EMPLOYMENT TRIBUNALS

Claimant: Ms D Hickey

Respondent: Myspace Housing Solutions Limited

Heard at: Manchester Employment Tribunal (by CVP)

On: 05, 06, 07, 08, 09, 12, 13, 14 and 15 September and 09, 10, 11 and 14 November 2022 (09 November was the tribunal only, reading back into the case and 11 and 14 November did not have the parties in attendance as this was used for deliberations and reaching a decision).

Before: Employment Judge Mark Butler
Ms L Atkinson
Ms V Worthington

Representation
Claimant: Self-representing
Respondent: Mr Boyd (of Counsel)

RESERVED JUDGMENT

1. The claims of direct sex discrimination, direct disability discrimination, harassment related to sex, harassment related to disability, a failure in the respondent's duty to make reasonable adjustments, victimisation, being subjected to a detriment on the grounds of having made a protected disclosure and of automatic unfair dismissal for making protected disclosures are all ill-founded and are dismissed.

2. For the avoidance of any doubt, all claims in this case have been found to be unsuccessful and are all dismissed.

REASONS

INTRODUCTION

3. The various claims in this case were contained across two claim forms. The first was presented to the tribunal by the claimant on 27 March 2020 and the second claim form was presented on 03 July 2020. The two claim forms contained detailed

particulars of claim.

4. Employment Judge Feeney, at a Preliminary Hearing on 21 September 2020, combined the claimant's two claims together. At this hearing EJ Feeney progressed the case in a number of ways. First, she listed a Public Preliminary Hearing to determine whether the claims were brought out of time, and whether the tribunal would use its discretion to extend time so as to have jurisdiction over any claims that were found to be out of time, and to consider the respondent's application for strike out and/or a deposit order (if the respondent pursued this application in writing). And secondly, EJ Feeney directed the claimant to produce a Scott Schedule, in which she would set out the events she relied upon in respect of each allegation and explain the nature of the claims brought.

5. The Public Preliminary Hearing was heard by Employment Judge Sharkett across two dates, 12 January 2021 and 05 February 2021 (this was reconvened following technical difficulties on 12 January 2021). There was no application made by the respondent for strike out and/or a deposit order in advance of this hearing, and therefore this matter was not taken any further. EJ Sharkett considered the Scott schedule, dismissed claims that were withdrawn by the claimant and determined an application to amend the claim. After this exercise, the remaining claims in the Scott Schedule stood as the allegations to be determined in this case at final hearing.

6. The tribunal at final hearing was provided with a file of documents that ran to 689 electronic pages. In addition to this the tribunal received further disclosure of documents during these proceedings, usually at the request of the tribunal when it transpired that a document appeared to be missing from the file. This included the claimant's advice concerning the 1% rent reduction, the claimant's completed job application and a document entitled 'Grievance Details'. Including these documents in the file of evidence at a late stage did not cause either party any significant difficulties.

7. The claimant gave evidence on her own behalf. And did not call any additional witnesses.

8. The respondent called 9 witnesses in total. Those called were:

    a. Mr Andrew Goodson, who was the Chief Executive Officer of the respondent up until September 2019

    b. Mr Qureshi, who was Chief Finance Officer at the material times

    c. Mr Peter Lynch, who was Strategic Director and a Trustee of the respondent

    d. Mr Jonathan Melia, who was temporary Chairman of the Board of Trustees for the respondent between June and October 2019, but has never been employed by it

    e. Mr John Manning, who was appointed as Chair of the Board of Trustees of the respondent in September 2019 and filled the role of interim Chief Executive Officer from Summer 2020 until December 2021.

f. Ms Denize Alston, who was on the Board of Trustees of the respondent throughout the claimant's employment with the respondent

g. Ms Robyn Wood, who held the role of Human Resource Business Support from 13 January 2020 (initially on secondment).

h. Mr Barry Campbell, who had the role of non-executive Trustee of the respondent throughout the material period

i. Mr Carl McCready, who had the role of non-executive Trustee of the respondent throughout the material period.

9. The final merits hearing was initially listed for 9 days and commenced on 05 September 2022. This was initially listed to be heard in-person. The claimant attended at the tribunal in advance of day of the final hearing to ensure that the room being used had a hearing loop that was effective. Unfortunately, this was not the case. And the only other tribunal room with a hearing loop was not available. This resulted in the hearing being converted to be heard remotely.

10. The tribunal ensured that there were sufficient breaks throughout the hearing. This was especially important as the hearing was conducted entirely remotely. And the tribunal was conscious that the claimant's disability would require her to concentrate significantly, which would be very tiring. It was important, from the tribunal's perspective that the claimant was able to fully engage and participate in the hearing. The tribunal tried to assist the claimant with questioning where necessary.

11. Unfortunately, the case was not concluded within the initial 9-day listing. The tribunal had heard all the evidence in this time, but without time to hear closing submissions or to start deliberations. A further 4 days were listed to conclude the case. The case returned to the tribunal on 09 November 2022. The first of those days was used by the tribunal to read back into the case. Day 2 was used for closing submission, and days 3 and 4 were used for the tribunal to deliberate and reach a decision. The decision was reserved.

12. The tribunal was impressed with the way that both parties presented their case. It always makes it easier for the tribunal when both parties act sensibly and follow direction, where it is given. Especially when a hearing is held remotely.

LIST OF ISSUES

13. The list of issues was discussed and confirmed at the outset of this hearing. It remained as presented in the Scott Schedule that was contained in the bundle at pages 163-182. This has been attached to the back of this judgment for ease.

14. For the avoidance of doubt, items 5 (allegation withdrawn),10 (amendment refused) and 19 (allegation withdrawn) of the Scott Schedule were not part of the issues going forward din this case.

15. Although the list of issues were the matters to be determined in this case, the tribunal was aware that the claimant was not legally represented. And so,

approached the pleadings as broad as possible. This included considering an allegation as a claim of direct discrimination where it had been brought as harassment, where it appeared that the wrong label had been attached. This was to ensure that the tribunal was not too formalistic when approaching the pleaded case of the claimant. This ensured the entirety of her claim was properly determined.

16. The tribunal in applying the overriding objective and approaching these reasons with proportionality in mind, did not consider it necessary to determine whether the claimant had done a protected act (for the purposes of her victimisation claims) or made a public interest disclosure (in relation to her claims for detriment or automatic dismissal for having made such disclosures). Instead, where an allegation included an allegation of vicimisation or detriment on the grounds of a protected disclosure, the focus in this judgment is on the treatments and whether they reach the level of being a detriment, and the reasons behind those treatments.

LAW

17. Mr Boyd explained to the tribunal that in his skeleton argument he had put in detailed reference to the law in the areas being determined in this case. And that he had adopted this approach with a view to assisting the claimant to understand the practical application of the law in these proceedings. Mr Boyd presented the legal position in a neutral way. The tribunal was grateful for this approach, given that the claimant was unrepresented, and the allegations brought in this claim included some of the more complicated species of claims that come before the tribunal. The tribunal has taken account of the law presented by Mr Boyd. The tribunal also consider it necessary to give further explanation as to the current state of law to ensure that this judgment can be understood fully. We hope the parties find this helpful.

Direct Sex/Disability Discrimination

18. Protection against direct sex or disability discrimination is provided for at s.13 of the Equality Act 2010:

> A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

19. Lord Nicholls in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** gave guidance as to the approach an employment tribunal should consider when determining a direct discrimination complaint:

> "7. …In deciding a discrimination claim one of the matters employment tribunals have to consider is whether the statutory definition of discrimination has been satisfied. When the claim is based on direct discrimination or victimisation, in practice tribunals in their decisions normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator (the 'less favourable treatment' issue) and then, secondly, whether the less favourable treatment was on the relevant proscribed ground (the 'reason why' issue). Tribunals proceed to consider the reason why issue only if the less favourable treatment issue is resolved in favour of the claimant. Thus the less favourable treatment issue is treated as a threshold which the claimant must cross before the

tribunal is called upon to decide why the claimant was afforded the treatment of which she is complaining.

8. No doubt there are cases where it is convenient and helpful to adopt this two-step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined.

…

11. …employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others."

20. This is further explained by Mr Justice Underhill P (as he then was), in **Amnesty International v Ahmed [2009] IRLR 884:**

"32. The basic question in a direct discrimination case is what is or are the "ground" or "grounds" for the treatment complained of.[3] That is the language of the definitions of direct discrimination in the main discrimination statutes and the various more recent employment equality regulations. It is also the terminology used in the underlying Directives: see, e.g., art. 2.2 (a) of Directive EU/2000/43 ("the Race Directive"). There is however no difference between that formulation and asking what was the "reason" that the act complained of was done, which is the language used in the victimisation provisions (e.g. s. 2 (1) of the 1976 Act): see *per* Lord Nicholls in **Nagarajan** at p. 512 D-E (also, to the same effect, Lord Steyn at p. 521 C-D).[4]

33. In some cases the ground, or the reason, for the treatment complained of is inherent in the act itself. If an owner of premises puts up a sign saying "no blacks admitted", race is, necessarily, the ground on which (or the reason why) a black person is excluded. **James v Eastleigh** is a case of this kind. There is a superficial complication, in that the rule which was claimed to be unlawful – namely that pensioners were entitled to free entry to the Council's swimming-pools – was not explicitly discriminatory. But it nevertheless necessarily discriminated against men because men and women had different pensionable ages: the rule could entirely accurately have been stated as "free entry for women at 60 and men at 65". The Council was therefore applying a criterion which was of its nature discriminatory: it was, as Lord Goff put it (at p. 772 C-D), "gender based".[5] In cases of this kind what was going on inside the head of the putative discriminator – whether described as his intention, his motive, his

reason or his purpose – will be irrelevant. The "ground" of his action being inherent in the act itself, no further inquiry is needed. It follows that, as the majority in **James v Eastleigh** decided, a respondent who has treated a claimant less favourably on the grounds of his or her sex or race cannot escape liability because he had a benign motive.

