when the Claimant became distressed.

PCP4: Being provided with sufficient notice of meetings and advanced notice of the reason for meetings.

PCP5: Being allowed to hot desk with consultation (i.e. using the desk above the atrium).

PCP6: Being allowed to hot desk with consultation – in January or February 2018.

PCP7: Being provided with sufficient notice of meetings and advanced notice of the reason for meetings.

405. Is not strictly necessary for us to go through all of the alleged reasonable adjustments in relation to the complaints based on the PCPs, as these complaints have already failed for the reasons already set out. However, we do so for completeness' sake. Given the considerable overlap in relation to the PCPs, we deal with them together rather than individually.

406. First, what is interesting is that the claimant in the list of issues limits these alleged adjustments to things which she maintained should have been

done in relation to the meetings of 21 and 28 February 2019 (with the exception of PCP 6; and PCP 6 is the one which we could not understand at all so it follows that it really is impossible to speculate on any alleged reasonable adjustment in relation to it). The subject matter of the remaining six PCPs is to do with such things as notice of meetings, provision of content and agendas for meetings, location of meetings, asking the claimant to come in on a day when she was otherwise scheduled to work at home and the email regarding teams change proposals. All of this happened prior to the meeting of 28 February 2019 when the claimant told Ms Morris and Ms Budden that she had an issue with matters such as short notice of meetings and not providing agendas or content in advance. As they didn't know about this in advance, no claim for a failure in relation to reasonable adjustments can succeed in this respect. After Ms Morris was told this, she made sure to give the claimant notice of meetings, booked a private room for those meetings, set out what the meeting was about in the subject line and so on, so she made the adjustments which the claimant told her to do at the time. The only time after the 28 February 2019 where she asked the claimant to attend on slightly shorter notice was the proposal that they should meet simply to agree a timetable of meetings going forward. This wasn't a fixed meeting, it was simply a suggestion that they could catch up if the claimant wanted to (and indeed the claimant declined to do so because she had another meeting) and it was to discuss something so basic as setting up meetings going forwards. We do not consider that it was a breach, either in substance or spirit, of what Ms Morris agreed with the claimant on 28 February 2019 and we do not consider that it could amount to a failure to make reasonable adjustments in the circumstances.

407. We turn to the individual alleged reasonable adjustments.

408. In relation to the alleged adjustment in relation to PCP 1, the claimant was provided with sufficient advance notice of the meetings of both 21 and 28 February 2019.

409. In relation to the alleged adjustment in relation to PCP 2, the claimant had been informed by Ms Morris in relation to the 21 February 2019 meeting that she wanted to catch up with her, as was consistent with the way Ms Morris had set up meetings previously with the claimant. In view of Ms Morris not knowing that this was an issue for the claimant, it would not have been a reasonable adjustment to make in relation to this meeting. As regards the 28 February 2019 meeting, the claimant knew in advance what the reason for the meeting was.

410. As regards the alleged adjustment in relation to PCP 3, being exempted from having to attend all meetings would not have been a reasonable adjustment for the claimant (or indeed for any employee) as it would have been impossible for the employment relationship to function without her meeting her manager. Furthermore, when the claimant became distressed in meetings (as was the case on 21 February 2019, but not on 28 February 2019), there was effectively a break; on 21 February 2019 the claimant simply left the meeting and walked away. We have no evidence that the claimant was ever prevented from taking a break when she became upset in a meeting (indeed, the only evidence we do have is that when she did ask for a break, she was given it, for example in the 25

July 2019 grievance appeal meeting with Ms Cox). This adjustment was, therefore, we find, implemented.

411. As regards the alleged adjustment in relation to PCP 4, the claimant was provided with sufficient notice of the meetings of 21 and 28 February 2019. She knew in advance the reason for the 28 February 2019 meeting. We repeat our conclusion above regarding the alleged adjustment under PCP 2 in relation to the 21 February 2019 meeting.

412. As regards the alleged adjustment in relation to PCP 5, hot desking is not relevant to meetings and therefore in relation to the meetings on 21 and 28 February 2019 and so is not a reasonable adjustment.

413. As regards the alleged adjustment in relation to PCP 7, we do not understand the reasonable adjustment sought which does not appear to relate to PCP 7 as we have understood it. Nevertheless, we repeat the conclusions which we have drawn in relation to the alleged adjustment in relation to PCP 2 above in this respect.

414. In short, therefore, none of the adjustments suggested by the claimant were reasonable in relation to the PCPs they are said to relate to. We reiterate, however, that these complaints have long since failed due to either the failure to establish the PCP alleged, the failure in relation to all PCPs to establish substantial disadvantage, and/or the issue of knowledge.

In respect of the physical features of her workplace

5.5.1 Being allowed to hot desk with consultation (in January or February 2018).

415. The period in which the claimant focuses here is January/February 2018, which was before the adjustments to her working patterns were formally agreed on 8 March 2018. However, during that period, the claimant did, without Dr Magdalenic-Moussavi even knowing it, move around and make other arrangements, whether they were to work from Level 3 or to work from home etc. Dr Magdalenic-Moussavi, when she learnt of this, did not object to it; all she wanted, which was quite reasonable, was for the claimant to let her know where she was going to be based at a given time. The claimant was, therefore, effectively allowed to hot desk during this period. There was no failure to make a reasonable adjustment and this complaint fails.

5.5.2 Being exempted from having to attend all meetings (on 8 March 2018).

416. Whilst it is not entirely clear, we think that what the claimant means in this instance is that it should have been agreed on 8 March 2018 that she should be exempted from all meetings going forwards. That would, as we have already indicated, have been completely unworkable. Their employment relationship could not function without meeting her manager. Furthermore, it was the essence of her job to meet others such as academics. Such an adjustment would not, therefore, have been reasonable. This complaint therefore fails.

5.5.3 Working in a well-ventilated space (on 28 January 2018; 8, 15, 22 February 2018; 2 August 2018; 4 September 2018; and 16 April 2019)

417. The claimant did work in a well-ventilated space. The Faculty Building was a modern one with air conditioning. It was therefore well ventilated. It may have got warm in the summer because of the amount of glass, but that is a separate issue from ventilation. There was therefore no further adjustment to make in this respect. This complaint therefore fails.

5.5.4 Working from home every other Tuesday (on 22 February 2018; 8 & 9 March 2018; 14 & 28 February 2019).

418. Whilst we don't fully understand all of the date references set out in relation to this alleged reasonable adjustment, it was the case that, prior to the formal agreement of the adjustments on 8 March 2018, the claimant had been able to and did at times work at home (without any objection from the respondent). Furthermore, working at home every other Tuesday was formalised in the arrangements agreed on 8 March 2018 and those arrangements did not change throughout the remainder of the claimant's employment. It was, therefore, the case that the claimant was permitted to work from home every other Tuesday; this adjustment was made.

419. Whilst we think she has got the date wrong, it may be that the claimant is intending to include a reference here to the Tuesday (12 February 2019) when she would ordinarily have been working at home but on which Ms Morris asked if she would come into the office because Ms Morris would have been on holiday and Ms Esteras-Chopo would have left the organisation and Ms Morris wanted to have one member of the team available in person. However, flexibility was one of the conditions of the arrangements agreed on 8 March 2018 and the claimant was aware of this. Furthermore, Ms Morris did not force her to attend the office that day; rather she asked her, and the claimant agreed to do so. Finally, there is no evidence that attending the office that day did cause the claimant any problems and, if she had had any issue with someone wearing perfume/aftershave that day, she could, as she always could have done, have stepped outside temporarily to get some fresh air or have relocated to a different area of the building. For all these reasons, there was no failure to comply with a duty to make reasonable adjustments in this respect. This complaint therefore fails.

420. In summary, therefore, all of the complaints of a failure to make reasonable adjustments arising from the physical features of the claimant's workplace therefore also fail.

*Summary – reasonable adjustments*

421. In summary, all the complaints of a failure to make reasonable adjustments fail.

Harassment related to disability

422. Before turning to the individual complaints of harassment, we reiterate that, in assessing whether an action has the harassing "effect", the claimant's perception is only one of the factors to be taken into account, alongside the other circumstances of the case and whether it is reasonable for the conduct to have that effect. As will be a general theme in relation to the harassment allegations, we reiterate our earlier findings that the claimant's perception is so often completely at odds with objective reality. In so many of the examples below, the claimant unrealistically perceives entirely normal and/or trivial incidents as matters which amount to harassment of her. Furthermore, we remind ourselves of the guidance in the case law that the wording of the statute looks for effects which are *"serious and marked"* and that *"tribunals must not cheapen the significance of these words since they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment"*.

6.1.1 Holding meetings / discussions in a public area / open plan office, specifically:
(a) Dr Magdalenic-Moussavi on 6 March 2018; and
(b) Ms Morris on 21 February 2019.

423. These meetings did not take place in private rooms, but neither manager knew the claimant had any objection to the location as none had been expressed by this stage. The first was a very brief conversation by the claimant's desk with no one around to eavesdrop. The latter was in the breakout area as was normal for the claimant and Ms Morris at that time. Holding these meetings in this manner was entirely normal behaviour by the respondent and in no way out of the ordinary. Holding these meetings was not conduct related to the claimant's disability or disabilities and both harassment complaints fail for this reason.

424. Furthermore, neither meeting had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Whatever the claimant's perception may have been (and we refer to our earlier findings that the claimant's perception is so often completely at odds with objective reality), it was in no way reasonable for the conduct to have had that effect on the claimant. These harassment complaints fail for this reason too.

6.1.2 Dr Magdalenic-Moussavi referring to other individuals having asthma and dry eyes when the Claimant was trying to discuss the adjustments she required on 8 March 2018.

425. This was a sympathetic comment acknowledging the building's limitations. No attempt was made to equate the claimant's particular disabilities with dry eyes or anyone else who, like the claimant, had asthma. It is extraordinary that the claimant took offence at it. Although it related to the claimant's asthma as it was part of a discussion about her asthma, it was not reasonable that this conduct should have had the effect of violating the claimant's dignity etc. (whatever the claimant's unrealistic perception of the comment may have been). We therefore find that the comment did not have the effect (or the purpose) of violating the claimant's dignity or creating the relevant environment for her. This harassment complaint therefore fails.

6.1.3 Being sent an excessive number of emails by Dr Wilson in October 2018 in the lead up to the Bio Japan event and excessive questioning surrounding the taking marketing material.

426. Dr Wilson did not send an excessive number of emails in the lead up to the BioJapan event. The emails were not inappropriate in terms of either number or tone in the context of the busy build-up to that event. Furthermore, there was no "excessive questioning" surrounding the taking of marketing material. There was discussion about marketing material but that was entirely normal in the context of the upcoming event. The only reason that it may have taken longer than normal was the claimant's obstructive attitude and un-collegiate approach to sharing up the marketing materials between those who were going. Furthermore, at the time Dr Wilson was unaware of the claimant's disabilities or any effect they may have had on her. The factual basis of this allegation is not therefore made out and this complaint fails for that reason.

427. Furthermore, the discussions in advance of the conference were not related to the claimant's disability or disabilities; they were related to preparation for the conference. The complaint fails for this reason too.

428. Finally, it was not reasonable for the conduct in advance of the BioJapan conference to have the effect on the claimant required by the statute. We therefore find that the conduct in advance of the BioJapan event did not have the effect (or the purpose) of violating the claimant's dignity or creating the relevant environment for her. This harassment complaint therefore fails for that reason too.

6.1.4 Dr Wilson's comment within email on 3 January 2019 as set out in paragraph 28 of the First Claim.

429. The email in question was Dr Wilson's email to Ms Morris setting out her views as to who to put forward in the shortlisting exercise in relation to the full-time Corporate Partnerships Assistant role. It was a private email not directed at the claimant and it stated a genuine opinion on the part of Dr Wilson (and a not unreasonable one in view of her knowledge of the claimant). Whilst it references the claimant's disability, the writing of this email is not "related to" the claimant's disability in the sense that the opinion expressed by Dr Wilson is not related to the claimant's disability; rather it is her opinion based on her previous experiences of the claimant. This complaint therefore fails for that reason.

430. Furthermore, it did not have the purpose of violating the claimant's dignity etc. (as it was a genuine objective assessment and was not directed at the claimant as it was a private email). In addition, in the light of that objective assessment, it was not reasonable, whatever the claimant's perception, for the email to have the effect of violating the claimant's dignity etc. given the high bar set by the wording of the statute. This harassment complaint therefore fails for that reason too.

6.1.5 Dr Wilson rolling her eyes during the Claimant's interview on 17 January 2019.

431. As we have already found, Dr Wilson did not roll her eyes during the interview. The complaint is not therefore made out and it therefore fails.

6.1.6 Being treated in an aggressive manner by Ms Morris on 21 February 2019 when she queried whether asking the Claimant to come into work was a "breach of a modification" in a public area in front of approximately 20 people.