34. But that is not the only kind of case. In other cases – of which **Nagarajan** is an example - the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, i.e. by the "mental processes" (whether conscious or unconscious) which led the putative discriminator to do the act. Establishing what those processes were is not always an easy inquiry, but tribunals are trusted to be able to draw appropriate inferences from the conduct of the putative discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). Even in such a case, however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the putative discriminator's action, not his motive: just as much as in the kind of case considered in **James v Eastleigh**, a benign motive is irrelevant. This is the point being made in the second paragraph of the passage which we have quoted from the speech of Lord Nicholls in **Nagarajan** (see para. 29 above). The distinctions involved may seem subtle, but they are real, as the example given by Lord Nicholls at the end of that paragraph makes clear.

…

37. …although (as Lord Goff points out) the test may be applied equally to both the "criterion" and the "mental processes" type of case, its real value is in the latter: if the discriminator would not have done the act complained of but for the claimant's sex (or race), it does not matter whether you describe the mental process involved as his intention, his motive, his reason, his purpose or anything else – all that matter is that the proscribed factor operated on his mind. This is therefore a useful gloss on the statutory test; but it was propounded in order to make a particular point, and we do not believe that Lord Goff intended for a moment that it should be used as an all-purpose substitute for the statutory language. Indeed if it were, there would plainly be cases in which it was misleading. The fact that a claimant's sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment.

Harassment related to sex or disability

21. Protection against harassment is provided for at s.26 of the Equality Act 2010:

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

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

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

(i) violating B's dignity, or

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

…

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

(a) the perception of B;

(b) the other circumstances of the case;

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

A failure in the duty to make reasonable adjustments

22. The relevant statutory provisions, in respect of a failure to make reasonable adjustments complaint are as follows:

20. Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

21. Failure to comply with duty

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

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

Victimisation

23. Protection from victimisation is contained at s.27 of the Equality Act 2010. It provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

Burden of Proof under the Equality Act 2010

24. We reminded ourselves of the burden of proof in discrimination cases, with reference to section 136 of the Equality Act 2010:

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

25. Lord Justice Mummery (with which Laws and Maurice Kay LJJ agreed) in **Madarassy v Nomura International plc [2007] ICR 867**, at paragraphs 56-58, provided a summary of the principles that apply when considering the burden of proof in Equality Act Claims:

> "56. The court in *Igen v Wong…* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination**. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.**
>
> 57. "Could… conclude" in section 63A (2) must mean that **"a reasonable tribunal could properly conclude" from all the evidence before it.** This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory "absence of an adequate explanation" at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; **for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like**

with like as required by section 5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment.

58. The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim." (emphasis added)

26. Mummery LJ also explained further how evidence adduced by the employer might be relevant, noting that it could even relate to the reason for any less favourable treatment (paras. 71-72):

"71. Section 63A (2) does not expressly or impliedly prevent the tribunal at the first stage from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the complainant's evidence of discrimination. **The respondent may adduce evidence at the first stage to show that the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the complainant; or that the comparators chosen by the complainant or the situations with which comparisons are made are not truly like the complainant or the situation of the complainant; or that, even if there has been less favourable treatment of the complainant, it was not on the ground of her sex or pregnancy.**

72. Such evidence from the respondent could, if accepted by the tribunal, be relevant as showing that, contrary to the complainant's allegations of discrimination, there is nothing in the evidence from which the tribunal could properly infer a prima facie case of discrimination on the proscribed ground…."

27. Lord Justice Mummery also pointed out that it will often be appropriate for the tribunal to go straight to the second stage. An example is where the employer is asserting that whether the burden at the first stage has been discharged or not, he has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by that approach since it is effectively assumed in his favour that the burden at the first stage has been discharged.

28. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant succeeds in doing this, then the onus will be on the respondent to prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment.

Detriment on the grounds of a Protected Disclosure

29. The relevant statutory provisions of the Employment Rights Act 1996 in relation to this category of claims brought by the claimant are s.43B, s.47B and s.48 of the Employment Rights Act 1996 ('ERA'). Section 43B ERA sets out what is meant by a qualifying disclosure:

43B Disclosures qualifying for protection.

> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [F2 is made in the public interest and] tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

30. Section 47B(1) ERA explains 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'.

31. Whilst the burden of proof in such cases is provided for by s.48(2) ERA.

32. In order to bring a claim under section 47B, the worker must have suffered a detriment. It is now well established that the concept of detriment is very broad and must be judged from the viewpoint of the worker (See **Jesudason v Alder Hay Children's NHS Foundation Trust [2020] EWCA Civ 73**). There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistle-blowing cases. In Derbyshire v St. Helens MBC [2007] UKHL 16. At paras 67-68 Lord Neuberger described the position thus:

> "67. … In that connection, Brightman LJ said in **Ministry of Defence v Jeremiah [1980] ICR 13** at 31A that "a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment". 68. That observation was cited with apparent approval by Lord Hoffmann in Khan [2001] ICR 1065 , para 53. More recently it has been cited with approved in your Lordships' House in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337**. At para 35, my noble and learned friend, Lord Hope of Craighead,

after referring to the observation and describing the test as being one of "materiality", also said that an "unjustified sense of grievance cannot amount to 'detriment'". In the same case, at para 105, Lord Scott of Foscote, after quoting Brightman LJ's observation, added: "If the victim's opinion that the treatment was to his or her detriment is a reasonable one to hold, that ought, in my opinion, to suffice"."

33. There is a requirement that there is a causal link between the protected disclosure and the detriment in question. Section 47B requires that the act should be "on the ground that" the worker has made the protected disclosure. The leading authority is the decision of the Court of Appeal in **Manchester NHS Trust v Fecitt [2011] EWCA 1190**, where Elias LJ considered the meaning of this phrase:

> "45. In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower."

CLOSING SUBMISSIONS

34. Mr Boyd provide the tribunal with written submissions in the form of a skeleton argument. And the tribunal heard closing submissions form Mr Boyd on behalf of the respondent and form the claimant. Although these are not repeated here, they have all been considered carefully in reaching this decision.

FINDINGS OF FACT

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. Where there is reference to certain aspects of the evidence that have assisted us in making our findings of fact this is not indicative that no other evidence has been considered. Our findings were based on all of the evidence and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why we made the findings that we did.

We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

GENERAL FINDINGS

35. The respondent is a Registered Provider of social housing and provides support to vulnerable individuals with support needs. As such the respondent is regulated by the Regulator of Social Housing and are subject to the Regulatory Standards.

36. When a Registered Provider reaches the threshold of holding 1000 units, it becomes subject to an inspection called an In-Depth Assessment.

37. Gill Cook approached the claimant in February 2019 with a view to the claimant joining the respondent.

38. On 27 February 2019, the claimant met with Mr Goodson, Mr Lynch, Mr Qureshi, and Mr O'Rourke to discuss the newly created role of Governance Manager for the respondent. Following this meeting, and having completed some written tasks, the claimant was invited to complete an application form for the role of Governance

Manager. The claimant, in this application form, declared that she had a disability, namely that she was deaf. The claimant was sent a draft job description for the role (see p.250).

39. The claimant completed the application form and sent it to the respondent on 26 March 2019.

40. On 06 April 2019, the respondent emailed the claimant and explained that the Board of Trustees wanted to appoint the claimant to the role of Governance Manager, but that they would want her to focus solely on the respondent's business and that she would not be able to complete any work for the claimant's training company (see claimant's witness statement, at paragraph 29).

41. On 24 April 2019, the claimant wrote to the respondent's Board of Trustees concerning the requirement for the claimant to stop completing work for her training company. The claimant sought to secure agreement with the Board to allow her to take up appointment whilst maintaining a role in her company. She put forward three options for the board to consider (see pp253-254).

42. On around 28 May 2019, the respondent and the claimant agreed that the claimant would not continue to provide work for her training company. On 14 June 2019, the claimant was sent a letter of appointment (see p.255). The claimant was also provided with a statement of her particulars of employment (see pp.259-265). As part of this contract, and in line with that agreed between the respondent and the claimant, the claimant was subject to restrictive covenants in relation to undertaking other work during her employment (see p.260). The clause read:

Other Work during Employment
You must notify and seek the consent of the Chair of the Board before accepting any other employment or business activity during the period of your employment. My Space Housing Solutions reserves the right to refuse permission to accept that other employment activity, if they consider it could damage their reputation or credibility, or damage your own capacity or credibility to fulfil your duties and responsibilities for My Space Housing Solutions; or it if it not in My Space Housing Solutions interests.

The Chair of the Board has agreed that as partner of "We Are On Point" you will not undertake any direct front facing or any paid work for any organisation that is direct competition with My Space. This would mean not delivering any training, consultancy or advice work for any housing association or charitable organisation with housing or support aims and objectives. You will be able to contribute and advise on the creation of training materials and course content, but your business partner would be responsible for any and all dealings with the organisation, delivering training, attending meetings etc.

43. The claimant commenced work with the respondent on 29 July 2019.

44. The respondent did not operate a 'boys club'. This is an assertion made by the claimant. However, there simply was not the evidence to support such a finding. To the contrary, the claimant was appointed to the role of Governance Manager, and alternative roles considered for her when the role of Governance Manager was being made redundant. These decisions were all adopted in full knowledge of the claimant's sex. Further, Ms Alston was a member of the Board of Trustees, and there was no evidence of detrimental treatment of her due to sex. To the contrary, Ms Alston played an active role on the Board of Trustees, including meeting with the Regulator (one of the claimant's allegations was that she was not permitted to meet the Regulator, which she highlighted as support for the 'boys club'). Amongst other evidence before the tribunal, these matters supported the finding we made in this regard that no such boys club existed in this case.

ITEM 1

45. In advance of starting employment with the respondent, the claimant was invited to meet with the Board of Trustees at the Board Meeting scheduled for 28 June 2019. The claimant was invited to this meeting as an introduction to the company. She would only attend the beginning of that meeting but would not remain for the board meeting discussions.

46. The claimant raised with Mr Goodson in advance of that meeting whether there was a hearing loop facility in the board room. There was not. The claimant offered to bring, and did bring, her own hearing loop.

47. On attending the meeting, the claimant set up her hearing loop on the table in the Board Room, and explained to those present that she was deaf, and that the hearing loop was a hearing aid. The claimant provided a humorous example to the group of an occasion where she had left the hearing loop in one room whilst she had left to go to the toilet but was still able to hear the conversation taking place in that other room. The claimant did this jokingly to help build rapport in the room, whilst also demonstrating the range of the equipment. The claimant likely also explained that the equipment was not capable of recording discussions.

48. The meeting, insofar as the claimant's attendance is concerned, was lighthearted throughout.

49. When the time came for the claimant to leave the meeting, and when the claimant was packing away her belongings, Mr McCready made a joke about the claimant's hearing loop, and more likely than not, referred to it in the terms of a spy pod.

50. The claimant did not react to this comment in a negative way, and this was her own evidence that she gave under cross-examination.

51. The claimant did not raise a complaint about this issue at the time. And, even in light of this comment, she then accepted the offer of appointment.

52. The claimant under cross-examination gave evidence that she went back to her previous employer to ask whether she could remain employed there and that she discussed with a trusted friend whether she should 'continue to work there or not', in light of this comment. However, we as a tribunal find that on balance this probably did not happen. The reason why we found this is that the claimant's witness statement, which is extremely detailed on important matters, is quiet on this specific matter. Paragraph 64 of the claimant's witness statement appears to be the most logical place where this would have been explained, had this happened. Further, there is no evidence produced in terms of discussions with the claimant's previous employer, nor with raising this matter with her trusted friend anywhere in the bundle.

DISCUSSION

53. Given our findings above, we conclude that at the time of this matter the claimant herself did not perceive this comment as being a detriment, either for the purposes of establishing less favourable treatment or unwanted conduct. And further, it would be unreasonable to consider this as such given the circumstances surrounding the comment. The comment itself was a natural extension to the discussions that were taking place, where the claimant, whether she used the term

spy herself or not is irrelevant, described a situation where discussions could be heard without her being in the room. The comment made by Mr McCready was clearly just continuing that theme of discussion that had been led by the claimant.

54. The tribunal is not satisfied that the claimant has been subject to either less favourable treatment because of her disability, nor unwanted conduct related to her disability that had the effect or purpose of creating those matters set out in section 26 of the Equality Act 2010.

55. The allegations of direct disability discrimination and harassment related to disability insofar as they relate to Item 1 of the Scott Schedule do not succeed and are dismissed.

ITEM 2

56. As part of the claimant's role, she was responsible for maintaining a register of interests and gifts and hospitality for board members and staff. As such, the claimant created a 'Declarations of Interest' form, to be used by those involved with the respondent.

57. The form was discussed at the Board Meeting of 15 August 2020.

58. Mr Melia, at that time, was in the temporary role of Chair of the Board of Trustees. As part of his role, he had to ensure that documents were unambiguous and achieved what they intended to achieve.

59. The form produced by the claimant was an extensive form, which led Mr Melia to querying why there were so many questions.

60. Mr Melia often raises queries in Board Meeting where there is a question of clarity. This was his role, and we accept the evidence of the respondent witnesses that this is what he did and had done so on previous occasions where a document required some clarification. His questioning of matters that lacked clarity is consistent with the factual pleading relating to this Item.

61. The claimant was required to clarify the meaning of the words 'significant' and 'material'. This was because Mr Melia considered that these two terms lacked clarity and needed to be defined.

62. The claimant updated the form and sent it to members of the Board of Trustees at 13.30 on 29 August 2019 (see p.324). Mr Qureshi at 13.32 on that same day asked Board members to forward their forms to him, and he would forward them to the claimant (p.325). Mr Melia completed the form and sent it to Mr Qureshi as instructed (p.327).

DISCUSSION

63. The treatment complained of by the claimant in relation to this matter is that Mr Melia was deliberately obstructive and difficult in complying with her reasonable instruction to make appropriate declarations of interest, and that this was through Mr Melia requiring the claimant to provide definitions of the terms 'significant' and 'material'. And through the tone adopted.

64. As a matter of principle, this conduct is in no way related to either sex or disability, and as such cannot support a claim of harassment related to either sex or disability. The harassment claims are therefore dismissed.

65. This tribunal concludes that it would be unreasonable to view this treatment as reaching the level of detriment, for the purpose of establishing less favourable treatment. The two terms in question are open to interpretation. It is difficult to envisage how requesting the claimant to define two central, yet ambiguous terms, in circumstances where it is part of the claimant's role to ensure an adequate register of interests is maintained, reaches the level of being a detriment. In short, it does not.

66. However, even if we are wrong on this, the claimant has not established any causal connection with either disability or sex. Interestingly, at paragraph 87 of the claimant's witness statement she appears to explain that Mr Melia's conduct was to do with a reluctance to disclose any interests, rather than this being because of sex or disability. And further, at paragraph 88 of the claimant's witness statement she states that it was due to her having challenged Mr Melia's use of disrespectful comments that 'contributed to the reason he treated me unfavourably'. The claimant's own evidence suggests that the treatment of her were for reasons other than her sex and/or disability.

67. In these circumstances the claims pertaining to direct disability because of either disability or sex insofar as they relate to Item 2 of the Scott Schedule are not successful and are dismissed.

ITEM 3

68. In the claimant's job description, as part of the role of Governance Manager the following is included:

- Provide advice and support to board and committee members to help them deliver their duties to the organisation

- Assist with the recruitment of new board members with support from the HR Manager

69. It was not the claimant's role to interview for the position of chair of the Board of Trustees. The claimant's role was to provide some assistance.

70. As part of the appointment process, the claimant received the application forms and CV's of those that applied for the role of chair. She was given the opportunity to make notes on the candidates. Nobody prevented her from presenting those notes.

71. The claimant emailed (for complete email chain see pp268-273) Mr Qureshi on 12 August 2019 at 08.47:

Good Morning.

Please could I ask about the progress of the chair recruitment as I wasn't in the meeting when this was discussed last week.

Will the board be requiring my input on this at all or have you got it covered?

I just want to be sure I can organise my time appropriately to assist if required.

Many Thanks

72. Mr Qureshi responded at 08.53, stating

Hi Dawn,

Thank you. We have this covered but your guidance may be important further down the line in which case I'll he in touch.

Aneeq

73. To which the claimant responded at 08.59:

Morning.

Thanks for letting me know, if I can be of any assistance please do let me know.

With regards

Dawn

74. The claimant raised no complaint about this.

75. There was no general practice with respect who made coffees or as to who greeted people on their arrival at the office premises. Although, this would likely be something by Jane Campbell, who was an office administrator. The office made use of a 'wheel of brews' for general use, which would be spun, and the person it landed on would make coffees for those in the office.

76. On the first day of interviewing for the role of Chair, the claimant greeted candidates. And made them a drink. However, on a subsequent day, when Mr Manning attended, this was done by somebody else.

DISCUSSION

77. As a matter of principle, this conduct is in no way related to either sex or disability, and as such cannot support a claim of harassment related to either sex or disability. The harassment claims are therefore dismissed.

78. The claimant has not satisfied the tribunal that this was direct discrimination because of disability or sex. Not being involved in something that was not within her remit simply does not reach the level of being a detriment. There is a real issue with the way that this particular allegation is pleaded. The claimant brings it in terms of being ostracized from her senior management duties. Whereas the reality is that she was not ostracized. The tribunal was not satisfied that the claimant at the time

viewed this as a detriment, nor would it be reasonable to do so in those circumstances.

79. Again, even if we are wrong on this and this was to be considered a detriment, there is no evidence adduced that would satisfy the causal connection to either the claimant's sex or disability.

80. The claims of direct disability because of either disability or sex and the claims of harassment related to either sex or disability, insofar as they relate to Item 3 of the Scott Schedule, are not successful and are dismissed.

ITEM 4

81. The claimant took minutes for a senior managers' meeting on 17 September 2019. On completing the minutes, the claimant emailed a copy of them to Mr Goodson and Gill Cook. A copy of the minutes was contained in the bundle at pages 294-300.

82. Mr Qureshi was not present in the meeting of 17 September 2019. However, a copy of the minutes was shared with him.

83. Mr Goodson did not consider that the minutes accurately reflected the discussion that had taken place. Parts of the discussion, at least from his perspective, were missing from the minutes. Mr Goodson discussed what he perceived as inaccuracies with Mr Qureshi. This was the oral evidence of Mr Qureshi and is more likely than not to have happened given the meeting that then took place with the claimant and the respective roles that Mr Goodson and Mr Qureshi held within the company.

84. Within the minutes, the claimant recorded the following that related to cash-flow/ the respondent's financial position:

J-PH	J-PH asked AG that given the cash flow issues if he should slow down on the take on of developments by knocking back properties on technical issues or by rearranging calendars to show limited availability. GC added that we have tenants but no furniture for these properties so we need to make decision. JP-H asked how far away from the cash flow issues being resolved My Space were, are we 7 days away or will it be weeks? There is a development that has no one in it and it is now creating security issues due to being empty and is becoming a target. AG suggested slowing down the take on of new developments and knocking back properties on minor issues. Decorating schedules have been completed for works My Space should be doing. GC added that these are in our asset management strategy. AG asked what actually needed doing and J-PH and GC went through the list of properties The Vaults communal does Lakeland St Paul's Queen	J-PH to slow down take on of new developments
	J-PH added that he could put his maintenance contractors on the works but there will be a need for equipment e.g. working at height will require scaffolding and towers and there will be a cost for this. GC added that there is a schedule of works for each property ready.	

85. Mr Qureshi considered this information to be inaccurate information and was concerned that this inaccurate information would be recorded in a document that would remain around for a very long time. Mr Qureshi gave this evidence (see para 67 of his witness statement), and the claimant explained under cross examination that she understood Mr Qureshi's view to be that the respondent did not have a cash flow problem, but rather an issue in the payment of invoices. The claimant also explained that Mr Qureshi in this meeting was 'adamant that what I had written down was not correct'.