432. In general terms, Ms Morris did not act in an aggressive manner at the meeting of 21 February 2019; rather, it was the other way round as it was the claimant who was aggressive. As to the specific point, Ms Morris only asked the claimant to clarify what she meant when the claimant herself, at her own volition, had said to her that asking her to come in to work on a day that she would usually be working from home was a breach of the disability act (which, unsurprisingly, shocked Ms Morris). Ms Morris was not, however, aggressive. It was then the claimant who reacted badly to this by standing up, raising her hands at Ms Morris, stating *"I don't have to put up with this"* and walking away. As Ms Morris did not treat the claimant in an aggressive manner, this factual allegation is not made out and this complaint fails.

433. In any case, in the context of what happened, it was not reasonable for Ms Morris's conduct to have the effect of violating the claimant's dignity etc. and, as is often the case, the claimant's own perception that it did was out of kilter with reality. The conduct did not, therefore, have the effect (or the purpose) of violating the claimant's dignity etc. and this harassment complaint therefore also fails for this reason.

6.1.7 Comments made to the Claimant by Ms Morris:
(a) "I have heard from several people you are not a team player" (21 February 2019);
(b) That "absences from Charlie have not gone unnoticed" (28 February 2019).

434. Ms Morris's evidence was that she did not recall using the exact words that people had said that the claimant was not a team player, and we accept that she did not use those precise words. However, as she freely admitted, she did set out a number of examples of information which had come to her attention, and on which she wanted the claimant's opinion, which if correct was indeed evidence that the claimant was not a team player; for example, negative comments which the claimant made at Dr Esteras-Chopo's leaving drinks, non-attendance at meetings and not helping at the AYCI event.

435. Ms Morris did state in the meeting of 28 February 2019 that absences from the claimant had not gone unnoticed.

436. However, both of these sets of comments at these respective meetings were normal management actions. Ms Morris would not have been doing her job as the claimant's manager properly if she had not raised these concerns with her. They were serious. They impacted on the proper running of the organisation and on others in the organisation. Furthermore, they were relevant from the point of view of the claimant's own personal development. It was perfectly proper and correct for Ms Morris to make these points.

437. These comments were not related to the claimant's disability or disabilities and these complaints both fail for that reason.

438. Furthermore, it was not reasonable for the comments to have the effect of violating the claimant's dignity etc. (whatever the claimant's unrealistic perception may have been). They did not, therefore, have the effect (or the purpose) of violating the claimant's dignity etc and, for this reason too, both these complaints of harassment fail.

6.1.8 Being criticised by Ms Morris due to her purported lack of visibility on 31 January 2019, 21 February and 28 February 2019.

439. We accept Ms Misra's submission that raising the issue of visibility was not a criticism but was a supportive discussion about performance. To be clear (as the claimant still appears not to accept it even at this tribunal despite being told by Ms Morris on many occasions), the issue of visibility was nothing to do with the reasons why she did not get the Full Time Corporate Partnerships Assistant role. Rather it was an issue about how she could improve her performance going forward in her existing job.

440. Raising the issue of visibility was not related to the claimant's disability or disabilities and so this complaint of harassment fails for that reason.

441. Furthermore, it was a perfectly normal management action. It was not reasonable for raising this to have the effect of violating the claimant's dignity etc. (whatever the claimant's unrealistic perception may have been). This did not, therefore, have the effect (or the purpose) of violating the claimant's dignity etc and, for this reason too, this complaint of harassment fails.

6.1.9 Being accused of poor performance by Dr Hepworth on 25 February 2019 and Ms Morris on 28 February 2019.

442. Dr Hepworth did not accuse the claimant of poor performance on 25 February 2019; rather, he encouraged her to speak to her manager, Ms Morris, whom he knew did have concerns about the claimant's performance. This allegation is not therefore made out on the facts and therefore fails.

443. Ms Morris did raise concerns related to the claimant's performance on 28 February 2019. However, as indicated above, these were entirely reasonable and proper management actions. Ms Morris would not have been doing her job properly if she had not raised performance concerns in relation to an employee about whom she had such performance concerns.

444. Raising those concerns was not related to the claimant's disability or disabilities and so this complaint of harassment fails for that reason.

445. Furthermore, it was a perfectly normal management action. It was not reasonable for raising this to have the effect of violating the claimant's dignity etc. (whatever the claimant's unrealistic perception may have been). This did not,

therefore, have the effect (or the purpose) of violating the claimant's dignity etc and, for this reason too, this complaint of harassment fails.

6.1.10 Being set up to fail by being given unrealistic tasks / expectations, specifically:
(a) On 4 December 2018 Ms Morris directing the Claimant to align her proposed performance targets with the corporate partnership strategy;
(b) On 18 February 2019 Ms Morris requested that the Claimant attend an event at a different campus at 08.30;
(c) On 18 February 2019 at 06.36 Ms Morris requested to meet the Claimant prior to a Corporate Partnerships meeting held at White City at 10.00 the same day;
(d) On 21 February 2019 Ms Morris sent the Claimant an invitation at 08.14 for a meeting starting at 09.30 without specifying its location or purpose;
(e) On 8 March 2019 at 10.32 Ms Morris unilaterally rearranged a meeting to 08.30 on 11 March 2019;
(f) The Respondent expecting the Claimant to attend coffee mornings at the South Kensington campus on dates when she was working at a different location or at home on Tuesday 29 January 2019 and Tuesday 26 February 2019.

446. These six allegations of harassment are six further instances of wholly reasonable management requests made to the claimant. It has not even been necessary to reference them all in our findings of fact above; as they stand in the list of issues, they are clearly ordinary quotidian events. Furthermore, they are not related to the claimant's disability or disabilities and therefore all of these complaints fail as allegations of harassment.

447. Furthermore, it was not reasonable for any of them to have the effect of violating the claimant's dignity etc. (whatever the claimant's unrealistic perception may have been). They did not, therefore, have the effect (or the purpose) of violating the claimant's dignity etc and, for this reason too, all of these complaints of harassment fail.

6.1.11 On 25 July 2019 during the First Grievance appeal hearing pertaining to discrimination Ms Cox repeatedly questioning the Claimant as to whether the Claimant's mental health condition impacted her perceptions of bullying and harassment.

448. We refer to our findings of fact above for the full context of this allegation. Ms Cox did ask the claimant whether her disabilities impacted on her perception of the actions of the respondent. For the reasons already given, these were reasonable and understandable questions in the context of the obvious discrepancy between ordinary management actions and the claimant's extreme reaction to them and the fact that, rightly as part of her role hearing the grievance appeal, Ms Cox was trying to understand the context of the situation so as to be able to recommend solutions which might help the claimant return to the workplace. The questioning was designed to understand the claimant's position in view of a lengthy appeal which was difficult to understand and the background occupational health information. The claimant did not answer the questions and so Ms Cox rephrased them in different and softer ways. However, despite her best attempts, the claimant eventually asked her to move on after three questions and she did so.

449. The questions were related to the claimant's disabilities as they were questions about the impact of those disabilities. However, they were certainly not asked with the purpose of violating the claimant's dignity etc; quite the contrary, Ms Cox was trying to help the claimant. Furthermore, in the context of the meeting and the background, it was not reasonable for the conduct of asking these questions to have the effect of violating the claimant's dignity etc. (although we accept that the claimant had a particularly strong reaction to being asked these questions). Asking these questions did not, therefore, have the effect (or the purpose) of violating the claimant's dignity etc. This complaint of harassment therefore fails.

6.1.12 On 25 July 2019 during the First Grievance appeal hearing, by Ms Cox referring to the Claimant having good days and not so good days on 25 July 2019 during the First Grievance appeal hearing.

450. The quotation as set out by the claimant in the list of issues is not accurate and we refer to our findings of fact to the actual quotation and its full context. Ms Cox accepts, however, that she did refer to good and bad days in order to try and get an understanding of whether the claimant's conditions in any way affected her perception of other people's actions. As Ms Cox was asking about the claimant's disabilities, this conduct was related to the claimant's disabilities.

451. However, Ms Cox did this as part of her attempt to understand the situation as set out more fully above. She certainly did not do so with the purpose of violating the claimant's dignity etc; quite the contrary, Ms Cox was trying to help the claimant. Furthermore, in the context of the meeting and the background, it was not reasonable for this conduct to have the effect of violating the claimant's dignity etc. This conduct did not, therefore, have the effect (or the purpose) of violating the claimant's dignity etc. This complaint of harassment therefore fails.

6.1.13 On 25 July 2019 during the First Grievance appeal hearing, by Ms Cox repeating questions pertaining to the failure of the College to put in place modifications for a disability.

452. The premise of this allegation is somewhat misleading because it suggests, incorrectly, that the respondent failed to put in place modifications in relation to the claimant's disabilities; that is obviously incorrect as it did so and as these were formally agreed at the meeting of 8 March 2018.

453. Ms Cox did ask several questions of the claimant at the grievance appeal meeting about the adjustments which had been put in place by the respondent and their appropriateness. This was an entirely obvious line of questioning given the nature of the grievance and appeal and the fact that a large part of it concerned allegations by the claimant that the respondent had failed to put in place adjustments. It was related to the claimant's disabilities as the questions were about adjustments in relation to the claimant's disabilities.

454. However, Ms Cox did this as part of her attempt to understand the situation as set out more fully above; it was part of her job as the person tasked

with dealing with the grievance appeal. She certainly did not do so with the purpose of violating the claimant's dignity etc; quite the contrary, Ms Cox was trying to help the claimant. Furthermore, in the context of the meeting and the background, it was not reasonable for this conduct to have the effect of violating the claimant's dignity etc. This conduct did not, therefore, have the effect (or the purpose) of violating the claimant's dignity etc. This complaint of harassment therefore fails.

6.1.14 By the HR personnel at the grievance appeal hearing on 25 July 2019 not intervening in respect of 6.1.11 and 6.1.12.

455. Ms Lynch did not intervene in relation to the issues which form the background to allegations 6.1.11 and 6.1.12 because there was nothing that merited intervention. We agree with Ms Misra that harassment by omission is unsustainable on the evidence here.

456. The fact that Ms Lynch did not intervene was not related to the claimant's disability or disabilities; it was related only to the fact that there was no good ground for intervening.

457. Furthermore, in the context of the meeting and the background, it was not reasonable for this conduct to have the effect of violating the claimant's dignity etc. (whatever the claimant's unrealistic perception may have been). This conduct did not, therefore, have the effect (or the purpose) of violating the claimant's dignity etc. This complaint of harassment therefore fails.

458. In summary, therefore, all the complaints of harassment fail.

6.2 If so, did this relate to the a protected characteristic?
The Claimant claims the conduct at:

- 6.1.10 (a) was related to asthma, depression and anxiety.
- 6.1.10 (b) was related to anxiety.
- 6.1.2 was related to asthma.
- All other alleged conduct is said to be related to anxiety and depression.

6.3 Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or otherwise offensive environment for the Claimant?

6.4 In deciding whether the conduct had this effect the Tribunal must take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

459. We have already dealt with issues 6.2, 6.3 and 6.4 as we have gone through the individual allegations of harassment.

*Summary – harassment related to disability*

460. In summary, all the complaints of harassment related to disability fail.

Victimisation – alleged protected acts

7.1 The Respondent accepts that the Claimant's grievance dated 10 March 2019 and First Claim each constitute a protected act.

461. We set out below our conclusions in relation to the other matters which are alleged by the claimant to be protected acts as set out in the list of issues. However, it is worth saying that, over the course of the hearing, the claimant rarely addressed the question of whether certain items were protected acts or set out the basis for why she says that the alleged protected acts in the list of issues were indeed protected acts. She never made any submissions as to, for example, which of the four types of protected act (see our summary of the law on victimisation above) she was arguing these alleged protected acts amounted to. It is of course for the claimant to prove that they were protected acts, including the basis upon which they were protected acts. In many cases she has failed even to touch on these issues, let alone to seek properly to prove them. Except where it is apparent from the evidence before us that a particular allegation is a protected act, it is not the task of the tribunal to make these arguments for her.

462. Furthermore, as there are 13 alleged protected acts, we have not, when the claimant has not addressed the matter and where it is not clear to us what part of, for example, a lengthy email, is said to be a protected act, set out the whole of that email in our findings of fact and we have simply stated that the claimant has not proven that the item alleged amounts to a protected act. It would be disproportionate to do otherwise given how little emphasis the claimant herself has placed on these issues.

7.2 Did the Claimant otherwise do a protected act by reference to:

7.2.1 An e-mail to Anne Kelly dated 6 February 2018 disclosing the impact of her local environment on her asthma.

463. The claimant's email of 6 February 2018 is the one in which she asks Ms Kelly to send an email regarding perfume and aftershave and notes that she needed her inhaler again the previous week. However, it does not make any allegation of a contravention of the Act.

464. It was not, therefore, a protected act.

7.2.2 An email to Ms Clare Budden dated 10 March 2018 expressly raising concerns regarding alleged discrimination on 8 March 2019.

465. We have quoted the relevant sections of the claimant's email of 10 March 2018 to Ms Budden in our findings of fact above. This is the email in which the claimant complains about the "dry eyes" comment made by Dr Magdalenic-Moussavi at the meeting of 8 March 2018. However, whilst the claimant complains about that comment, the email does not make any allegation, express or implied, of a contravention of the Act. A reasonable person reading that email at the time would think that the claimant objected to the comment made by Dr Magdalenic-Moussavi but not that the claimant had somehow

suggested that it was an act of, for example, disability discrimination or harassment.