86. Mr Qureshi and Mr Goodson invited the claimant into a meeting in the Board Room after having reviewed the minutes. Mr Qureshi questioned the claimant as to the accuracy of the minutes, as he was seeking to ensure that they accurately portrayed the financial position of the company, which he had understood to have been discussed at the meeting.

87. The discussion concerned the accuracy of the minutes and did not go beyond that. The tribunal was faced with, what was in essence, two conflicting accounts of what was said at this meeting. The claimant brought a case that she was not only interrogated as to the accuracy of the minutes that she produced but that she was also subject to accusations by Mr Goodson and Mr Qureshi of inputting false information in the minutes, spreading gossip and rumours and making threats to the respondent about 'shopping them to the Regulator'. Whilst Mr Goodson and Mr Qureshi's evidence were that the only discussion that took place in the meeting of 17 September 2019 concerned the accuracy of the minutes. We reached the finding that we did on the balance of probability. The tribunal on this matter considered the evidence of Mr Goodson and Mr Qureshi to be more reliable. In reaching this position the tribunal took account, amongst other things, of the accuracy of their evidence relative to the written documents compared to that of the claimant, whose evidence was subject to change more frequently. And further, the claimant, when raising several issues in her grievance on 08 December 2019 (see pp.394-396), which is very detailed as to what concerned her, does not raise this event. This led us to concluding that, on balance, Mr Goodson and Mr Qureshi were likely accurate on the content of this discussion.

DISCUSSION

88. As a matter of principle, the conduct that makes up item 4 is in no way related to either sex or disability, and as such cannot support a claim of harassment related to either sex or disability. The harassment claims are therefore dismissed. However, even had the claim been presented as a direct discrimination complaint, because of either disability or sex, the allegation still would not have succeeded.

89. It follows from our findings above that the reason behind Mr Qureshi questioning the claimant about the accuracy of her minutes on or around 17 September 2019 is because he considered the minutes to be inaccurate. And he reached this conclusion based on his knowledge and understanding of the financial position of the respondent and having discussed the minutes with Mr Goodson.

90. Whether the approach adopted by Mr Qureshi is a good practice or not is not a matter for this tribunal. The tribunal must focus on the allegations that are before it. The tribunal concludes that the treatment that the claimant was subjected to on

17 September 2019 had no causal connection to either sex or disability or a protected disclosure, but rather were for reasons entirely disconnected from these.

91. The claims brought under item 4 of the Scott Schedule are all dismissed.

ITEM 6

92. From the commencement of the claimant's employment until the beginning of October 2019, the claimant would meet with Mr Goodson to update him on governance matters.

93. Mr Goodson was the beneficiary of those meetings. The claimant did not need them, but Mr Goodson found them useful. This was the claimant's evidence under cross examination.

94. Mr Goodson did continue to meet with the claimant in October and November 2019. This is clear from the claimant's witness statement at paragraph 148.

95. There were occasions where either Mr Goodson or the claimant could not meet on a one-on-one basis. On some of these occasions there would be communication between the two' However, on occasion there was not.

96. The claimant throughout this period was attending at monthly Board Meetings, at which Mr Goodson was present, to update the Board of Trustees on governance issues.

97. In October 2019, the respondent's Operations Manager left its employ. This role was filled by Mr Goodson, which involved duties in addition to those that he already had. This took up a significant portion of Mr Goodson's time.

DISCUSSION

98. On a factual basis, the claimant has failed to establish that Mr Goodson simply stopped one-to-one meetings from September 2019. Meetings between the two did continue after this date, and therefore on a factual level this allegation does not succeed.

99. However, putting that to one side. If the case had been brought on the occasional meeting having been cancelled for no reason, then the claim was still bound to fail, for the reasons described below.

100. It is difficult to perceive how this would be a detriment for the purposes of either a victimisation complaint or detriment on the grounds of having made a protected disclosure. The claimant herself gave evidence that these meetings were for the benefit of Mr Goodson and not her. That by cancelling the meetings 'he was cutting off his nose to spite his face'. And in circumstances where the claimant was attending Board Meetings and being given the opportunity to raise governance matters internally. In those circumstances, the claimant would not have satisfied the tribunal that this treatment reached the level of a detriment.

101. In terms of the reasons behind occasional meetings being cancelled, the tribunal accepted the evidence of Mr Goodson on this matter. That meetings tend to be more frequent at the outset of employment whilst an individual settles into their role, but naturally become less frequent. And this was be read against the fact

that the claimant herself did not raise any concerns about such meetings being cancelled.

102. The reason behind some one-to-one meetings being cancelled was because weekly meetings were no longer deemed necessary. And further, Mr Goodson's time had become stretched having taken on the additional role of Operations Manager. There was no connection to either a protected act for the purposes of a victimisation complaint or to a Public Interest Disclosure for the purposes of a detriment claim.

103. The claims that relate to item 6 on the Scott schedule are dismissed.

ITEM 7

104. Neither the claimant nor Mr Melia were employed with a view to providing legal advice to the respondent.

105. On 23 September 2019, there was some discussion at a Board meeting about the application of a 1% rent reduction (see p.307). Mr Melia interpreted the legislation in one way, whilst the claimant disagreed. The note of that discussion was as follows:

4.3 1% rent reduction
A detailed discussion was held regarding the qualification of the rent deduction. DH disagreed with JM's interpretation of the legislation but accepted that the Board would make the decision. JM to check the regulation wording regarding 'every tenant' and where our referrals are generated from. The final decision to be made by 27 September.

106. The claimant presented by email to Mr Melia (cc'd to Mr Goodson, Mr Qureshi and others) her position with respect the 1% rent reduction (see pp321a-321b). Within this email she explains:

As you will all be aware this is something that I feel very strongly about and that matters a great deal to me. I am grateful for the opportunity to present to the board my approach on this and the reasonings as to why my space should have applied the 1% rent reduction.

107. Mr Melia presented an email with his interpretation on 24 September 2019 (see pp315-319) and spoke to that document at the Board Meeting on 27 September 2019.

108. The Board reconvened on 27 September 2019. Having considered the two conflicting pieces of advice, the Board unanimously voted in preference of Mr Melia's advice. This is recorded at p.310:

12. Legislation of 1% Rent Reduction

JMe and DH disagreed on the interpretation of the legislation of 1% rent reduction. We have not applied the 1% rent reduction. JMe hopes that DH will also have the opportunity to report back to the Board. There is no statutory interpretation of 'personal care.' If the profile of our tenants changed, JMe's advice would remain the same as the support we provide remains the same.
Action: **JMe to provide the Board with his legal advice in writing.**

109. The claimant enquired as to the outcome of the 27 September board discussion by email on 11 October 2019 (see p.333). Mr Goodson explained the following:

Hi Dawn

After a long discussion it was decided that the 1% doesn't apply and Jonathan provided an email confirming this from a legal perspective which the Board accepted.

Forwarded to you but copied below for reference:

110. The claimant replied to this email on 11 October 2019 (see p.334), explaining:

Thank you for the clarification of the boards decision.

I still disagree with this as you are aware but respect the board
[Quoted text hidden]

DISCUSSION

111. The claimant brings this part of her claim on the basis of having been 'circumvented to advise the board on legal matters'. However, that is clearly not the case. On a factual level, the claimant was involved in discussing this matter, with her view listened to, albeit ultimately rejected. This is evident in the minutes from 23 September 2019. Furthermore, the claimant was afforded the opportunity (and took it up) to provide her interpretation of the relevant housing regulations to the Board. And she thanked the Board for that opportunity. The claimant has clearly not been circumvented in these circumstances, but actively involved.

112. Ultimately, the Board were persuaded by the advice of another. Those witnesses questioned on this matter explained that Mr Melia's advice was clearer in terms of the relevant provisions and persuasive in its interpretation as it applied to the respondent. And having considered the two advices in question, this is a plausible conclusion for each to reach. This allegation appears to be more rooted in disagreeing with the outcome of that decision, rather than being a detriment that gives rise to the claims that are brought on this item.

113. The claimant has not satisfied the tribunal that, on a factually level, she was circumvented from giving legal advice. But to the contrary, was involved and an active participant. In those circumstances her claims of direct discrimination because of sex or disability, victimisation and unlawful detriment on the ground of making a protected disclosure all fail.

114. The tribunal was also satisfied that the decision of preferring Mr Melia's advice had no causative link to sex, disability, a protected act or a protected disclosure.

ITEM 8

115. The claimant was aware of the need to complete quarterly returns of statistical data to the Regulator and was aware of an upcoming deadline. As such, she emailed Mr Qureshi on 15 October 2019 to ensure that this was being completed by the deadline (see p.335). She wrote:

Hi

Haven't seen anything about the submission of this info so im assuming Aneeq has got it in hand? Can you confirm please as its due by the 21st.

https://www.gov.uk/government/collections/quarterly-survey-of-private-registered-providers

Thanks

116. Mr Qureshi responded on that same day with the following:

Don't know anything about it

Regards,

Aneeq
[Quoted text hidden]

117. On 15 October 2019, following the email exchange above, the claimant knocked on the door of the boardroom, where Mr Qureshi and Mr Goodson were sat. The claimant raised the issue of the quarterly return. Mr Qureshi repeated that which was contained in his earlier email, that he had no idea about it.

118. Mr Qureshi, more likely than not laughed at this point, before he explained that the returns were half done, before showing the claimant the status of the current return on his laptop.

119. Mr Qureshi considered his actions to be a joke, but the claimant did not.

DISCUSSION

120. As a matter of principle, this conduct is in no way related to either sex or disability, and as such cannot support a claim of harassment related to either sex or disability. The harassment claims are therefore dismissed.

121. Even had this been brought as a direct discrimination claim because of either sex or disability, the claim would still fail based on the evidence before this tribunal. The claimant's own evidence supports a finding that the treatment that she was subjected to was not because of her sex or disability, but rather because Mr Qureshi considered it appropriate to play a practical joke and that he had played one successfully. This may well be misguided, but it does not support a finding of discriminatory treatment. The claimant has not adduced sufficient evidence to establish facts from which this tribunal could conclude that there was any causal connection between the treatment in question and the either the protected characteristic of sex or disability.

122. It is on this basis that the claim must fail. Claims insofar as they relate to Item 8 of the Scott Schedule are all dismissed.

ITEM 9

123. Mr Goodson did not make the comment that 'if I had known she was deaf I would never have hired her'. Put simply, it is implausible that Mr Goodson made

this comment given that he was aware that the claimant was deaf at the point of appointment. And was aware of the claimant being deaf at the point of her passing through her probation period. Further, the claimant is relying on the accounts of others, whom she has elected not to call to give evidence. Considering all of this, on balance we find that the comment was not made by Mr Goodson.

DISCUSSION

124. Given our finding above, this claim is found not to succeed.

ITEM 11

125. There was no contractual agreement to have the restrictive covenants contained within the claimant's contract reviewed on the completion of the probationary period. No such agreement was reached between the claimant and the respondent. We make this finding based on the record of the agreement contained in the claimant's contract. This was not challenged by the claimant as being inaccurate when she received the contract.

126. The initial decision to include restrictive covenants into the claimant's contract was down to business reasons. This was accepted by the claimant when she gave her evidence.

127. On 12 November 2019, the claimant emailed Ms Tye, a Human Resources Manager for the respondent, explaining that her probation period had ended on 29 October 2019 and asking whether the restrictions on working in her business 'On Point' could be revisited (see p.350).

128. Ms Tye responded to the claimant on 22 November 2019, explaining that she had raised the matter of removing the restrictive covenants from her contract with Mr Goodson, and that Mr Goodson had responded by allowing the claimant to deliver training, but not to other housing associations. In other words, Mr Goodson relaxed the position as it related to the restrictive covenants that applied to the claimant.

129. No other employees of the respondent were permitted to undertake paid work in direct competition with the respondent. The claimant has not adduced sufficient evidence for the tribunal to make any finding to the contrary.

130. The reason behind this decision of Mr Goodson was to prevent the claimant from making use of information gained through her employment for the respondent and delivering training to any of the respondent's competitors. This restriction was maintained for a business reason.

DISCUSSION

131. Oddly the claimant pleads this in terms of her restrictive covenants not having been redrafted. Whereas the reality is that they were redrafted as from 22 November 2019. They were relaxed to allow the claimant to have a more forward-facing role in her training company, whilst previously this was precluded. This is redrafting. In that sense, the claimant has failed to establish the primary facts on which she brings this part of her claim, and it must therefore fail.

132. However, even if we are wrong on our reading of the claim as it is brought, and if this pleading was focussed on the decision to not remove the restrictive covenants in their entirety, then this part of the claim would still fail. And it would fail on both the need to establish detriment and the causal connection, in relation to each of the type of complaint brought.

133. The claimant does not bring a complaint in these proceedings about the initial restriction against working for her training company. She accepts that there were reasonable business reasons behind this initial decision. Instead, focusses on the position as it continued to exist after the completion of her probation period.

134. Moving from a strict restriction in terms of outside work permitted, which is for business reasons, to a more relaxed position in terms of training but still precluding work that is for direct competitors, does not reach the level of being a detriment. This decision clearly remains as was the case in the first place, a decision made for commercial reasons. It would be unreasonable to view a relaxing of a restriction, which had been accepted as having been imposed for valid commercial reasons, as reaching the level of detriment

135. Not only does the claimant fail to establish that this decision not to remove/redraft the restrictive terms is a detriment, but the reason behind that decision has nothing to do with the claimant's disability or sex or having made a protected act or having made a protected disclosure. The claimant adduced no evidence to support that any such causal link existed

136. All claims brought in relation to item 11 are therefore dismissed.

ITEM 12

137. The claimant was emailed by Mr Goodson at 12.10 on 12 November 2019, requesting an update on progress for the In-Depth Assessment. He wrote the following:

Please can you provide the Senior Management Team and the Board at the next Board Meeting with an update on progress in preparation for the In Depth Assessment. Specifically the NHF Code of Practice 2015 and the RSH In Depth Assessment Criteria (Annex C).

Be specific and indicate your activity and progress in each of the required areas. Where you do not own the outcome or are unable to comply please state what the issue is and who is responsible for this outcome.

The end of January will mark 6 months since we began this exercise and, I feel, a realistic date for us to be ready for any IDA date set by the Regulator. In the meantime if you find yourself being drawn into meetings or issues outside of this activity please speak with me prior to agreeing to attend/take part.
Regards

Andy

138. The claimant replied to this email, on the same day, at 12.14:

HI Andy

No problem, I will do.

Can you confirm when we are getting a head of Housing/Head of Ops in place then please?

Im getting pulled into things and asked questions about stuff as there is no one else to go to.

Until this gap is filled that's going to keep happening so how do you want me to manage that?

Dawn

139. On 17 November 2019, the claimant sent an email to board members seeking their papers for the meeting to be submitted by the following Wednesday, which was 21 November 2019.

DISCUSSION

140. As a matter of principle, this conduct is in no way related to either sex or disability, and as such cannot support a claim of harassment related to either sex or disability. The harassment claims are therefore dismissed. The tribunal again, did give consideration as to what the position would be had it been brought as a direct discrimination complaint.

141. This allegation is brought on a detriment that she was asked to complete an extensive report in a three-day turnaround on every single piece of work that she had done since her employment started with the respondent. However, there is no request for a report, nor was this required within 3 days. The claimant having up to 9 days to complete the update. Factually, her claim of harassment (or direct discrimination had it been brought in that way), victimisation and detriment on the grounds of a protected disclosure insofar as it relates to item 12 is not established and fails as a result.

142. The claimant's response to the email from Mr Goodson is also quite telling in this case. She replies by stating 'No problem'. This does not demonstrate that the claimant was perceiving the request made by Mr Goodson as being an act that would amount to a detriment for the purposes of any of these claims.

143. And taking this one step further, the reason behind the request is accepted by the tribunal as being due to an upcoming In-Depth Assessment in January 2020, which the claimant was aware of since the commencement of her employment. The tribunal, had it been required, would have found that the reason behind this request was due to that impending assessment. The claim would have failed on the lack of any causal connection to either of the protected characteristics on which this claim is brought, any protected act or a protected disclosure.

ITEM 13

144. Meeting with the regulator was not part of the claimant's contractual role with the respondent. The claimant's contract simply does not require this, nor was it mentioned in the job description for the role that she occupied. The claimant accepted this under cross examination.

145. No manager at the equivalent level of the claimant met with the Regulator.

146. It was only the respondent's board members or members of its executive team that met with the Regulator. Ms Alston, because of her being on the Board of Trustees, met with the Regulator on at least one occasion. Attendees at meeting with Regulator was always at the request of the Regulator.

DISCUSSION

147. The claimant has produced no evidence to support any findings that members outside of board members and/or the executive team met with the Regulator.

148. It is the case that the claimant was excluded from meetings with the Regulator. However, this was no way because of her sex or disability, or for having done a protected act or on the grounds of having made a protected disclosure. It was because of her status within the company. She was never a member of the Board, nor part of the executive team. This is the sole reason behind her exclusion. The claimant may well consider that she should have been involved in such meetings, but that is not enough to support the claims which she brings before the tribunal.

ITEM 16

149. Angela Furness, a HR consultant with a third party was appointed to hear and determine the claimant's grievance. A grievance meeting with the claimant took place on 10 March 2020. This meeting started at 10.30am. It was explained at the beginning of that meeting that should the claimant need a break then she needs just ask for one. The claimant accepted under cross examination that as it is recorded in the minutes of that meeting then it 'must be accurate' (see p.471). During the meeting it was identified that the claimant's companion was named in the grievance on numerous occasions and that this may mean that there is a conflict of interest. On this basis this meeting was adjourned at 11.25 (see p.474).

150. This was the first time that the claimant had met Ms Furness.

151. The grievance meeting reconvened on 13 March 2020. This meeting started at 10.30. Again, Ms Furness explained at the beginning of the meeting that a break would be arranged if one was requested (see p.475).

152. The meeting on 13 March 2020 and concluded at around 14.30. This is the clear evidence of Ms Wood on this matter (see para 39 of Ms Wood's witness statement), was not challenged by the claimant, accepted as possible by the claimant under cross examination and is consistent with the record of when Ms Furness was signed out from the respondent's premises (see p.469).

153. On one occasion during the meeting the claimant got upset. This led to a break in the meeting. This break was in the afternoon and lasted about 15 minutes.

154. It is likely that there was a short break in the morning. This was a short comfort break during which Ms Wood left the room to refresh everybody's drinks. Ms Wood is clear on this at paragraph 26 of her witness statement. Whilst the claimant explained that she could not say that this did not happen when cross-examined on this point. The claimant did not challenge Ms Wood on this point under cross examination, other than to indicate that she thought there was only a single break. On balance, we make a finding that the claimant's recollection on this point is less likely to be accurate than that of Ms Wood.

155. The claimant was offered a further break for lunch but declined it. Paragraph 27 of Ms Wood's evidence was not challenged on this point.

156. During the meeting, the claimant did not ask for or require any further breaks.

157. The claimant has been involved in meetings other than this one that has lasted more than a couple of hours. Neither during nor following these meetings

did the claimant raise any issue about the meeting not having breaks every 45 minutes.

DISCUSSION

158. The claimant has not established the facts on which she brings this claim. No grievance meeting lasted for 6 hours. The meeting of 13 March 2020 lasted for 4 hours, at most. Further, the tribunal, on balance, found that there were at least 2 breaks with a third offered, with the claimant being afforded the ability to request further breaks where necessary. On a factual basis, these claims fail.

159. In respect of the claim for a failure by the respondent to make reasonable adjustments, the claimant has failed to establish facts that support a number of the constituent parts of that claim. The tribunal was not satisfied that the respondent had a practice of holding meetings that lasted up to 6 hours whilst only affording a single break. The claimant has failed to adduce evidence that such lengthy meetings put her at a substantial disadvantage for reasons connected to her disability. The claimant has failed to establish either actual or constructive knowledge of that substantial disadvantage. And the claimant has failed to establish that the adjustment contended for would have removed or alleviated the substantial disadvantage in question.