466. It was not, therefore, a protected act.

7.2.3 An email to Ms Clare Budden and Kalpna Mistry dated 17 April 2018 in which she expressed her concern that her working environment will be altered.

467. This is the email to Ms Budden in which the claimant stated that she was a little concerned as she had been informed that she might be losing her desk on Level 2 due to lack of space (something which never in fact happened). Whilst the claimant expresses a concern in this email, the email does not make any allegation, express or implied, of a contravention of the Act.

468. It was not, therefore, a protected act.

7.2.4 Concerns she raised with Dr Hepworth on or about 5 October 2018 about the impact of Dr Rebecca Wilson's communication on her mental health.

469. When the claimant caught Dr Hepworth on his way out of the office on 5 October 2018, she told him that she suffered from anxiety and depression and that the number of emails which she had received (in the run-up to the BioJapan conference) were making her levels of anxiety worse. She did not go into much more detail on this. She was, therefore, alleging that the emails she received had a detrimental impact on her anxiety. However, that is a very different matter from alleging that what Dr Wilson had been doing in sending those emails was something which was a contravention of the Act, for example that it was an act of disability discrimination or harassment for her to do so. On the facts, therefore, we do not find that the claimant made an allegation, express or implied, of a contravention of the Act to Dr Hepworth on 5 October 2018. Indeed, whilst it was not put to him by the claimant, there is no indication whatsoever that he took it as such.

470. This was not, therefore, a protected act.

7.2.5 An e-mail to Ms Stephanie Morris of 23 January 2019 when she reiterated her October 2018 allegations of harassment against Dr Wilson.

471. This is the email from the claimant to Ms Morris the day after the claimant learned that she had been unsuccessful in her application for the Full Time Corporate Partnerships Role, in which she stated that she had expressed her concerns to HR that Dr Wilson was on the interview panel and that she found a lot of Dr Wilson's behaviour very aggressive and had raised that with Dr Hepworth and Dr Magdalenic-Moussavi prior to BioJapan. This is an allegation that Dr Wilson's behaviour was aggressive. However, it is not an allegation, express or implied, of a contravention of the Act, for example that Dr Wilson's behaviour was an example of disability discrimination or harassment related to disability.

472. This was not, therefore a protected act.

7.2.6 A meeting request email to Ms Clare Budden dated 7 February 2019 when she disclosed concerns about being asked to breach agreed temporary working arrangements, followed by a meeting to discuss issues raised on 14 February 2019.

473. There are two parts to this assertion.

474. First, the email referred to is, we think, the email of 8 February 2019 from the claimant to Ms Budden rather than an email of 7 February 2019. In the email of 8 February 2019, the claimant says to Ms Budden that, when they meet next week, she would like to chat about: bullying; modifications for disability; and potentially challenging the recent recruitment process where the individual exhibiting bullying behaviour was on the interview panel. These three items are expressed separately and are not stated to be linked. The claimant is not, either expressly or impliedly, making an allegation that there has been a contravention of the Act, for example of disability discrimination or harassment related to disability; she simply says there has been bullying.

475. The first part of this allegation is, however, specific in that the protected act is said to be that the claimant *"disclosed concerns about being asked to breach agreed temporary working arrangements"*. That suggests that the only part of this email relied on is therefore the section which reads *"If I am working at home as a modification I should not be expected to come in"*. The claimant was clearly wrong in her assertion as her working arrangements were specifically subject to flexibility and the need to come in for meetings when required. However, that is not the test. There were adjustments in place in relation to the claimant's disability and what the claimant is saying in this statement is that the expectation for her to come in on a working at home day is a breach of those adjustments. It is, in other words, at least an implied if not an express allegation of a breach of the duty to make reasonable adjustments, in other words a breach of the Act.

476. This was, therefore, a protected act.

477. Turning to the second part of this issue, as Ms Budden accepted in her witness statement, the claimant raised general concerns at the meeting on 14 February 2019 between the claimant and Ms Budden about being asked to attend the office when she was due to work from home. In the light of her email of 8 February 2019, which we have found to be an allegation that, in asking the claimant to come in on a working at home day, the respondent was breaching its duty to make reasonable adjustments, we find that raising these concerns in general terms at the meeting of 14 February 2019 but to the same person to whom she had sent the much more specific email of 8 February 2019, amounted at least impliedly to the same allegation of a breach by the respondent of its duty to make reasonable adjustments.

478. This too was, therefore, a protected act.

7.2.7 Concerns raised at a meeting with Ms Clare Budden on 21 February 2019 about Ms Morris, including that she was questioned on reasons for homeworking.

479. As we have found, the only issue raised at the meeting with Ms Budden on 21 February 2019 was the "visibility" issue. The issue about being questioned on reasons for homeworking was not raised. This protected act is not made out on the facts and there was, therefore, no such protected act done.

480. If we are wrong in our fact-finding, then even if the concern had been raised, it would not have been a protected act. Unlike the actions referred to in issue 7.2.6, which we have found to be protected acts, this alleged behaviour by Ms Morris is said to have been questioning the claimant about homeworking on a Monday. The claimant's homeworking day, as agreed in the 8 March 2018 adjustments, was Tuesday. Whether she was working at home or not on Monday did not, therefore relate to her disability or to the agreed adjustments. It could not, therefore, have been an allegation of a breach by the respondent of its duty to make reasonable adjustments (as opposed to a general complaint about Ms Morris's behaviour). It could not, therefore, have been an allegation of a contravention of the Act and could not therefore have been a protected act.

481. There was, therefore, no protected act.

7.2.8 An e-mail to Ms Glemma Edwards of 23 January 2019 when she stated she was thinking of making a complaint regarding bullying and harassment.

482. We have not quoted the whole of the claimant's email of 23 January 2019 to Ms Edwards in our findings of fact above. However, the email does not state that the claimant was thinking of making a complaint regarding bullying and harassment, so the factual basis of this alleged protected act is not made out.

483. The email references the alleged bullying behaviours of (an unnamed) Dr Wilson and later on makes reference to there being little or no thought given to the alleged mental or physical well-being of individuals subjected to these behaviours on a regular basis. That is an allegation about the alleged impact of alleged bullying, including on mental health, but that is not an allegation of a contravention of the Act. There is no allegation of a contravention of the Act, for example that the alleged bullying was done because of anyone's disability or as an act of harassment related to anyone's disability.

484. There was, therefore, no protected act.

7.2.9 An email to Ms Clare Budden dated 18 February 2019 when she complained that harassment was not being taken seriously within the department.

485. In this email to Ms Budden, the claimant stated that she was not convinced that bullying and harassment were being taken seriously in her department. However, this was a general statement rather than a specific allegation. Furthermore, bullying and harassment in themselves are not breaches of the act unless the bullying and harassment is because of or related to a protected characteristic such as disability. There is no suggestion in the sentence that there was bullying which was done because of the claimant's

disability or harassment done which was related to her disability. There was, therefore, no allegation, express or implied, of a contravention of the Act.

486. This was not, therefore, a protected act.

7.2.10 Concerns raised at a meeting with Dr Hepworth on 25 February 2019 about discrimination she had experienced at work.

487. First, given that this was a half-hour meeting at which the claimant said an awful lot, it is disappointing that this alleged protected act is so generally worded and that it does not specify what is said to have been said by the claimant to Dr Hepworth which amounted to the protected act. It is not reasonable to expect the tribunal or the respondent to have to guess in this respect. Furthermore, we note and accept Ms Misra's submission that it is for the claimant to establish which limb of the protected act test she relies on to show that this was a protected act, and that the claimant is put to proof in this respect.

488. Secondly, the claimant did not put it to Dr Hepworth that anything that she said to him at that meeting amounted to a protected act. All we have to go on, therefore, is Dr Hepworth's note of the meeting. We have not quoted it in full in our findings of fact as it is extensive and it is not necessary to do so; however, although it includes the long familiar list of complaints, including bullying, it does not contain any reference to the claimant making an allegation of "discrimination" (as she describes it in issue 7.2.10) or of any alleged contravention of the Act. The claimant has not, therefore, proved that she did a protected act.

489. There was, therefore, no protected act.

7.2.11 An email to Ms Clare Budden dated 26 February 2019 headed "Urgent Victimisation Starting to Occur" when she expressed concerns about comments made by Dr Hepworth on 25 February 2019.

490. Although it is not set out in clear terms, there is an implicit allegation by the claimant in this email that, because she set out her concerns to Dr Hepworth in the meeting of 25 February 2019, he then victimised her by raising performance concerns. It is true that what Dr Hepworth did could never amount to victimisation because the claimant had not made a protected act in that meeting. It is also true that his reference to performance concerns was relevant and appropriate in the context of trying to set a path by which the claimant and Ms Morris could work with each other going forwards, including dealing with necessary performance issues. However, the merits of the allegation are not the test. The fact of the matter is that the claimant made an implicit allegation of victimisation in this email and that is an allegation of a contravention of the Act.

491. We note and accept Ms Misra's submission that it is for the claimant to establish which limb of the protected act test she relies on to show that this was a protected act, and that the claimant is put to proof in this respect. However, we consider that it is clear enough that this is an allegation of a contravention of the Act and that, on the evidence available, the claimant has proved that this was an allegation of a contravention of the Act.

492. This was, therefore, a protected act.

7.2.12 Concerns raised at a meeting with Ms Morris and Ms Clare Budden on 28 February 2019 about the impact of policies, procedures and practices on her disability.

493. This allegation is very widely drawn, and it is not clear from the face of it exactly what the claimant is referring to. Ms Budden's notes of the 28 February 2019 meeting run to some three pages, and it is not reasonable to expect the tribunal to trawl through these and guess what the claimant is getting at here, particularly as she has not addressed what she says this protected act relates to in her cross-examination of the respondents' witnesses or submissions. Similarly, we note and accept Ms Misra's submission that it is for the claimant to establish which limb of the protected act test she relies on to show that this was a protected act, and that the claimant is put to proof in this respect.

494. This was the meeting at which the claimant first complained about meetings being set at short notice, not having an agenda in advance and not being held in private and said that this had an impact on her anxiety. If these are the *"policies, procedures and practices"* which she is referring to in this allegation, then she was certainly drawing it to the respondent's attention that she considered that these practices had an impact on her anxiety. However, she was not, either expressly or impliedly, saying that, for example, the respondent implemented these practices because of her disability. The claimant has not, therefore, proved that, in drawing this to the respondent's attention, she was making an allegation that the respondent had contravened the Act.

495. This was not, therefore, a protected act.

7.2.13 An e-mail to Ms Clare Budden of 11 March 2019 where she complained that the Respondent was harassing her by initiating meetings without notice.

496. This is the email which, unknown to Ms Morris, the claimant sent to Ms Budden, copied to Ms Mistry, in relation to Ms Morris asking her whether she would like to catch up to discuss the proposed schedule of meetings going forwards. We have quoted the email in full in our findings of fact and refer to that for the full context. In the email, the claimant asks that the respondent stops Ms Morris from *"doorstepping"* her for meetings and states that *"I consider this to be harassment"*. The email than references that the claimant had previously explained what she considered to be the impact of "being doorstepped" on her disability and that the respondent therefore knows about this.

497. We note and accept Ms Misra's submission that it is for the claimant to establish which limb of the protected act test she relies on to show that this was a protected act, and that the claimant is put to proof in this respect. However, reading the email as a whole, it is clear that this is not a bare allegation of harassment but that the allegation is of harassment related to the claimant's disability. This is particularly so given that the claimant stresses that Ms Morris already had knowledge of the alleged impact of "doorstepping" on the claimant; the fact that, as the claimant sees it, Ms Morris continued to "doorstep" her is

clearly an allegation of harassment related to her disability of anxiety. The claimant has, therefore, proven that the allegation in this email was of a contravention of the Act.

498. This was, therefore, a protected act.

7.3 Did the Respondent believe that the Claimant might do a protected act? The Claimant claims that Ms Morris believed that she might do a protected act when she told Ms Morris on 21 February 2019 that she would be speaking to Dr Hepworth about her bullying and harassment.

499. During a meeting on 21 February 2019, the claimant told Ms Morris that she was going to be meeting with Dr Hepworth on 25 February 2019 to *"follow up her complaint"*. Ms Morris therefore only knew that the claimant was going to meet Dr Hepworth to discuss some form of concern but not what that concern was or why the claimant was proposing to do this. Furthermore, the claimant never put it to Ms Morris in cross-examination that she knew that the claimant would or might do a protected act in her meeting with Dr Hepworth. There was, therefore, nothing to indicate to Ms Morris that the claimant might do a protected act in the meeting with Dr Hepworth (and in fact, as we have found, the claimant did not do a protected act in her meeting with Dr Hepworth).

500. Ms Morris did not, therefore, believe that the claimant might to a protected act.

*Summary of proven protected acts*

501. In summary, therefore, the only proven protected acts are, in addition to the claimant's first grievance and first claim (issue 7.1), those at issues 7.2.6 (two of them); 7.2.11; and 7.2.13. These are, therefore, the only protected acts which can be relied on for the purposes of the claimant's victimisation claims.