160. All claims brought under item 16 are therefore dismissed.

ITEMS 14, 15, 17 AND 18

161. There was a peer review that took place between 17 October 2019 and 24 November 2019. This was undertaken by Lica Marchant. This resulted in 34 recommendations. It included a proposed new structure for the respondent. And a proposal that Ms Marchant would be appointed as Consultant Strategic Leader for a period of six months. Her role was to 'drive change, review organisational structure and to future proof the organisation. These proposals were approved by the Board at the board meeting of 15 January 2020 (see p.419).

162. The claimant started a period of absence form work through illness, on 13 December 2019.

163. On 15 January 2020, Ms Marchant brought forward a Business Case Proposal (see pp.416-417). She proposed that the permanent Governance Manager role be made redundant and that this area of the business be outsourced to an external company. Ms Marchant made this proposal on the following basis:

a. There is currently a gap in critical provision due to the claimant being absent from work
b. The claimant has made it clear that her desire is not to return to her employment with the respondent
c. An external party, namely Campbell Tickell, had been identified as providing multi-disciplinary management consultancy, including on governance matters
d. Engaging an external company such as Campbell Tickell would be cost neutral in the first year, but would make savings of between £8,000 and £12,000 per year going forward

e. Utilising an external company comes with the added benefit of protection through its professional indemnity insurance

164. A decision was mas at the board meeting of 15 January 2020, where the Board decided to accept the proposal presented by Ms Marchant. Cheryl Calland was instructed to prepare a letter of redundancy (se p.422). Although the claimant disputes whether any decision was made at this meeting, it is clear through the actions recorded that this was the decision reached in relation to her.

165. The claimant was sent a letter on 20 January 2020 informing her that her role had been selected for potential redundancy for economic reasons (see p.424).

166. On 23 January 2020, Mr Manning wrote to the claimant to explain that the redundancy process and the grievance process was being kept separate. And to ensure this, an external company would be appointed to manage the grievance. The company P3PM was appointed to manage the grievance process.

167. The claimant attended a first redundancy meeting on 05 February 2020. This meeting was chaired by Mr Manning. In this meeting the claimant explained that she would not be returning to work for the respondent. Notes (these start at p.429, but see p.430), that were not challenged as inaccurate by the claimant at the time, record:

DH response; DH loves her job, the staff team at My Space, loved what she has done, but the experience that she feels in her view she has suffered makes her feel that she cannot return due to her breakdown to My Space and if she returned to My Space she would be treated poorly, DH feels she is in an intangible position.

168. On 14 February 2020, Ms Calland sent the claimant alternative roles available with the respondent (see pp.436-437). Further alternative roles were sent to the claimant, including on 25 February 2020 (see p.449).

169. A second redundancy consultation meeting was held on 04 March 2020. The claimant is recorded as explaining that:

She confirmed that she wasn't interested in the other roles and she felt her position at the company was now untenable due to a breakdown of trust/confidence which she felt would be difficult, if ever to recover from.

170. On 13 March 2020, the claimant reiterated to the respondent, during her grievance meeting that she no longer wished to continue working for the respondent.

171. The claimant was sent a letter dated 02 April 2020, which confirmed thrat her role was being made redundant and that as a result her employment was being terminated. It explained that:

In reaching this decision, I wish to give the following reasons:

- The role of Governance Manager will no longer exist at My Space Housing Solutions with the Board satisfied this function can be provided by an external organisation, with significant financial saving to My Space.
- I note that at the consultation meeting on the 5th February 2020, you alleged that the reason for the redundancy was not what was contained in the at risk letter on the 21st January 2020 but because you had raised a grievance and you were currently off work ill. As you are aware, I disagreed with that allegation at the time and explained that the redundancy process was not because you had raised a grievance or was off ill.

It is also noted that:

- Alternative roles within My Space have been made available for your consideration and you have declined to be considered for such roles.
- You have been unequivocal that you no longer wish to work for My Space in any capacity, including in your substantive role.

172. The role of Governance Manager does not exist within the respondent currently. This role has never been replaced.

DISCUSSION

173. The tribunal was satisfied that the reason behind the claimant's role of Governance Manager being put at risk of redundancy, being made redundant and the decision to terminate the claimant's contract by reason of redundancy were for reasons associated with cost savings that could be made by engaging an external consultancy firm. And this was in circumstances where the claimant had made it clear to the respondent that she was not intending on returning to work. The claimant has not adduced any evidence that would support that she was subject to any of these actions for reasons connected to her sex or disability, or for having done a protected act, or that her having made a protected disclosure materially influenced (for the detriment claims), or was the principal reason (with respect the automatic unfair dismissal complaint) for these decisions.

174. These claims must therefore all fail.

CONCLUSION

175. This was a case where the tribunal needed to constantly remind itself of what the allegations were in this case, and to ensure that is did not stray into matters that went beyond the pleaded case. For example, there was evidence of certain things being said in this case whereby one party considered it a joke, but it appeared to cause some distress to the recipient (namely the claimant). However, the tribunal was tasked with determining the legal claims that were before it. And its focus had to be on those matters. Whether the tribunal agreed with some of the actions or not (which no comment is passed, and nothing should be read into that) was only considered where it was relevant.

176. The tribunal did adopt a less formal approach to the pleadings, in particular where an allegation was brought as harassment without a claim of direct discrimination in the alternative, where the allegation appeared to fit better as a claim of direct discrimination. This was to ensure that none of the allegations brought by the claimant were dismissed simply by virtue of the claimant not knowing the correct label to place on an allegation. This appeared to be the fairest approach the tribunal could adopt.

177. For the avoidance of any doubt, all claims in this case fail and are dismissed.

Employment Judge Mark Butler

Date: 06 December 2022

JUDGMENT SENT TO THE PARTIES ON

8 December 2022

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

No.	Event/act	Date alleged incident occurred	What types of claim alleged?	How does that allegation satisfy the relevant legal test?	Alleged actor(s)	Comparator	Paragraph number in particulars of claim	Respondent's comments
1	Making derogatory comments about C's hearing loop at board meeting	28th June 2019 – This act forms a continuing act as set out below	Direct discrimination on the grounds of her disability (section 13 of the Equality Act 2010) Harassment (section 26 of the Equality Act 2010)	C was singled out by R who identified C's disability and weaponised it to ridicule and insult her. R did this by referring to her hearing loop as a 'spy pod' and said words to the effect of 'we'll have to be careful around you then'. The insinuation was that, because C was deaf, she was untrustworthy. Because of her hearing disability, R treated C less favourably than R would have treated somebody who was not deaf. These comments were inextricably linked to C's disabilities. The comments would not have been made had C not been disabled. CM harassed C by engaging in unwanted conduct related to her disability which had the purpose or effect of either violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C. Consequently, C felt humiliated and ostracised from the senior management team.	CM	Non-disabled person working in the same role as C during the relevant period.	Claim form 1, paragraph 6	1. The s.13 claim and s.26 claim (which it is assumed is on the protected characteristic of disability) are out of time and ought to be struck out. 2. The allegations are untrue and will be refuted by witness evidence. 3. The Claimant ought to pay a deposit as the allegations have little reasonable prospect of success. 4. The allegations are vexatious in that the Claimant has made this knowing it to be untrue.
2	Being patronising and deliberately obstructive	15 August 2019 – Continuing act	Direct discrimination on the grounds of her disability and/or sex (section 13 of the Equality Act 2010) Harassment (section 26 of the Equality Act 2010)	Due to C's sex and/or disability, JM was deliberately obstructive and difficult in complying with C's reasonable instruction to make appropriate declarations of interest. By doing so, C felt degraded and humiliated, and that the senior management team were creating a hostile environment for her. Additionally, because of C's sex and/or disability, JM treated C less favourably than he would have treated his male and able-bodied colleagues. JM harassed C by engaging in unwanted conduct related to her disability which had the purpose or effect of either violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C.	JM	Male and able-bodied members of the senior management team during the relevant period.	Claim form 1, paragraph 8	1. The s.13 claim (for disability) is a new claim as the allegation was not described as an act of direct disability discrimination in the claim form and ought to be rejected by the Tribunal. 2. The s.13 claim (if were to be accepted at this late stage) and s.26 claim (which it is assumed is on the protected characteristic of disability and/or sex) are out of time and ought to be struck out. 3. The allegation is untrue and will be refuted by witness evidence. 4. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success. 5. The allegation is vexatious in

								that the Claimant has made this knowing it to be untrue.
3	Being ostracized and undermined from senior management team duties	10 September 2019 – Continuing act	Harassment (section 26 of the Equality Act 2010) Direct discrimination on the grounds of her sex (section 13 of the Equality Act 2010)	As Governance Manager, C would usually be involved in the interview process for the selection of the new chair of the board of trustees. Rather than partaking in the interview, C was asked to make the coffees, meet the candidates and sign them into the building. A male employee was not be requested to undertake the same tasks. Given C's seniority and experience, being asked to make the coffees and generally being undermined had both the purpose and effect of violating C's dignity and creating a degrading and humiliating environment for her to work in.	AQ and AG	Male members of the senior management team working during the relevant period.	Claim form 1, paragraph 10	1. The s.13 claim and the s.26 claim (on an unknown protected characteristic) are out of time and ought to be struck out. 2. The allegations are untrue and will be refuted by witness evidence. 3. The Claimant ought to pay a deposit as the allegations have little reasonable prospect of success. 4. The allegations are vexatious in that the Claimant has made these knowing them to be untrue.
4	Being interrogated as to the accuracy of her minutes, questioning C's professional integrity	17 September 2019 – Continuing act	Harassment (section 26 of the Equality Act 2010) Unlawful detriment on the ground of making a protected disclosure (s47B ERA 1996)	On 17 September, C made several protected disclosures to R regarding governance issues she had identified. These can be seen at paragraph 12 of the grounds of complaint. As a result of these disclosures, C was subjected to detrimental treatment by subjecting her to an interrogation. C had taken minutes for a managers meeting. AQ was not in attendance at this meeting, yet he, along with AG claimed that the minutes C had taken were negative. For 45 minutes, AQ and AG interrogated C, accusing her of inputting false information in her minutes, spreading gossip and rumours and making threats to R, questioning her professional and personal integrity. This degraded C, humiliated her, and created an extremely hostile environment for her to work within. C made protected disclosures on 15 August 2019, 17 September 2019 Details of these disclosures are as follows: <u>15 August 2019</u> C became aware on 15 August that the annual accounts report issued by R and lodged on companies house stated	AQ and AG		Claim form 1, paragraph 13	1. It is not admitted that the C made protected disclosures. 2. The s.26 claim (on an unknown protected characteristic) is out of time and ought to be struck out. 3. The s.47B (detriment) claim is out of time and ought to be struck out. 4. The allegations are untrue and will be refuted by witness evidence. 5. The Claimant ought to pay a deposit as the allegations have little reasonable prospect of success. 6. The allegations are vexatious in that the Claimant has made these knowing them to be untrue.