Victimisation - detriments

502. Before going through the individual alleged detriments, we remind ourselves that paragraph 7.6 of the list of issues sets out an agreed table of which of the alleged detriments are said to have been done as a result of which alleged protected acts. Any complaints which rely only on protected acts which we have found not to have been proven will therefore fail from the start for that reason alone.

503. However, having been through that table, it is only the alleged detriments at 7.4.1(a); 7.4.1(b); 7.4.2; and 7.4.3 (the first entry in that table) which fall into this category and which therefore fail from the start. All the other alleged detriments are said to have been as a result of alleged protected acts amongst which are included at least one proven protected act (in most cases the protected acts at 7.1, in other words the first grievance and first claim).

504. We turn now to the individual alleged detriments.

7.4.1 Aggressive behaviour by Dr Wilson, specifically by

(a) rolling her eyes during the interview on 17 January 2019;
(b) her interview scoring notes from 17 January 2019.

505. As we have already found, Dr Wilson did not roll her eyes during the interview. Furthermore, we accept Ms Misra's submission that nothing about Dr Wilson's scoring notes was detrimental insofar as it represented Dr Wilson's genuine views of the claimant as an interview candidate. Furthermore, in no sense could writing her interview scoring notes in relation to the claimant be described as "aggressive behaviour", which is the basis for this factual allegation. The factual allegation is, therefore not made out and the complaint fails for that reason.

506. Furthermore, there is no evidence that Dr Wilson wrote her scoring notes for the claimant for any reason other than her genuine assessment of the claimant as an interview candidate and certainly not as an act of retaliation against anything the claimant did or said. The complaint fails for this reason as well.

507. Finally, as noted, this allegation of detriment is said to be only because of an alleged protected act (7.2.4) which was not proven. It therefore fails for that reason as well.

7.4.2 Dr Wilson scoring her unfairly during the interview process on 17 January 2019.

508. For the reasons set out in our findings of fact above, Dr Wilson did not score the claimant unfairly during the interview process on 17 January 2019. The factual allegation is, therefore, not made out in the complaint fails for that reason.

509. Furthermore, as noted, this allegation of detriment is said to be only because of an alleged protected act (7.2.4) which was not proven. It therefore fails for that reason as well.

7.4.3 Not selecting the Claimant for the post of Corporate Partnerships Associate further to interview.

510. The claimant was not selected for this post. We accept that this allegation, contrary to Ms Misra's resubmission, does amount to a detriment. Not being selected for the post is more than merely an "unjustified sense of grievance" on the part of the claimant, in the same way that being selected for redundancy or not promoted could be, regardless of how fair and reasonable the process which led to that decision and the decision itself were. We consider that, following the guidance in Shamoon, a reasonable worker would or might take the view that not being appointed to the Full Time Corporate Partnerships Assistant role was in all the circumstances to his or her disadvantage.

511. However, there is no evidence that the decision not to select the claimant was for any other reason other than that the four interviewers on the panel all genuinely and rightly considered that another candidate was a far better candidate than the claimant (which we have found to be the only reason why

they did not select the claimant); the reason was certainly not as an act of retaliation against anything the claimant did or said. The complaint fails for this reason as well.

512. Finally, as noted, this allegation of detriment is said to be only because of an alleged protected act (7.2.4) which was not proven. It therefore fails for that reason as well.

7.4.4 Comments made to the Claimant by Ms Morris, specifically:
(a) "I have heard from several people that you are not a team player" on 21 February 2019".
(b) "absences [from Charlie] have not gone unnoticed" on 28 February 2019.

513. Ms Morris's evidence was that she did not recall using the exact words that people had said that the claimant was not a team player, and we accept that she did not use those precise words. However, as she freely admitted, she did set out a number of examples of information which had come to her attention, and on which she wanted the claimant's opinion, which if correct was indeed evidence that the claimant was not a team player; for example, negative comments which the claimant made at Dr Esteras-Chopo's leaving drinks, non-attendance at meetings and not helping at the AYCI event.

514. Ms Morris did state in the meeting of 28 February 2019 that absences from the claimant had not gone unnoticed.

515. However, both of these sets of comments at these respective meetings were normal management actions. Ms Morris would not have been doing her job as the claimant's manager properly if she had not raised these concerns with her. They were serious. They impacted on the proper running of the organisation and on others in the organisation. Furthermore, they were relevant from the point of view of the claimant's own personal development. It was perfectly proper and correct for Ms Morris to make these points.

516. We accept Ms Misra's submission that, in this case, the raising of legitimate queries through line management is not a detriment. Rather, this is an "unjustified sense of grievance" on the claimant's part. As there is no detriment, these complaints fail.

517. Furthermore, there is no evidence that Ms Morris taking these actions was for any other reason than the raising of legitimate queries through line management; the reason was certainly not as an act of retaliation against anything the claimant did or said. The complaints fail for this reason as well.

518. Furthermore, the only proven protected acts which are relied on for the purposes of issue 7.4.4(a) are the claimant's first grievance and first claim. These were not submitted until after this alleged detriment had taken place. Ms Morris' actions could not, therefore, have been done because of those protected acts. The complaint, therefore, fails for this reason too.

519. That point applies equally to issue 7.4.4(b) in so far as that allegation relies on the first grievance and first claim. The only other proven protected acts

relied on in relation to issue 7.4.4(b) are the two protected acts set out at issue 7.2.6. However, these were an email from the claimant to Ms Budden and a disclosure made by the claimant to Ms Budden at the meeting the claimant had with Ms Budden on 14 February 2019. These disclosures were not made to Ms Morris and there is no evidence that the contents of these disclosures were passed on to Ms Morris, who is the person who is alleged to have carried out the victimisation for the purposes of issue 7.4.4(b). We therefore find on the balance of probabilities that Ms Morris was not aware of these two protected acts under issue 7.2.6. As she was not aware of them, she could not have subjected the claimant to detrimental treatment because of them. Issue 7.4.4(b) therefore also fails for this reason too.

7.4.5 Ms Morris criticising the Claimant's performance:
(a) on 21 February 2019 during a meeting with the Claimant.
(b) on 28 February 2019 during a meeting with Ms Clare Budden.

520. We accept Ms Misra's submission that Ms Morris did not "criticise" the claimant's performance at the meeting of 21 February 2019. She did ask the claimant at the meeting of 21 February 2019 for her opinion about the various reports about her recent behaviour which had come to Ms Morris's attention; however, that is not the same as criticising her performance. The allegation in relation to the 21 February 2019 meeting is not therefore made out and that complaint fails.

521. At the 28 February 2019 meeting, Ms Morris did tell the claimant that that absences from her had not gone unnoticed and raised concerns about a lack of attendance at some key meetings. Whilst we accept that Ms Morris did this with the claimant's best interests in mind and that it was entirely reasonable of her to do so, we do consider that this amounts to "criticism" of the claimant's performance, so the factual basis of this allegation is made out.

522. However, this was all done by way of reasonable line management of the claimant in the circumstances. There is no evidence that it was done to retaliate against anything that the claimant had done or said. Both complaints therefore fail for this reason.

523. Furthermore, the only proven protected act which issue 7.4.5(a) is said to have been done because of is issue 7.2.6. We refer to our findings above that Ms Morris was not aware of this protected act. Therefore, she could not have taken the actions which she did on 21 and 28 February because of that protected act. For this reason too, issue 7.4.5(a) fails.

524. The same reasoning, in relation to issue 7.2.6, applies equally to issue 7.4.5(b). Furthermore, the only other proven protected acts relied on for the purposes of issue 7.4.5(b) are the claimant's first grievance and first claim. As these were both submitted after 28 February 2019, what Ms Morris did on 28 February 2019 could not have been because of them. Issue 7.4.5(b) therefore fails for this reason too.

7.4.6 Being set up to fail by being given unrealistic tasks / expectations, specifically:

(a) The Respondent expecting the Claimant to attend coffee mornings at the South Kensington campus on dates when she was working at a different location or at home on Tuesday 29 January 2019;
(b) On 21 February 2019 Ms Morris sent the Claimant an invitation at 08:14 for a meeting starting at 09.30 without specifying its location or purpose;
(c) The Respondent expecting the Claimant to attend coffee mornings at the South Kensington campus on dates when she was working at a different location or at home on Tuesday 26 February 2019.
(d) On 8 March 2019 at 10.32 Ms Morris unilaterally rearranged a meeting to 08:30 to take place on 11 March 2019;

525. These four allegations of victimisation are four further instances of wholly reasonable management requests made to the claimant. It has not even been necessary to reference them all in our findings of fact above; as they stand in the list of issues, they are clearly ordinary quotidian events. There is no evidence that they were done to retaliate against anything that the claimant had done or said. All these complaints of victimisation therefore fail for this reason.

526. Furthermore, they are said to have been done because of the proven protected acts of the claimant's first grievance and first claim (in the case of all four of them) and because of the proven protected acts at issue 7.2.6 (in the case of (a) and (d) above). All these four alleged detriments are said to have taken place on dates prior to the claimant's presentation of her first grievance and her first claim, so they cannot have been done because of those protected acts. Furthermore, the alleged perpetrator in the case of 7.4.6(a) & (d) was Ms Morris as the claimant's line manager. As we have found, Ms Morris was not aware of the protected acts at 7.2.6. She could not, therefore, have taken these actions because of those protected acts. For these reasons too, all four of these complaints fail.

7.4.7 Being sent "check-up e-mails" specifically:
(a) On 25 February 2019 Ms Morris forwarded a request to the Claimant at 12:45 to contact an external party and she chased up this request with an additional e-mail on 26 February 2019 at 16.23.
(b) On 12 March 2019 when Ms Morris e-mailed the Claimant and copied HR expressing "concern" that an out of office response was on.

527. As to complaint 7.4.7(a), the 25 February 2019 "chaser" email from Ms Morris to the claimant was in the context of an outstanding request which had been with the claimant for several weeks and was time sensitive. Ms Morris had then asked the claimant to carry out the task "as soon as possible" earlier in the day on 25 February 2019 and to let her know once she had done it. Towards the end of the day, and as the claimant had not sent Ms Morris confirmation that she had done it, Ms Morris asked her to confirm whether she had done it. When it became clear that the claimant had not yet done it, Ms Morris undertook the task herself and told the claimant that she would do so. She did not chastise the claimant in any way for this. This was normal management behaviour by Ms Morris and could in no sense be described as detrimental treatment of the claimant. This is another clear example of an unjustified sense of grievance on the part of the claimant. As it is not detrimental treatment, this complaint fails.

528. Furthermore, Ms Morris did this to ensure that a work task which was important and time sensitive was in fact done. There is no evidence that she did so in retaliation for anything which the claimant had said or done. For this reason too, this complaint fails.

529. Furthermore, the proven protected acts relied on by the claimant are, once again, the claimant's first grievance and first claim and the protected acts at issue 7.2.6. The treatment which forms the basis of this alleged detriment took place on 25 February 2019. This was prior to the claimant's presentation of her first grievance and her first claim, so the treatment cannot have been done because of those protected acts. Furthermore, as we have found, Ms Morris was not aware of the protected acts at 7.2.6. She could not, therefore, have taken this action because of those protected acts. For these reasons too, this complaint fails.

530. As to complaint 7.4.7(b), the 12 March 2019 email was sent by Ms Morris out of concern for the claimant's safety, when she was surprised because she received an automatic email reply from the claimant stating that she was currently away from the office almost an hour before the end of her working hours. This was not detrimental treatment; to the contrary, Ms Morris was looking out for the claimant's safety. As it was not detrimental treatment, this complaint fails.

531. Furthermore, the reason for the treatment was concern for the claimant's safety. There is no evidence that Ms Morris sent the email in retaliation for anything which the claimant had done or said. The complaint fails for that reason as well.

532. The proven protected acts relied on in relation to complaint 7.4.7(b) are the claimant's first grievance and first claim, and the protected act at 7.2.13, which was the claimant's email of 11 March 2019 to Ms Budden in which she complained that Ms Morris was "doorstepping" her and that she considered this to be harassment.

533. There is no evidence that Ms Morris was made aware of the 11 March 2019 email to Ms Budden, and we therefore find on the balance of probabilities that she was not aware of it and certainly not at the time of the alleged detrimental treatment on 12 March 2019. As she was not aware of it, she could not have done what she did on 12 March 2019 because of that protected act. This complaint therefore also fails for this reason too to the extent that it is based upon the proven protected act at 7.2.13.

534. The first claim was presented on 7 May 2019. That post-dates the alleged detrimental treatment on 12 March 2019. The treatment could not, therefore, have been done because of the first claim. This complaint therefore also fails for this reason too to the extent that it is based upon the first claim.

535. The first grievance was raised by the claimant on 10 March 2019. This predates the alleged treatment on 12 March 2019. Dr Hepworth informed Ms Morris that the claimant had raised a grievance on the evening of 11 March 2019,

and he confirmed this in an email to Ms Morris early on 12 March 2019. Ms Morris was therefore aware that the claimant had raised a grievance prior to her sending the email later on 12 March 2019 seeking to find out where the claimant was after she got her automatic email reply (although there is no evidence that she knew of and was therefore aware of the contents or detail of that lengthy grievance by then). However, there is no evidence that she sent it because the claimant raised the first grievance; by contrast, the reason she sent it was out of concern over the claimant's safety. The complaint therefore fails to the extent that it is based upon the first grievance too.

7.4.8 The comments made by Dr Wilson in direct response to the Claimant's First Grievance (22 March 2019) which makes assumptions regarding the Claimant's disabilities including: *"she suffered from anxiety and depression and the found planning activities difficult."*

536. The exact quotations from Dr Wilson's response to the claimant's grievance are as set out in our findings of fact above. As noted, the claimant's partial quotation is misleading and makes it sound as if Dr Wilson was expressing her opinion of the claimant as opposed to merely setting out her recollection of what the claimant said to her in Japan, which is what Dr Wilson was actually doing in that response document. Dr Wilson did not, therefore, refer to the claimant's disability negatively in making these statements as she was merely setting out her recollection of what the claimant had said to her and not expressing any opinion of her own. This was not detrimental treatment as Dr Wilson was not expressing any opinion of her own but merely honestly and reasonably setting out her recollection of what the claimant had told her. As there was no detriment, the complaint fails.

537. Furthermore, Dr Wilson did not do this "because of" the fact that the claimant did the protected act of raising the grievance. The fact that the claimant had raised a grievance was of course the background to Dr Wilson making these comments as she was asked to provide a response to that grievance. However, as set out in our summary of the law above, the test in victimisation is not a "but for" test. We refer to the case of Khan which we have referenced in our summary of the law, which was another case where the protected act was the background to the particular action taken by the respondent in that case but was not the reason for that action and we reiterate the House of Lords judgment that employers who act *"honestly and reasonably"* ought to be able to take steps to preserve their position in pending discrimination proceedings without laying themselves open to a charge of victimisation. Similarly, as is the case here, a respondent should be able to put in a response to a complaint honestly and reasonably without laying itself open to a charge of victimisation. The reason Dr Wilson did put in her response was honestly and reasonably to give her account of what happened; the reason was not the protected act itself. To find otherwise would be to render as illegal victimisation any attempt by any employer to defend an allegation of discrimination against it. The complaint fails for this reason too.

538. Furthermore, the proven protected acts relied on by the claimant are, once again, the claimant's first grievance and first claim and the protected acts at issue 7.2.6. The treatment which forms the basis of this alleged detriment took place on 22 March 2019. This was after the presentation of the first grievance

and Dr Wilson was clearly aware of it because she was writing a response to it. However, this was prior to the claimant's presentation of her first claim, so the treatment cannot have been done because of that protected act. Furthermore, as we have found, for the same reasons that we have found that Ms Morris was not aware of the protected acts at 7.2.6 (which were made to Ms Budden only), we also find that Dr Wilson was not aware of the protected acts at 7.2.6. Dr Wilson could not, therefore, have taken this action because of those protected acts. For these reasons, this complaint also fails to the extent that it relies on the first claim and the proven protected acts at 7.2.6.

7.4.9 The failure by Ms Catherine Watt to properly consider concerns raised by the Claimant pertaining to the appointment of Dr Alistair McDermott as Chair of the First Grievance panel.

539. We refer to our findings of fact in full in relation to these issues. However, in summary, the concerns raised by the claimant were considered properly by the respondent, at each of the stages when the claimant raised them. The respondent simply took a different view of matters to that of the claimant and that view was not an unreasonable one. We do not, therefore, consider that this amounts to detrimental treatment of the claimant; a reasonable worker would not take the view that the treatment was in all the circumstances to his or her disadvantage. As there is no detriment, this complaint fails.

540. Furthermore, although the claimant liaised with Ms Watt when she made certain of her complaints about Dr McDermott being appointed to investigate her grievance, Ms Watt liaised with Dr McDermott and ultimately it was he who decided that there was no reason for him to recuse himself. In naming Ms Watt as the alleged perpetrator of this alleged act of victimisation, the allegation is, therefore, aimed at the wrong person. It fails for that reason too.

541. Furthermore, Ms Watt's role in this was to liaise with Dr McDermott and communicate what were reasonable decisions to the claimant. There is no evidence to suggest that she did so in retaliation for anything which the claimant had said or done. For this reason too, this complaint fails.

542. The proven protected acts relied on for the purposes of this allegation are the claimant's first grievance and her first claim. Claimant's first grievance obviously predated these allegations. However, the first claim was presented on 7 May 2019. That post-dates Ms Watt's response on 15 March 2019 to the first of the claimant's complaints about Dr McDermott's appointment; that response could not therefore have been because of the first claim. Furthermore, the responses to the claimant's second complaint (in mid May 2019) and to her third complaint (in early June 2019) were not long after the claimant had presented her claim to the tribunal on 7 May 2019. Given the delay that there usually is between a claim being presented and being processed and sent to the respondent, it is far from clear that the respondent in general would have been aware by the stage of these responses that the claimant had submitted the first claim, let alone that the respondent would have informed Ms Watt and Dr McDermott of the same. For that reason, we find that on the balance of probabilities, Dr McDermott and Ms Watt were not aware of the first claim at the time of these responses. These responses could not therefore have been done

because of the first claim. In summary, therefore, to the extent that this allegation relies on the protected act of the first claim, it fails for this reason too.

7.4.10 The proposal by Ms Maria Lynch to postpone the First Grievance appeal meeting (23 July 2019) scheduled for 25 July 2019.

543. Again, we refer to our findings of fact above for the full context of this allegation. However, the fact that Ms Lynch suggested that the meeting should be postponed was because she had been unable to find a suitable room. Indeed, in doing so she was acting in the claimant's own interests in making this suggestion. There was therefore no detrimental treatment; this is another example of an unjustified sense of grievance on the part of the claimant. The complaint fails for that reason.

544. Furthermore, there is no evidence to suggest that Ms Lynch did so in retaliation for anything which the claimant had said or done or because of the claimant's first grievance or first claim (which are the proven protected acts relied on for the purposes of this allegation); quite the contrary, Ms Lynch did so because she was, in the light of what she knew about the claimant's conditions, trying to ensure that there was a suitable room for her for the hearing; in other words trying to act in her best interests. For this reason too, this complaint fails.

7.4.11 The comments made by Ms Cox during the meeting of 25 July 2019.

545. Despite the unreasonable generality of the way this allegation is phrased, we assume that the comments referred to are the three questions which Ms Cox asked relating to the claimant's perception of actions taken by others. We refer again to our findings of fact for the full context and background to these comments, which is important. We accept that the claimant considered them offensive and detrimental to her. However, in the full context of what Ms Cox was trying to do, which was to help get an understanding of the claimant's grievance and of how she might be able to put in place recommendations that might help the claimant get back to work, they were not detrimental. The claimant, as is often the case, sees the world very differently from others but we consider, in the proper context, which has now been explained to the claimant on a number of occasions, both at the time and at this tribunal, that the fact that she considers them detrimental is an example of an unjustified sense of grievance on her part; considering the whole context, a reasonable worker would not take the view that the treatment was in all the circumstances to his or her disadvantage. These comments did not therefore amount to a detriment. As the comments did not amount to a detriment, this complaint fails for that reason.

546. Furthermore, there is no evidence to suggest that Ms Cox made these comments in retaliation for anything which the claimant had said or done or because of the claimant's first grievance or first claim (which are the proven protected acts relied on for the purposes of this allegation); quite the contrary, Ms Cox made them because she was trying to assist the claimant. For this reason too, this complaint fails.

7.4.12 The initial failure by Ms Kelly and Ms Lynch to acknowledge the Second Grievance;

547. Ms Lynch was not copied into the claimant's second grievance email. Ms Kelly was on annual leave holiday at the time when the claimant's email was sent on 13 August 2019. The claimant was informed of this. Ms Kelly dealt with matters once she got back from holiday. As the reason why Ms Lynch and Ms Kelly did not acknowledge receipt of the claimant's email straightaway was because, in the one case, Ms Lynch was not copied to it, and in the other case, Ms Kelly did not receive it because she was away on holiday, there was no detrimental treatment. This complaint therefore fails for this reason.

548. Furthermore, given that they were both unaware of the email containing the second grievance at the time, it cannot be the case that their failure to acknowledge receipt of the second grievance soon after it was sent could have been in retaliation for anything which the claimant had said or done or because of the claimant's first grievance or first claim (which are the proven protected acts relied on for the purposes of this allegation); rather, they didn't reply because they didn't know about the email at the time. For this reason too, this complaint fails.

7.4.13 The decision by Ms Kelly on 29 August 2019 to appoint Ms Cox to investigate the Second Grievance submitted by the Claimant.

549. This allegation is not true. Ms Cox was not appointed to investigate the second grievance. She was asked to provide a response to the second grievance, which was about allegations about her conduct (in the same way that Ms Morris and Dr Wilson were asked to provide a response to the first grievance, which was against them). However, the second grievance was investigated by Dr Watkins. As the factual allegation is not made out, this complaint fails.

7.4.14 The comments made by Ms Cox by e-mail to Ms Lynch and Ms Kelly (30 August 2019): "In light of Ms Milnes' complaint about the appeal hearing, I will amend my outcome letter. I think it important now to include or make reference to her dismissive approach throughout…"

550. We refer in full to our findings of fact in relation to this comment and its context. Once again, the claimant has partially selected the section of the relevant email and we refer to the fuller quotation in our findings of fact, which completes the sentence left unfinished above and gives an example which provides context for the statement which the claimant has partially quoted at allegation 7.4.14.

551. Ms Cox had not originally intended in her grievance appeal outcome to place a lot of emphasis on the claimant's dismissive approach at the grievance appeal meeting, not least because of her concern that this would have an adverse impact on the claimant. That might in turn have an adverse impact on the possibility of trying to facilitate the claimant's return to the workplace. In short, she was being kind and considerate to the claimant. However, as noted, the basis of the claimant's complaint of 13 August 2019 was that Ms Cox's approach was "adversarial". The reason that Ms Cox therefore thought that it was now important to include this was to note that the claimant's approach (such as saying *"move on"*) had made the meeting, at times, challenging and to go

some way to explain why there had been occasions where she had had to repeat or rephrase a question. By including those details, therefore, Ms Cox was simply answering the allegations made against her by the claimant. That was a reasonable thing to do. Furthermore, this email is a private email and was not directed to the claimant (albeit she has since seen it as a result of the disclosure process).

552. We remind ourselves again that the test for victimisation complaints is not a "but for" test and we refer again to the case of Khan. What Ms Cox is doing by deciding to include or make reference in her outcome letter to the claimant's dismissive approach is to defend herself against the allegations made in the claimant second grievance. She is honestly (as the claimant was dismissive in her approach at the first grievance appeal hearing) and reasonably taking steps to preserve her position in relation to allegations of discrimination and is entitled to do so without laying herself open to a charge of victimisation. Ms Cox did not, therefore, send this email as retaliation to anything the claimant did or said but did so to defend her position. The relevant causation is not made out and this complaint therefore fails for this reason too.

553. Interestingly, the proven protected acts relied on in relation to this allegation are the claimant's first grievance and first claim. It seems particularly strange to pick these protected acts as surely, given what the claimant is alleging, the only potentially credible charge would have been that Ms Cox wrote this email because of the allegations in the second grievance, as it is what the claimant alleged in the second grievance which is the background and context to Ms Cox's email. In relation to the first grievance and the first claim, there is clearly no causal link whatsoever. As the claimant has not pleaded that the second grievance was a protected act, she could not succeed in this claim on that basis. However, even if it had been a proven protected act for the purposes of this claim, victimisation would not have been established for the reasons in the paragraphs above.

7.4.15 The way in which the Respondent dealt with the Claimant's data subject access request as set out in paragraph 33 of the Second Claim, in particular:
(a) on 21 February 2019, Ms Mitchell circulating information in a subject access request to Ms Morris and via Ms Morris (21 February 2019) to the interview panel for the Corporate Partnerships Associate role alongside the disclosure of the Claimant's personal data;
(b) Ms Watt's failure to respond to the Claimant's email dated 14 March 2019, as followed-up by the Claimant in an email to Ms Watt and Ms Kelly on 17 April 2019;
(c) the failure of Subject Access Team to respond to the Claimant's email of 5 June 2019 entitled "Re. CMSAR29.3.19.";
(d) the email from Ms Watt on 6 June 2019 advising the Claimant to "speak to the SAR team in the first instance to seek a resolution";
(e) Mr Robert Scott's response of 11 July 2019 to the Claimant's letter of complaint dated 17 June 2019; and
(f) the First Grievance report communicated to the Claimant on 20 June 2019.

554. We have not gone into all of the numerous allegations above in our findings of fact, firstly because most of them were not even pursued in cross-examination anyway and secondly because those allegations represent ordinary

everyday behaviour in dealing with the claimant's SARs that is self-evidently not acts of victimisation or done as retaliation for anything the claimant did or said or because of the claimant's first grievance or first claim (which are the proven protected acts relied on for the purposes of this set of allegations).

555. We make a few comments in summary as regards some of them very briefly as follows. Ms Mitchell did nothing out of the ordinary in circulating information about the claimant's SAR to Ms Morris as she was the person who had the interview documents which would be necessary to send to the claimant in order to deal with her SAR. Ms Morris only circulated the email to the rest of the panel out of courtesy. Both Mr Scott's response of 11 July 2019 and the first grievance report were reasonable documents which responded reasonably to the concerns raised by the claimant.