				that the organisation was fully compliant with its obligations under the NHF 2015 code of governance, that the board took regular reviews of its effectiveness, and that it was compliant with the NHF standard and issued the statement saying so. C believed this to be untrue and incorrect. . C made contact with public concern at work on this date. <u>17 September 2019</u> C made further disclosures to AG. On 17 September she disclosed: 1) That rents and service charges had an element for enhanced housing management that did not reflect the actual delivery of services to clients e.g expenses of the board, directors expenses, fuel cards. 2) That rents and service charges also had an element in them for aids and adaptations which R were proposing to use to get round the ineligibility if the touch base mobile communication device by claiming it was a disability aid rather than a support service. 3) That the 4 year mandate for a 1% rent cut not being applied to R properties and Cs concern this was in breach of the regulatory standards as Rs residents were not so vulnerable that they would be in a care home or a hospital which was the threshold for being specialised supported housing. These were qualifying disclosures of information because C reasonably believed they showed that a person i. had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject, ii. that the health or safety of any individual had been, was being or was likely to be endangered, iii. that information tending to show any matter falling within any one of the preceding paragraphs had been, is being or was likely to be deliberately concealed.				
~~5~~	Ignoring complaints of racism [This allegation was withdrawn on 7.1.2021]	24 September 2019 – Continuing act	~~Harassment (section 26 of the Equality Act 2010)~~ ~~Victimisation (s.27 of the Equality Act 2010~~)	C overheard an employee of R using racist language in the office and complained to AG. AG initially didn't respond to this email. Following a follow-up email, C was told to leave it and was made to feel as if she was a nuisance	Gillian Wright and AG		Claim form 1, paragraph 14	1. <u>The s.26 claim (on an unknown protected characteristic but assumed to be race and/or disability) and;</u>

				for raising the matter in the first place. Due to C being Caucasian, C's complaint was not taken seriously, despite the fact that the comment she complained about caused her great offence. C raised a protected act, that being an employee using racist language to AG. AG told C to leave it and made C feel like a nuisance GW harassed C by engaging in unwanted conduct related to her disability which had the purpose or effect of either violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C.				2. The s.27 claim (on an unknown protected characteristic but assumed to be race and/or disability) are both out of time and ought to be struck out. 3. The allegations are untrue and will be refuted by witness and documentary evidence. 4. The Claimant ought to pay a deposit as the allegations have little reasonable prospect of success. 5. The allegations are vexatious in that the Claimant has made these knowing them to be untrue.
6	Not attending one-to-one meetings	September 2019 – Continuing act	Victimisation (s.27 of the Equality Act 2010) Unlawful detriment on the ground of making a protected disclosure (s47B ERA 1996)	C relies o the protected act on the 24 August 2020 (5 above) and the protected disclosures set out in 4 above) It was agreed at the commencement of C's employment with R that she and AG would meet to discuss governance issues. This was essential given that C was employed to oversee the governance of the organisation. By September, AG was regularly cancelling meetings, failing to attend scheduled meetings and refusing to engage with C in any meaningful way, without explanation. C contends that this treatment was either due to raising a protected act or raising a protected disclosure	AG		Claim form 1, paragraph 15	1. It is not admitted that the C made protected disclosures. 2. The s.27 claim (on an unknown protected characteristic) is out of time and ought to be struck out. 3. The s.47B (detriment) claim is out of time and ought to be struck out. 4. The allegations are untrue and will be refuted by witness evidence. 5. The Claimant ought to pay a deposit as the allegations have little reasonable prospect of success.
7	Being circumvented to advise the board on legal matters	11 October 2019 – Continuing act	Direct discrimination on the grounds of her disability and/or sex (section 13 of the Equality Act 2010) Victimisation (s.27 of the Equality Act 2010) Unlawful detriment on the ground of making a protected	C has a degree in law and has since completed numerous housing law qualifications from recognised bodies. As such, C was well placed to advise the board on housing matters. JM was chosen to advise the board, despite specialising in employment law.	AG and the Board	JM, a male member of the senior management team who was employed by R during the relevant period.	Claim form 1, paragraph 17	1. The s.26 claim (on an unknown protected characteristic but assumed to be sex and/or disability), and; 2. The s.27 claim (on an unknown

			disclosure (s47B ERA 1996)	Due to C's sex and/or disability, she was not deemed to be capable of advising the board on housing matters. This amounts to the board treating C less favourably than JM due to her protected characteristics. Alternatively, C contends that this treatment was either due to raising a protected act or raising a protected disclosure (as set out in 4 and 5 above)				protected characteristic but assumed to be sex and/or disability), and; 3. The s.47B (detriment) claim are all out of time and ought to be struck out. 4. The allegations are untrue and will be refuted by witness and documentary evidence. 5. The Claimant ought to pay a deposit as the allegations have little reasonable prospect of success. 6. The allegation is vexatious in that the Claimant has made these knowing them to be untrue.
8	Being bullied and subjected to a practical joke	15 October 2019 – Continuing act	Harassment (section 26 of the Equality Act 2010)	AQ feigned ignorance when asked about the quarterly data return by C (which had to be submitted by 21 October 2019). The pretence continued as C confronted AQ and AG in person. Both men then laughed in C's face and showed her the completed quarterly data return. This behaviour was unwanted and had both the purpose and effect of violating C's dignity and created an intimidating, hostile, degrading, and humiliating environment for C to work within. It was entirely reasonable for these comments to have that effect on C.	AQ and AG		Claim form 1, paragraph 19	1. The s.26 claim (on an unknown protected characteristic) is out of time and ought to be struck out. 2. The allegations are untrue and will be refuted by witness evidence. 3. The Claimant ought to pay a deposit as the allegations have little reasonable prospect of success.
9	Comments made by AG	22 October 2019 – Continuing act	Direct discrimination on the ground of her disability (section 13 of the Equality Act 2010) Harassment (section 26 of the Equality Act 2010)	On this date, C learned from the former Head of Operations that AG remarked in June 'if I had known she was deaf I would never have hired her'. This overtly discriminatory comment was entirely unwanted and unwelcomed. It clearly had both the purpose and effect of violating C's dignity and created an intimidating, hostile, degrading, offensive and humiliating environment for C to work within. Whilst this was not said to C directly, learning that it was said made C feel totally ostracised from the senior management team and AG himself. It reinforced her	AG	A non-disabled member of the senior management team who was employed by R during the relevant period.	Claim form 1, paragraph 21	1. The s.13 claim and the s.26 claim (on an unknown protected characteristic but assumed to be disability) are out of time and ought to be struck out. 2. The allegation is untrue and will be refuted by witness evidence. 3. The Claimant ought to pay a deposit as the allegations have little reasonable prospect of success.

				existing concerns about the way that she was being singled out and treated by her colleagues. It was entirely reasonable for these comments to have that effect on C. AG treated C less favourable than others by making this comment				4. The allegation is vexatious in that the Claimant has made this knowing it to be untrue.
~~10~~	C regularly had to make telephone calls from her car or outside the office building in order to hear properly [The ET determined that this allegation necessitated an amendment and refused this amendment on 5.2.2021]	28 October 2019 – Continuing act	~~Failure to make reasonable adjustments (section 20 Equality Act 2010)~~ ~~Discrimination arising from disability – s.15 Equality Act 2010~~	C was put at a substantial disadvantage by a PCP (working practices of being seated in a loud working environment) compared to non-disabled people due to her hearing disability. No reasonable adjustments were put in place to provide additional support to accommodate C's disability. The loud working environment of an open office increased C's stress levels and hindered her from being able to undertake aspects of her job role. A reasonable adjustment would have been to consult with C and put additional support/assistance in place and provide a quiet space for her to make phone calls. C is unable to sit in loud working environments because of her being deaf. C was therefore unable to completely her role properly.	SMT	Non-disabled person working in the same role as C during the relevant period.	Claim form 1, paragraph 23	1. The s.20 claim (for reasonable adjustments) is a new claim as this was not pleaded in the claim form and ought to be rejected by the Tribunal. 2. The s.20 claim (if were to be accepted at this late stage) and s.15 claim are out of time and ought to be struck out. 3. The allegation (if accepted) is untrue and will be refuted by witness evidence. 4. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success.