556. We do not consider that any of these allegations, either individually or as a whole, amount to detrimental treatment of the claimant and some of them are trivial beyond belief. Again, they amount to an unjustified sense of grievance on the claimant's part. As there is no detrimental treatment, all of these complaints fail.

557. Furthermore, there is no evidence whatsoever to suggest that any of these things were done in retaliation for anything the claimant did or said or because of the claimant's first grievance or first claim. All of these complaints therefore fail.

7.5 If so, was this because the Claimant did a protected act?

558. This issue has been dealt with as we have gone through the various allegations of detriment above.

*Summary - victimisation*

559. All the complaints of victimisation fail.

<u>Protected disclosures</u>

8.1 Whether the Claimant's First Grievance and the First Claim amount to protected disclosures within the meaning of section 43B(1)(b) ERA. In particular, whether the putative disclosures were disclosures of information and whether the Claimant held a reasonable belief in the public interest at the material time of making the putative disclosures.

560. As Ms Misra rightly submits, the burden of proof is on the claimant to prove that she has made protected disclosures.

561. As already noted, it is striking that the claimant has not advanced her complaints of detriment or dismissal on the alleged basis of protected disclosures at the hearing at all or with any witness of the respondent. Indeed, in her submissions, she only addressed the protected disclosure complaints orally in response to Ms Misra's submissions on them and only did so in the following terms:

"Regarding whistleblowing and protected disclosures, I don't understand enough about it. What I do know is to say that the respondent did not comply with its public sector equality duty and I refer to whistleblowing in some emails to Ms Budden. So whilst I did not refer to it, there is a public element. I did not have the mental bandwidth to provide every argument."

562. With no disrespect to the claimant, who is not an employment lawyer, that statement in itself shows that the claimant does not even understand what a protected disclosure complaint is, let alone what is required to establish a protected disclosure complaint. The public sector equality duty is something different and separate from the law on protected disclosures. It is perhaps unsurprising, therefore, that the claimant has made no attempt to establish such a complaint at this hearing, either in the evidence she has brought, in questions to the respondent's witnesses or in submissions. That is tantamount to abandoning the protected disclosure detriment and dismissal complaints.

563. We would add that, as set out in issue 8.1, it appears that the claimant's first grievance and first claim are what are said to amount to protected disclosures. As has already been noted, both of those documents are extremely lengthy and contain numerous allegations of all sorts of things. It is not reasonable or appropriate for the tribunal to try and establish what, if any, of the paragraphs in those two lengthy documents might amount to a protected disclosure, particularly without even being told by the claimant which elements of those documents are said to amount to protected disclosures, let alone why and on what basis.

564. We therefore find, firstly, that the claimant has indeed abandoned her protected disclosure complaints.

565. If, however, we are wrong about that, we find the claimant has not proven (or, in fact, even attempted to prove) any protected disclosure.

566. As there are no protected disclosures, it follows that all of her protected disclosure detriment complaints and her constructive unfair dismissal complaint, which is predicated on her dismissal being solely or mainly because of making a protected disclosure or disclosures, fail.

<u>Protected disclosure - detriment complaints</u>

8.2 If so, whether the Respondent subjected the Claimant to detriment on grounds of the protected disclosure as alleged in paragraph 29 of the Second Claim (i.e. those matters relied on as acts of direct disability discrimination).

567. As there are no protected disclosures, it is not strictly necessary to go through the individual allegations of detriment in relation to the protected disclosure complaints. However, we do so briefly for completeness' sake. As noted, whilst these were not in the original list of issues, that list of issues cross-references to paragraph 29 of the second claim, which contains four allegations of detriment.

a. the Respondent's sharing of occupational health reports by Human Resources without the Claimant's consent;

568. Ms Budden did offer to share a copy of the first occupational health report with Ms Morris in the event that she had not seen it already and Ms Morris replied to say that she would appreciate seeing a copy. Ms Budden therefore sent it to her. Ms Budden did not get express consent from the claimant at the time. However, consent had previously been given the previous year for the report to be provided to the claimant's then line manager, Dr Magdalenic-Moussavi. Ms Morris stepped into the shoes of Dr Magdalenic-Moussavi as the claimant's line manager when Dr Magdalenic-Moussavi went on maternity leave. We therefore accept Ms Misra's submission that there was implied consent for the report to be shared with the new line manager as express consent been given in relation to the original line manager. The factual basis of this allegation is not therefore made out and the complaint therefore fails.

569. However, if we are wrong about that, it is nevertheless the case that there were very good reasons (in the claimant's own interests) for Ms Morris to see the report. Furthermore, the claimant never suggested to Ms Budden (whom she has described as *"lovely"*) that her motivation in disclosing the report to Ms Morris was because of an alleged protected disclosure. It manifestly was not. The reason for disclosing the report was to help Ms Morris do her job and fulfil her responsibilities to the claimant as her line manager and not because the claimant was disabled. The complaint therefore fails.

b. the Respondent's sharing of personal data by Dr Simon Hepworth to a colleague, Dr Rebecca Wilson, without the Claimant's knowledge or consent;

570. As set out in our findings of fact, we found that on the balance of probabilities Dr Hepworth did not have the claimant's express consent to speak to Dr Wilson or to disclose to her that the claimant suffered from mental health disabilities. That was, however, what Dr Hepworth genuinely believed that the claimant expected him to do and his decision to do so was an understandable and reasonable one in the circumstances for the reasons set out in our findings of fact. Furthermore, he did so without disclosing the nature of the claimant's disabilities. Dr Hepworth was clear in his evidence that he would have done the same in respect of any employee who had come to him in this type of situation. We therefore find that the reason why he did so was not because of any alleged protected disclosure but in order to provide a solution to the issues which the claimant had raised with him. This complaint therefore fails.

c. the Respondent's comments made by Dr Rebecca Wilson in a formal response to the Claimant's grievance which negatively references the Claimant's disability/disabilities including: "she suffered form anxiety and depression and found planning activities difficult.." and "She said openly that she found… the pressure hard to cope with…"

571. The exact quotations from Dr Wilson's response to the claimant's grievance are as set out in our findings of fact above. As noted, the claimant's partial quotation is misleading and makes it sound as if Dr Wilson was expressing her opinion of the claimant as opposed to merely setting out her

recollection of what the claimant said to her in Japan, which is what Dr Wilson was actually doing in that response document. Dr Wilson did not, therefore, refer to the claimant's disability negatively in making these statements as she was merely setting out her recollection of what the claimant had said to her and not expressing any opinion of her own. The factual basis of the allegation is not therefore made out and the complaint fails for that reason alone. Furthermore, there was no detrimental treatment, and the complaint fails for that reason as well.

572. In any event, it was not put to Dr Wilson that she made these comments because of any alleged protected disclosure and there is no evidence whatsoever to suggest that she did. Rather, she made them to give her honest recollection of what happened and, as she had been asked to do, to set out her recollection of events in response to the allegations in the claimant's grievance. They were not made because of any alleged protected disclosure. The complaint fails for that reason too.

d. the comments made by Ms Cox during the meeting of 25 July 2019;"

573. Despite the unreasonable generality of the way this allegation is phrased, we assume that the comments referred to are the three questions which Ms Cox asked relating to the claimant's perception of actions taken by others. We refer again to our findings of fact for the full context and background to these comments, which is important. We accept that the claimant considered them offensive and detrimental to her. However, in the full context of what Ms Cox was trying to do, which was to help get an understanding of the claimant's grievance and of how she might be able to put in place recommendations that might help the claimant get back to work, they were not detrimental. The claimant, as is often the case, sees the world very differently from others but we consider, in the proper context, which has now been explained to the claimant on a number of occasions, both at the time and at this tribunal, that the fact that she considers them detrimental is an example of an unjustified sense of grievance on her part; considering the whole context, a reasonable worker would not take the view that the treatment was in all the circumstances to his or her disadvantage. These comments did not therefore amount to a detriment. As the comments did not amount to a detriment, this complaint fails for that reason.

574. Furthermore, there is no evidence to suggest that Ms Cox made these comments because of any alleged protected disclosure; quite the contrary, Ms Cox made them because she was trying to assist the claimant. We therefore find that they were not made because of any alleged protected disclosure. For this reason too, this complaint fails.

*Summary - protected disclosure detriment complaints*

575. All the protected disclosure detriment complaints fail.

Protected disclosure - unfair constructive dismissal

9.1 Did the Respondent conduct itself in a manner calculated or likely to seriously damage or destroy mutual trust and confidence so as to amount to a repudiatory breach of contract entitling the Claimant to resign on 24 September 2019 in response thereto by reference to the alleged acts of direct disability discrimination set out in the Second Claim (paragraph 29). If the Claimant relies on a cumulation of matters, what is the last straw?

576. First, we find that the respondent has not conducted itself in a manner calculated or likely to seriously damage or destroy mutual trust and confidence so as to amount to a repudiatory breach of contract entitling the claimant to resign. As will be evident from our findings above, we find that the respondent has not so conducted itself in any way, be it (a) in relation to the discrimination complaints (all of which have failed); or (b) in relation to the protected disclosure complaints (all of which have failed); or (c) in any other aspect of its behaviour as regards the claimant. The claimant was not, therefore, constructively dismissed at all and therefore the complaint fails at this stage for this reason.

577. For completeness' sake, we should add that, as the claimant does not have the two complete years' continuous employment to bring a complaint of ordinary unfair constructive dismissal, it would not profit her for the purposes of her unfair dismissal claim even if she had established either (a) or (c) above. She can only succeed if she establishes (b) above, as there is no continuous employment requirement for a dismissal because of making a protected disclosure. Furthermore, the issue at 9.1 appears to be predicated on the acts of alleged direct disability discrimination (in other words (a) above) in which case it was doomed to fail (in other words, it would have failed even if the claimant had been successful in her disability discrimination complaints). We accept Ms Misra's submission that there is a contradiction in pleading that the constructive dismissal is based principally on disability discrimination and pleading that it is based on section 103A ERA which requires that the sole or principal reason for the dismissal should be the protected disclosures; there cannot, after all, be more than one sole or principal reason.

578. However, the fact of the matter is that the claimant has not even established that there were protected disclosures, so she cannot rely on section 103A ERA. Even if she had been constructively dismissed (which we have found that she has not been), she could not have been constructively dismissed because of making protected disclosures. The complaint, therefore, fails for this reason too.

9.2 If so, did the Claimant in fact resign in response to the breach of the Respondent without waiving the breach or affirming the breach prior thereto?

579. As there was no breach of contract by the respondent and no constructive dismissal, this issue falls away.

9.3 If the Claimant was constructively dismissed in all the circumstances the Respondent will not contend that it was a fair constructive dismissal but will rely on Polkey.

580. As noted, the basis of the Polkey argument is that the respondent submits that the claimant would not have continued in employment with the respondent anyway. As the claim has failed, it is not strictly necessary for us to deal with this issue. However, we do so for completeness' sake.

581. We fully accept Ms Misra's submission that it is hard to envisage that someone in the position of the claimant who had made such trenchant allegations against so many people, based on so little, would ever come to like and enjoy working for the respondent ever again. We further accept her submission that, unless the claimant's worldview of events was upheld to the last point, she would never be content. She was determined, as was evident from her demands in the first grievance, that Ms Morris and Dr Wilson should be disciplined for the conduct alleged by the claimant in that grievance, conduct in relation to which, as we have found, they were utterly blameless. On the basis of that approach, it is hard to see that she would ever have come back given that no action was taken against them. Furthermore, when at the end of the grievance meeting Dr McDermott asked the claimant what she would like to see as a resolution to these issues, she said that she would like to leave the respondent or leave the Corporate Partnerships team.

582. We accept that we can be confident that, had the claimant not resigned on 24 September 2019, her employment would not have lasted much longer. As Ms Misra submits, it would not have taken much for the touchpaper to ignite with the claimant if she felt her performance was being questioned or her needs were not being met in exactly the way she dictated that they should be. Her dissatisfaction with the respondent was such that she would have left before long. Staying in employment with the respondent (unless she came back to work) would have been on a nil pay basis as she had exhausted her contractual sick pay by the time she resigned, and her statutory sick pay was due to expire the week after she resigned.

583. We therefore accept Ms Misra's submission that the claimant would in any event have resigned by 31 December 2019 at the latest. Had she been successful in her constructive unfair dismissal claim, therefore, any compensation for loss of earnings would have been limited to the period up to 31 December 2019.

9.4 If the Claimant was constructively dismissed then was the reason or principal reason for dismissal the fact that she had made Protected Disclosures and accordingly her constructive dismissal was automatically unfair under section 103A ERA.

584. This issue has already been dealt with under issue 9.1 above.

Time limits/limitation issues

1.1 Were all of the Claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the EqA 2010?

1.2 Given the date the first ET1 was presented and the dates of early conciliation, any complaint about something that happened before 30 December 2018 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it.

585. On 29 March 2019, the claimant commenced ACAS early conciliation. The ACAS certificate concluding early conciliation was issued on 16 April 2019. The claimant submitted the first claim on 7 May 2019. Any complaints under the first claim about acts or omissions predating 30 December 2018 are therefore prima facie out of time.