11	C's request to have the restrictive covenants in her employment contract redrafted was refused	12 November 2019 – Continuing act	Direct discrimination on the grounds of her sex and/ or disability (section 13 Equality Act 2010) Victimisation (s.27 of the Equality Act 2010) Unlawful detriment on the ground of making a protected disclosure (s47B ERA 1996)	Because of C's sex and/ or disability, AG treated C less favourably than AG had treated others. C understood that following the conclusion of her probationary period, she would be able to have her restrictive covenants redrafted. C also understood that AQ and Peter Lynch (a board member and Director) had directly undertaken consultancy work for other organisations within the charity and housing sector. The less favourable treatment therefore was the refusal to consider redrafting C's restrictive covenants which restricted her from undertaking additional work outside of her work with the Respondent. C contends that this treatment was either due to raising a protected act or raising a protected disclosure (row 15 or row 5)	AG	AQ and Peter Lynch	Claim form 1, paragraph 26	1. The s.13 claim (for sex and/or disability), and; 2. The s.27 claim (on an unknown protected characteristic but assumed to be sex and/or disability), and; 3. The s.47B (detriment) claim are all out of time and ought to be struck out. 4. The allegation is untrue and will be refuted by witness evidence. 5. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success.
12	C was asked to submit an extensive report in a three-day turnaround on	12 November 2019	Harassment (section 26 of the Equality Act 2010) Victimisation (s.27 of the Equality Act 2010)	AG engaged in unwanted conduct directed towards C, namely by making entirely unreasonable requests of her. This request was intended to make C feel	AG		Claim form 1, paragraph 27 (error? this should refer to	1. The s.26 claim (on an unknown protected characteristic) and;

	every single piece of work she had done since her employment with the Respondent commenced.		Unlawful detriment on the ground of making a protected disclosure (s47B ERA 1996)	stressed and under immense pressure. This had the purpose and effect of violating C dignity and creating an intimidating, hostile, degrading, humiliating working environment for C. C contends that this treatment was either due to raising a protected act or raising a protected disclosure (row 15 or row 5)			paragraph 28)	2. The s.27 claim (on an unknown protected characteristic) and; 3. The s.47B (detriment) claim are all out of time and ought to be struck out. 4. The allegation is untrue and will be refuted by witness evidence. 5. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success.
13	C was not informed of, asked to contribute to, or invited to meetings with the social housing regulator.	13 November 2019 – Continuing act	Direct discrimination (section 13 Equality Act 2010) Victimisation (s.27 of the Equality Act 2010) Unlawful detriment on the ground of making a protected disclosure (s47B ERA 1996)	Because of C's sex and/ or disability, members of the SMT treated C less favourably than they would have treated others. The less favourable treatment was excluding C from planning for and attending the meeting with the social housing regulator. Given C's job title of Governance Manager, she naturally assumed that these would be meetings that she would attend. Being ostracised in this way caused C to feel embarrassed and unworthy. C contends that this treatment was either due to raising a protected act or raising a protected disclosure (row 15 or row 5)	SMT	A male and/ or non-disabled member of the senior management team who was employed by R during the relevant period.	Claim form 1, paragraph 30	1. The s.13 claim (on an unknown protected characteristic) and; 2. The s.27 claim (on an unknown protected characteristic) and; 3. The s.47B (detriment) claim are all out of time and ought to be struck out. 4. The allegation is untrue and will be refuted by witness evidence. 5. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success.
	C raises a grievance raising a protected act	8 December 2019						
14	C was informed that her job role was at risk of redundancy	21 January 2020 – Continuing act	Direct discrimination (section 13 Equality Act 2010)	Because of C's sex and/ or disability, R treated C less favourably than it treated others by selecting her role for redundancy. This action should be placed in the wider context of the less favourable treatment C was subjected to up to this point. They did not like a female and disabled employee speaking up	SMT	A male and/ or non-disabled member of the senior management team who was employed by R during the relevant period.	Claim form 1, paragraph 44	1. The s.13 claim (for sex and/or disability), the allegation for which is untrue and will be refuted by witness and documentary evidence. 2. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success.

15	C was informed that her job role was at risk of redundancy	21 January 2020	Unlawful detriment on the ground of making a protected disclosure (s47B ERA 1996) Victimisation (s.27 of the Equality Act 2010)	C made protected disclosures on 15 August 2019, 17 September 2019 and 15 October 2019. Details of these disclosures are as follows: 15 August 2019 C became aware on 15 August that the annual accounts report issued by R and lodged on companies house stated that the organisation was fully compliant with its obligations under the NHF 2015 code of governance, that the board took regular reviews of its effectiveness, and that it was compliant with the NHF standard and issued the statement saying so. C believed this to be untrue and incorrect. . C made contact with public concern at work on this date. 17 September 2019 C made further disclosures to AG. On 17 September she disclosed: 1) That rents and service charges had an element for enhanced housing management that did not reflect the actual delivery of services to clients e.g expenses of the board, directors expenses, fuel cards. 2) That rents and service charges also had an element in them for aids and adaptations which R were proposing to use to get round the ineligibility if the touch base mobile communication device by claiming it was a disability aid rather than a support service. 3) That the 4 year mandate for a 1% rent cut not being applied to R properties and Cs concern this was in breach of the regulatory standards as Rs residents were not so vulnerable that they would be in a care home or a hospital which was the threshold for being specialised supported housing. 15 October 2019 On 15 October C raised a protected disclosure by email to Andrew Goodson Peter Lynch and Aneeq Quereshi.that R had misled the regulator about having an audit and risk committee as mandated by the NHF code 2015 by entering details into NROSH website with a false chair, false details and false information	SMT		Claim form 1, paragraph 44	1. The s.47B (detriment) claim and s.27 claim (on an unknown protected characteristic but assumed to be sex and/or disability), the allegation for which is untrue and will be refuted by witness and documentary evidence. 2. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success.

				These were qualifying disclosures of information because C reasonably believed they showed that there was a breach of R's legal obligations. C has been subjected to unlawful detriment by being informed that her job role was at risk of redundancy. This was in response to the disclosures outlined above.				
16	C's grievance meeting was six hours long, with only one brief adjournment insisted upon by C's representative.	13 March 2020 – Continuing act	Failure to make reasonable adjustments (sections 20-21 Equality Act 2010) ~~Discrimination arising from disability – s.15 Equality Act 2010~~ Harassment (section 26 of the Equality Act 2010)	C was put at a substantial disadvantage by a PCP compared to a non-disabled colleague due to her difficulty hearing and the resulting effect that has on her ability to concentrate. The intense grievance meeting, without the appropriate number of breaks, led to significant stress and anxiety and resulted in impaired judgment in responding to the questions being directed at her. A reasonable adjustment would have been to consult with C prior to the meeting and put additional support/ assistance in place for her. This could have included more frequent breaks, seeking her consent to progress with the meeting at certain stages, or splitting the meeting over a longer period than one day, amongst other things.	AF and Robin Wood	A non-disabled colleague	Claim form 2, paragraph 14	1. The s.20 and 21; (for reasonable adjustments); the s.15 (for discrimination arising); and s.26 (harassment) claims are all new claims as these were not pleaded in the claim form and ought to be rejected by the Tribunal. 2. The s.20-21; s.15 and s.26 claims (if were to be accepted at this late stage) are out of time and ought to be struck out. 3. The allegation (if accepted) is untrue and will be refuted
				The Something arising from is her reduced concentration levels. AF and RW treated C less favourably by not offering any reasonable break periods. C felt increased levels of stress and anxiety and an impaired judgment in dealing with the questions being posed. This conduct had the purpose and/ or effect of violating C's dignity and creating an intimidating, hostile, degrading and humiliating or offensive environment.				by witness and documentary evidence. 4. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success. 5. The allegation is vexatious in that the Claimant has made this knowing it to be untrue.
17	C was dismissed by reason of redundancy	3 April 2020 – Continuing act	Direct disability and/ or sex discrimination (section 13 Equality Act 2010)	Because of C's sex and/ or disability, R treated C less favourably than it treated others by making her role redundant. This action should be placed in the wider context of the less favourable treatment C was subjected to up to this point.	SMT	Non-disabled and male colleagues	Claim form 2, paragraph 19	1. The s.13 claim (sex and/or disability) is a new claim as this was not pleaded in the claim form and ought to be rejected by the Tribunal. 2. The s.13 claim (if were to be accepted at this late stage) is out of time and ought to be struck out. 3. The allegation (if accepted) is untrue and will be refuted by witness and

								documentary evidence. 4. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success.
18	C was dismissed by reason of redundancy	3 April 2020 – Continuing act	Automatic unfair dismissal for making protected disclosures (section 103A Employment Rights Act 1996) Unlawful detriment on the ground of making a protected disclosure (s47B ERA 1996) Victimisation (s.27 of the Equality Act 2010)	R's dismissal of C was automatically unfair as it was by reason (or principal reason) of C making protected disclosures on 15 August 2019, 17 September 2019 and 15 October 2019 as previously set out. C contends that this treatment was either due to raising a protected act or raising a protected disclosure (row 15 or row 5)	SMT		Claim form 2, paragraph 19	1. The s.47B (detriment) claim is misconceived having regard to S.47B(2)(a). 2. The s.103A and s.27 claim (on an unknown protected characteristic), the allegation for which is untrue and will be refuted by witness and documentary evidence. 3. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success.
~~19~~	C was repeatedly contacted to return work equipment, eventually suggesting that somebody from R would turn up to C's house to collect the items [This allegation was withdrawn on 12.1.2021]	12 May 2020, 15 May 2020, 18 May 2020, 26 May 2020, and 27 May 2020	~~Harassment (section 26 Equality Act 2010)~~	R engaged in unwanted conduct, namely by repeatedly requesting the return of company property in quick succession (despite failing to respond in a timely manner to C previously). This culminated in R suggesting that somebody would be prepared to attend C's home to collect the items for themselves on 18 May 2020. Given the way in which C had been treated by R up to this point, this conduct had the purpose and/ or effect of violating C's dignity and creating an intimidating, hostile, degrading and humiliating or offensive environment.	Cheryl Callow		Claim form 2, paragraphs 28, 29, 30, 33, and 34	1. The s.26 (harassment) claim is a new claim as this was not pleaded in the claim form and ought to be rejected by the Tribunal. 2. The s.26 claim (if this were to be accepted at this late stage) is out of time and ought to be struck out. 3. The allegation (if accepted) is untrue and will be refuted by witness and documentary evidence. 4. The Claimant ought to pay a deposit as the allegation has little reasonable prospect of success. 5. The allegation is vexatious in that the Claimant has made this knowing it to be untrue.