586. The claimant submitted the second claim on 21 October 2019. We have not seen the ACAS early conciliation certificate in relation to the second claim, which should give the dates of the start and end of ACAS early conciliation. However, the respondent has consistently submitted that any complaints under the second claim about acts or omissions predating 2 July 2019 are prima facie out of time. That suggests that the claimant commenced ACAS early conciliation on 1 October 2019 and completed it at some point prior to 21 October 2019. The respondent has been accurate and honest during the proceedings, and we therefore see no reason to doubt the assertion it has made. We therefore accept and find that any complaints under the second claim about acts or omissions predating 2 July 2019 are prime facie out of time.

*Equality Act complaints*

587. As all the complaints under the Act have failed, there are no in time successful complaints under the Act to which earlier complaints under the Act could be linked as part of conduct extending over a period. Therefore, all acts and omissions in the respective claims which predated the respective dates in the paragraphs above are out of time.

588. The burden is on the claimant to establish that it would be just and equitable for us to extend time in relation to such of these complaints as are brought under the Act. However, the claimant has made no submissions about why it would be just and equitable for us to extend time in relation to any of these complaints. Furthermore, we have seen no reasons in the evidence that we have heard as to why it would be just and equitable to extend time. We therefore find that it would not be just and equitable to extend time.

589. The tribunal does not, therefore, have jurisdiction to hear any complaints under the Act under the first claim about acts or omissions predating 30 December 2018 or any complaints under the Act under the second claim about acts or omissions predating 2 July 2019. All those complaints are accordingly struck out.

*ERA complaints*

590. As to the complaints under the ERA, the unfair constructive dismissal complaint was brought in time.

591. The four complaints of detriment because of making a protective disclosure were set out in the second claim. Therefore, any of those complaints which were about acts or omissions which predated 2 July 2019 are out of time. That means that the first three of them were out of time and only the fourth

complaint, which relates to the 25 July 2019 first grievance appeal meeting, was in time. No argument has been put forward that any of these alleged acts or failures to act was part of a series of similar acts or failures, and indeed, as the only in time complaint has failed, such an argument would not be of assistance to the claimant anyway.

592. We have heard no arguments as to why it was not reasonably practicable to have brought those first three protected disclosure detriment complaints in time and we therefore find that it was reasonably practicable to have brought them in time. The tribunal does not, therefore, have jurisdiction to hear those three protected disclosure detriment complaints and they are struck out.

**Concluding remarks**

593. We would also like to add that we are well aware of the serious impact that being subject to serious allegations of discrimination or harassment can have on individuals, even more so when they have been hanging over them for such a long period of time as is the case here. We would, therefore, like to note that we found that without exception the 14 witnesses for the respondent were not only all blameless but were impressive, not just as witnesses and in the way they conducted themselves at this hearing, but in their handling of and conduct in relation to the events to which these proceedings pertain.

Employment Judge Baty

Dated:07/11/2022

Judgment and Reasons sent to the parties on:

08/11/2022

For the Tribunal Office

AGREED AND FINAL

LIST OF ISSUES

---

EqA – Equality Act 2010
ERA – Employment Rights Act 1996

## 1. Time limits / limitation issues

1.1 Were all of the Claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the EqA 2010?

1.2 Given the date the first ET1 was presented and the dates of early conciliation, any complaint about something that happened before 30 December 2018 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it.

## 2. Disability

2.1 The Respondent admits that the Claimant was disabled within the meaning of EqA 2010 at all relevant times by reference to the following impairments: anxiety, depression and asthma.

## 3. EqA 2010, section 13: Direct Disability Discrimination

3.1 Did the Respondent subject the Claimant to the following treatment?

3.1.1 Dr Simon Hepworth sharing personal data with his subordinate, Dr Rebecca Wilson, without the claimant's knowledge or consent on 5 October 2018.

3.1.2 Dr Wilson allegedly rolling her eyes during the Claimant's interview on 17 January 2019.

3.1.3 Not appointing the Claimant to the post of Corporate Partnerships Associate through the competitive selection process. *The Claimant was informed of the decision on 22 January 2019. The decision was taken between 17 and 22 January 2019. The interview panel comprised Dr Declan O'Regan, Dr Shona Blair, Dr Rebecca Wilson and Stephanie Morris.*

3.1.4 Sharing the Claimant's Occupational Health reports and / or personal data without consent on 22 January 2019.

3.1.5 In Dr Rebecca Wilson referring to the Claimant's disability negatively on or around 22 March 2019, for example: *"she suffered from anxiety and depression and found the planning activities difficult"*; "*the pressure hard to cope with*" in her formal response to the Claimant's First Grievance.

3.1.6 Comments made by Ms Lynne Cox on 25 July 2019 during the First Grievance appeal hearing: *"Some days [the Claimant] will have good days and other days not so good days".*

3.1.7 Comments made by Ms Lynne Cox by e-mail on 9 August 2019 to Maria Lynch: *"I would fully expect a level 4 staff member with these less severe disabilities to secure the best working environment"* and *"It was unfortunate that [the Claimant] would not accept any challenges on her submission. Choosing to leave the room for a break …"*

3.1.8 Comments made by Ms Lynne Cox and/or Maria Lynch by e-mail on 18 September 2019 *"Poor mental health can change perceptions and behaviours; that is a fact, temporarily or long term."*

3.2 Was this treatment less favourable treatment i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others in not materially different circumstances? The Claimant relies on a hypothetical comparator i.e. a person working in the Corporate Partnerships Associate role on a fixed-term and part-time basis with the same experience and qualifications as the Claimant but who does not have the same disabilities, i.e. depression and anxiety.

3.3 If so, was this because of the Claimant's depression and anxiety? If the burden of proof shifts to the Respondent under section 136 EqA 2010 the Respondent must show a non-discriminatory reason for the treatment.

4. EqA 2010, Section 15: Discrimination Arising from Disability

4.1 Did the following things arise in consequence of the Claimant's disability?

4.1.1 The Claimant needed to work flexibly / from home as a consequence of fatigue caused by anxiety. The Claimant says that this impacted on her visibility at work, including her attendance at key meetings.

4.1.2 The Claimant needed to have control of physical, spatial and temporal elements of her working environment as a consequence of her anxiety and/or depression and/or asthma.

4.2 Did the Respondent treat the Claimant unfavourably as follows:

4.2.1 Dr Simon Hepworth sharing personal data with his subordinate, Dr Rebecca Wilson, without the Claimant's knowledge or consent on 5 October 2018.

4.2.2 Not appointing the Claimant to the post of Corporate Partnerships Associate on 22 January 2019.

4.2.3 Sharing Occupational Health reports by Human Resources without the Claimant's consent on 22 January 2019.

4.2.4 Ms Catherine Mitchell circulating information submitted in a subject access request to Ms Stephanie Morris on 21 February 2019 and via Ms Morris to the interview panel for the Corporate Partnerships Associate role on 21 February 2019 alongside disclosure of the Claimant's personal details.

4.2.5 Ms Stephanie Morris's failure to consider the Claimant's disability when making short notice changes to proposed working locations on week commencing 27 January 2019 (concerns raised with Ms Clare Budden in a meeting request sent 7 February 2019) and 28 February 2019.

4.2.6 The failure of the Respondent to properly consider the concerns raised by the Claimant regarding the appointment of Dr Alistair McDermott to chair the First Grievance meeting, specifically with reference to:

(a) on 11 March 2019 at 09.46 the email from the Claimant to Ms Clare Budden;

(b) on 14 March 2019 the email at 18.00 from the Claimant to Ms Catherine Watt;

(c) on 14 May 2019 the email at 18.56 from the Claimant to Ms Catherine Watt; and

(d) on 7 June 2019 the email at 13.55 from the Claimant to Ms Catherine Watt and Ms Ann Kelly.

4.2.7 The Respondent's failure to properly deal with the Claimant's data subject access request, specifically with reference to:

(a) the alleged act at 4.2.4;

(b) Ms Catherine Watt and Ms Ann Kelly's email on 6 June 2019 at 09.22 in response to the Claimant's email of 5 June 2019 at 23.22; and

(c) Mr Robert Scott's response of 11 July 2019 to the Claimant's letter of complaint dated 17 June 2019.

4.2.8 The Respondent's proposal to postpone the First Grievance appeal meeting proposed for 25 July 2019 (Ms Maria Lynch 23 July 2019).

4.2.9 The Respondent's failure to follow Occupational Health guidelines as set out on 16 April 2019 when conducting the meeting with the Claimant on 25 July 2019.

4.2.10 The comments made by Ms Lynne Cox during the meeting of 25 July 2019: *"some days [the Claimant] will have good days and other days not so good days."*

4.2.11 The comments made by Ms Lynne Cox by e-mail on 9 August 2019 to Ms Maria Lynch: "*I would fully expect a level 4 staff member with these less severe disabilities to secure the best working environment*" and "*It was unfortunate that Charlotte would not accept any challenges on her submission. Choosing to leave the room for a break….".*

4.3 Did the Respondent treat the Claimant unfavourably because of any of those things?

The Claimant says that 4.2.2 was because of 4.1.1. She says all the other treatment (listed at 4.2.1, 4.2.3 to 4.2.11) was because of 4.1.1 and 4.1.2.

4.4 If so, has the Respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim?

5. EqA 2010, sections 20 and 21: Reasonable Adjustments

5.1 Did the Respondent have the following provisions, criteria or practices ('PCPs')?

5.1.1 Arranging meetings with minimal or no notice (PCP1).

5.1.2 Not providing content in meeting requests sent by email (PCP2).

5.1.3 Holding meetings to discuss potentially confidential or upsetting material in public areas (PCP3).

5.1.4 Not providing meeting agendas or information regarding meetings (PCP4).

5.1.5 Requesting alterations to work locations / conditions without consultation and circulating such requests (PCP5).

5.1.6 Alterations of working conditions without enough notice (PCP6).

5.1.7 Expectations that part-time employees will alter their working conditions / patterns without consultation and with minimal notice (PCP7).

5.2 Did the Claimant's workplace have the following physical features? *The Claimant alleges that her workplace was not ventilated, and she had minimal control over her environment including temperature, air flow and exposure to allergens.*

5.3 Did any such PCP or physical feature put the Claimant at substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time insofar that:

5.3.1 these PCPs exacerbated her anxiety and depression?

5.3.2 these physical features exacerbated her asthma and anxiety?

5.4 If so, did the Respondent know or could it reasonably be expected to know that the Claimant was likely to be placed at any such disadvantage?

5.5 If so, were there steps which were not taken which could have been taken by the Respondent to avoid any such disadvantage?

<u>In respect of the PCPs (on 21 & 28 February 2019 save for PCP6):</u>

PCP1: Being provided with sufficient notice of meetings.

PCP2: Being provided with advanced notice of the reason for meetings.

PCP3: Being exempted from having to attend all meetings and having a break during meetings when the Claimant became distressed.

PCP4: Being provided with sufficient notice of meetings and advanced notice of the reason for meetings.

PCP5: Being allowed to hot desk with consultation (i.e. using the desk above the atrium).

PCP6: Being allowed to hot desk with consultation – in January or February 2018.

PCP7: Being provided with sufficient notice of meetings and advanced notice of the reason for meetings.

In respect of the physical features of her workplace

5.5.1 Being allowed to hot desk with consultation (in January or February 2018).

5.5.2 Being exempted from having to attend all meetings (on 8 March 2018).

5.5.3 Working in a well-ventilated space (on 28 January 2018; 8, 15, 22 February 2018; 2 August 2018; 4 September 2018; and 16 April 2019)

5.5.4 Working from home every other Tuesday (on 22 February 2018; 8 & 9 March 2018; 14 & 28 February 2019).

5.6 If so, would it have been reasonable for the Respondent to have to take those steps at any relevant time (as above)?

6. EqA 2010, section 26: Disability Related Harassment

6.1 Did the Respondent engage in the following unwanted conduct:

6.1.1 Holding meetings / discussions in a public area / open plan office, specifically:

(a) Dr Magdalenic-Moussavi on 6 March 2018; and

(b) Ms Morris on 21 February 2019.

6.1.2 Dr Magdalenic-Moussavi referring to other individuals having asthma and dry eyes when the Claimant was trying to discuss the adjustments she required on 8 March 2018.

6.1.3 Being sent an excessive number of emails by Dr Wilson in October 2018 in the lead up to the Bio Japan event and excessive questioning surrounding the taking marketing material.

6.1.4 Dr Wilson's comment within email on 3 January 2019 as set out in paragraph 28 of the First Claim.

6.1.5 Dr Wilson rolling her eyes during the Claimant's interview on 17 January 2019.

6.1.6 Being treated in an aggressive manner by Ms Morris on 21 February 2019 when she queried whether asking the Claimant to come into work was a "breach of a modification" in a public area in front of approximately 20 people.

6.1.7 Comments made to the Claimant by Ms Morris:

(a) "I have heard from several people you are not a team player" (21 February 2019);

(b) That "absences from Charlie have not gone unnoticed" (28 February 2019).

6.1.8 Being criticised by Ms Morris due to her purported lack of visibility on 31 January 2019, 21 February and 28 February 2019.

6.1.9 Being accused of poor performance by Dr Hepworth on 25 February 2019 and Ms Morris on 28 February 2019.

6.1.10 Being set up to fail by being given unrealistic tasks / expectations, specifically:

(a) On 4 December 2018 Ms Morris directing the Claimant to align her proposed performance targets with the corporate partnership strategy;

(b) On 18 February 2019 Ms Morris requested that the Claimant attend an event at a different campus at 08.30;

(c) On 18 February 2019 at 06.36 Ms Morris requested to meet the Claimant prior to a Corporate Partnerships meeting held at White City at 10.00 the same day;

(d) On 21 February 2019 Ms Morris sent the Claimant an invitation at 08.14 for a meeting starting at 09.30 without specifying its location or purpose;

(e) On 8 March 2019 at 10.32 Ms Morris unilaterally rearranged a meeting to 08.30 on 11 March 2019;

(f) The Respondent expecting the Claimant to attend coffee mornings at the South Kensington campus on dates when she was working at a different location or at home on Tuesday 29 January 2019 and Tuesday 26 February 2019.

6.1.11 On 25 July 2019 during the First Grievance appeal hearing pertaining to discrimination Ms Cox repeatedly questioning the Claimant as to whether the Claimant's mental health condition impacted her perceptions of bullying and harassment.

6.1.12 On 25 July 2019 during the First Grievance appeal hearing, by Ms Cox referring to the Claimant having good days and not so good days on 25 July 2019 during the First Grievance appeal hearing.

6.1.13 On 25 July 2019 during the First Grievance appeal hearing, by Ms Cox repeating questions pertaining to the failure of the College to put in place modifications for a disability.

6.1.14 By the HR personnel at the grievance appeal hearing on 25 July 2019 not intervening in respect of 6.1.11 and 6.1.12.

6.2 If so, did this relate to the a protected characteristic?

The Claimant claims the conduct at:

- 6.1.10 (a) was related to asthma, depression and anxiety.
- 6.1.10 (b) was related to anxiety.
- 6.1.2 was related to asthma.
- All other alleged conduct is said to be related to anxiety and depression.

6.3 Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or otherwise offensive environment for the Claimant?

6.4 In deciding whether the conduct had this effect the Tribunal must take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

## 7. EqA 2010, section 27: Victimisation

7.1 The Respondent accepts that the Claimant's grievance dated 10 March 2019 and First Claim each constitute a protected act.

7.2 Did the Claimant otherwise do a protected act by reference to:

7.2.1 An e-mail to Anne Kelly dated 6 February 2018 disclosing the impact of her local environment on her asthma.

7.2.2 An email to Ms Clare Budden dated 10 March 2018 expressly raising concerns regarding alleged discrimination on 8 March 2019.

7.2.3 An email to Ms Clare Budden and Kalpna Mistry dated 17 April 2018 in which she expressed her concern that her working environment will be altered.

7.2.4 Concerns she raised with Dr Hepworth on or about 5 October 2018 about the impact of Dr Rebecca Wilson's communication on her mental health.

7.2.5 An e-mail to Ms Stephanie Morris of 23 January 2019 when she reiterated her October 2018 allegations of harassment against Dr Wilson.

7.2.6 A meeting request email to Ms Clare Budden dated 7 February 2019 when she disclosed concerns about being asked to breach agreed temporary working arrangements, followed by a meeting to discuss issues raised on 14 February 2019.

7.2.7 Concerns raised at a meeting with Ms Clare Budden on 21 February 2019 about Ms Morris, including that she was questioned on reasons for homeworking.

7.2.8 An e-mail to Ms Glemma Edwards of 23 January 2019 when she stated she was thinking of making a complaint regarding bullying and harassment.

7.2.9 An email to Ms Clare Budden dated 18 February 2019 when she complained that harassment was not being taken seriously within the department.

7.2.10 Concerns raised at a meeting with Dr Hepworth on 25 February 2019 about discrimination she had experienced at work.

7.2.11 An email to Ms Clare Budden dated 26 February 2019 headed "Urgent Victimisation Starting to Occur" when she expressed concerns about comments made by Dr Hepworth on 25 February 2019.

7.2.12 Concerns raised at a meeting with Ms Morris and Ms Clare Budden on 28 February 2019 about the impact of policies, procedures and practices on her disability.

7.2.13 An e-mail to Ms Clare Budden of 11 March 2019 where she complained that the Respondent was harassing her by initiating meetings without notice.

7.3 Did the Respondent believe that the Claimant might do a protected act? The Claimant claims that Ms Morris believed that she might do a protected act when she told Ms Morris on 21 February 2019 that she would be speaking to Dr Hepworth about her bullying and harassment.

7.4 Did the Respondent subject the Claimant to detriment as follows?

7.4.1 Aggressive behaviour by Dr Wilson, specifically by

(a) rolling her eyes during the interview on 17 January 2019;

(b) her interview scoring notes from 17 January 2019.

7.4.2 Dr Wilson scoring her unfairly during the interview process on 17 January 2019.

7.4.3 Not selecting the Claimant for the post of Corporate Partnerships Associate further to interview.

7.4.4 Comments made to the Claimant by Ms Morris, specifically:

(a) "*I have heard from several people that you are not a team player*" on 21 February 2019".

(b) *"absences [from Charlie] have not gone unnoticed*" on 28 February 2019.

7.4.5 Ms Morris criticising the Claimant's performance:

(a) on 21 February 2019 during a meeting with the Claimant.

(b) on 28 February 2019 during a meeting with Ms Clare Budden.

7.4.6 Being set up to fail by being given unrealistic tasks / expectations, specifically:

(a) The Respondent expecting the Claimant to attend coffee mornings at the South Kensington campus on dates when she was working at a different location or at home on Tuesday 29 January 2019;

(b) On 21 February 2019 Ms Morris sent the Claimant an invitation at 08:14 for a meeting starting at 09.30 without specifying its location or purpose;

(c) The Respondent expecting the Claimant to attend coffee mornings at the South Kensington campus on dates when she was working at a different location or at home on Tuesday 26 February 2019.

(d) On 8 March 2019 at 10.32 Ms Morris unilaterally rearranged a meeting to 08:30 to take place on 11 March 2019;

7.4.7 Being sent "check-up e-mails" specifically:

(a) On 25 February 2019 Ms Morris forwarded a request to the Claimant at 12:45 to contact an external party and she chased up this request with an additional e-mail on 26 February 2019 at 16.23.

(b) On 12 March 2019 when Ms Morris e-mailed the Claimant and copied HR expressing "concern" that an out of office response was on.

7.4.8 The comments made by Dr Wilson in direct response to the Claimant's First Grievance (22 March 2019) which makes assumptions regarding the Claimant's disabilities including*: "she suffered from anxiety and depression and the found planning activities difficult."*

7.4.9 The failure by Ms Catherine Watt to properly consider concerns raised by the Claimant pertaining to the appointment of Dr Alistair McDermott as Chair of the First Grievance panel.

7.4.10 The proposal by Ms Maria Lynch to postpone the First Grievance appeal meeting (23 July 2019) scheduled for 25 July 2019.

7.4.11 The comments made by Ms Cox during the meeting of 25 July 2019.

7.4.12 The initial failure by Ms Kelly and Ms Lynch to acknowledge the Second Grievance;

7.4.13 The decision by Ms Kelly on 29 August 2019 to appoint Ms Cox to investigate the Second Grievance submitted by the Claimant.

7.4.14 The comments made by Ms Cox by e-mail to Ms Lynch and Ms Kelly (30 August 2019): "In light of Ms Milnes' complaint about the appeal hearing, I will amend my outcome letter. I think it important now to include or make reference to her dismissive approach throughout..."

7.4.15 The way in which the Respondent dealt with the Claimant's data subject access request as set out in paragraph 33 of the Second Claim, in particular:

(a) on 21 February 2019, Ms Mitchell circulating information in a subject access request to Ms Morris and via Ms Morris (21 February 2019) to the interview panel for the Corporate Partnerships Associate role alongside the disclosure of the Claimant's personal data;

(b) Ms Watt's failure to respond to the Claimant's email dated 14 March 2019, as followed-up by the Claimant in an email to Ms Watt and Ms Kelly on 17 April 2019;

(c) the failure of Subject Access Team to respond to the Claimant's email of 5 June 2019 entitled "Re. CMSAR29.3.19.";

(d) the email from Ms Watt on 6 June 2019 advising the Claimant to *"speak to the SAR team in the first instance to seek a resolution"*;

(e) Mr Robert Scott's response of 11 July 2019 to the Claimant's letter of complaint dated 17 June 2019; and

(f) the First Grievance report communicated to the Claimant on 20 June 2019.

7.5 If so, was this because the Claimant did a protected act?

7.6 The Claimant says that the alleged detriments were as a result of the protected acts as follows:

- the alleged detriments at 7.4.1(a); 7.4.1(b); 7.4.2; and 7.4.3 were as a result of the pleaded protected act at 7.2.4;

- the alleged detriment at 7.4.4(a) was as a result of the pleaded protected acts at 7.1; 7.2.4; 7.2.5; and 7.2.8;

- the alleged detriment at 7.4.4(b) was as a result of the pleaded protected acts at 7.1; 7.2.5; 7.2.6; 7.2.7; 7.2.8; and 7.2.10;

- the alleged detriment 7.4.5(a) was as a result of the pleaded protected acts at 7.2.6; 7.2.8;

- the alleged detriment at 7.4.5(b) was as a result of the pleaded protected acts at 7.1; 7.2.6; 7.2.7; and 7.2.10;

- the alleged detriment 7.4.6(a) was as a result of the pleaded protected acts at 7.1 and 7.2.6; 7.2.8; 7.2.10.

- the alleged detriment at 7.4.6(b) was as a result of the pleaded protected acts at 7.1; 7.2.8; and 7.2.10.

- the alleged detriment at 7.4.6(c) was as a result of the pleaded protected acts at 7.1; 7.2.7; 7.2.10; 7.2.12;

- the alleged detriment at 7.4.6(d) was as a result of the pleaded protected acts at 7.1; 7.2.6; 7.2.7; 7.2.10 and 7.2.12

- the alleged detriment at 7.4.7(a) was as a result of the pleaded protected acts at 7.1; 7.2.6; 7.2.7; and 7.2.10;

- the alleged detriment at 7.4.7(b) was as a result of the pleaded protected acts at 7.1; 7.2.7; 7.2.10; 7.2.12 and 7.2.13;

- the alleged detriment at 7.4.8 was as a result of the pleaded protected acts at 7.1; 7.2.4; 7.2.6and 7.2.10;

- the alleged detriments at 7.4.10; 7.4.11; 7.4.12; 7.4.14 and 7.4.15 were as a result of the pleaded protected acts at 7.1; and

- the alleged detriments at 7.4.9; and 7.4.13 were as a result of the pleaded protected acts at 7.1; and 7.2.10.

## 8. ERA, section 47B: Protected Disclosures

8.1 Whether the Claimant's First Grievance and the First Claim amount to protected disclosures within the meaning of section 43B(1)(b) ERA. In particular, whether the putative disclosures were disclosures of information and whether the Claimant held a reasonable belief in the public interest at the material time of making the putative disclosures.

8.2 If so, whether the Respondent subjected the Claimant to detriment on grounds of the protected disclosure as alleged in paragraph 29 of the Second Claim (i.e. those matters relied on as acts of direct disability discrimination).

## 9. ERA, sections 94 and 103A: Unfair Dismissal

9.1 Did the Respondent conduct itself in a manner calculated or likely to seriously damage or destroy mutual trust and confidence so as to amount to a repudiatory breach of contract entitling the Claimant to resign on 24 September 2019 in response thereto by reference to the alleged acts of direct disability discrimination set out in the Second Claim (paragraph 29). If the Claimant relies on a cumulation of matters, what is the last straw?

9.2 If so, did the Claimant in fact resign in response to the breach of the Respondent without waiving the breach or affirming the breach prior thereto?

9.3 If the Claimant was constructively dismissed in all the circumstances the Respondent will not contend that it was a fair constructive dismissal but will rely on *Polkey*.

9.4 If the Claimant was constructively dismissed then was the reason or principal reason for dismissal the fact that she had made Protected Disclosures and accordingly her constructive dismissal was automatically unfair under section 103A ERA.

NB paragraph 29 of the second claim, cross-referred to at 8.2 above, comprises the following four alleged detriments (the fifth allegation under paragraph 29 relates to the alleged dismissal and is by definition not therefore a detriment for the purposes of a protected disclosure complaint):

a. the Respondent's sharing of occupational health reports by Human Resources without the Claimant's consent;

b. the Respondent's sharing of personal data by Dr Simon Hepworth to a colleague, Dr Rebecca Wilson, without the Claimant's knowledge or consent;

c. the Respondent's comments made by Dr Rebecca Wilson in a formal response to the Claimant's grievance which negatively references the Claimant's disability/disabilities including: *"she suffered form anxiety and depression and found planning activities difficult.."* and *"She said openly that she found… the pressure hard to cope with…"*

d. the comments made by Ms Cox during the meeting of 25 July 2019;"