EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss E Taylor	**v**	**Clarion Housing Group Limited**

Heard at: London Central (in person and by video)

On: 22, 23, 24 and 25 March 2022

Before: Employment Judge P Klimov
Tribunal Member T Breslin
Tribunal Member S Godecharle

Representation:

For the Claimant: in person

For the Respondent: Ms J Denvers (of Counsel)

JUDGMENT having been sent to the parties on 25 March 2022 and written reasons having been requested by the claimant on 1 April 2022, in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background and Issues

1. By a claim form presented on 29 January 2021 the Claimant has brought complaints of direct disability discrimination (s 13 Equality Act 2010) discrimination arising from disability (s 15 Equality Act 2010) and unfair dismissal (s.94 Employment Rights Act 1996).

2. There was an agreed list of issues (pp 43-45 of the bundle). It was agreed at the start of the hearing that issues 1.3.4 and 3.4 were not live issues and issues 3.31

and 3.3.2 to be determined as part of the discrimination arising from disability claim.

3. The Claimant represented herself at the hearing and Ms Denvers appeared for the respondent. The Tribunal is grateful for their submissions and assistance.

Evidence

4. The Claimant gave evidence and was cross-examined. There were five witnesses for the Respondent: Ms Z Pattern (the Claimant's manager from August 2018 to August 2019) , Ms I McConnell (the Claimant's manager from August 2019 to dismissal), Ms S Noyce (the Claimant's redundancy appeal hearer), Mr A Knight (the Claimant's manager from February 2017 to August 2018) and Mr P Johnston (the Claimant's grievance hearer). All gave sworn evidence and were cross-examined. The Tribunal was referred to various documents in the bundle of documents of 937 pages the parties introduced in evidence.

Findings of Fact

5. The Claimant was employed by the Respondent as Dalgarno Neighbourhood Manager between 22 October 2007 and 31 October 2020. Throughout her employment, the role was jointly funded by five housing providers which formed the 'Dalgarno Neighbourhood Management Alliance' ("DNMA" or "Alliance") (comprising the Respondent, Peabody Trust, Catalyst Housing, Notting Hill Genesis Housing and Royal Borough of Kensington & Chelsea 'RBKC'). The DNMA was established to tackle various issues on the 'Dalgarno Wedge', which consists of 5 developments, but because of the shape is effectively one estate ('Dalgarno').

6. The Claimant was initially employed for two years and thereafter the DNMA extended funding for her role every two years until September 2017, when it was extended each year for one year until the end of her employment.

Keyworker team

7. In September 2015, the Claimant was given responsibility for the Key Worker and Market Rent Teams, which had been moved from the Commercial to Housing departments. The Claimant did not think she should have been given the team but did not raise it at the time.

Epilepsy

8. In June 2016 the Claimant was diagnosed with focal epilepsy. In July 2016 the Claimant informed her then line manager, Susan Clinton, of her diagnosis. The Claimant was referred by the Respondent to occupational health ("OH") in September 2016.

Return of the Key Worker team to Commercial

9. In around October 2016, a merger was taking place between the Respondent (then called 'Affinity Sutton') and another provider, Circle Anglia Limited. Circle had a Commercial team and after the merger that team took over responsibilities for the

Key Worker and Market Rent teams. The Claimant did not complain about the removal of the teams from her area of responsibilities.

1-2-1s with Susan Clinton

10. After the Claimant informed Susan Clinton of her diagnosis, they continued to have 1-2-1 meetings on a monthly business apart from in November and January 2017 when they were unable find a mutually convenient date to meet.

11. In the Claimant's February 2017 1-2-1, Ms Clinton reminded her that the DNMA was due for renewal in October 2017 and that the Claimant should review her options if the agreement was not renewed.

Management by Adam Knight

12. In February 2017, Adam Knight became Head of Housing and the Claimant's line manager. During his time as her line manager, Mr Knight was aware the Claimant had epilepsy but not aware that she suffered from anxiety.

13. The Claimant did not raise any training needs with Mr Knight, and he did not suggest or organise any specific training or development for her independently. During this time the Claimant was not invited to team meetings by Mr Knight. At that time, the Claimant's role was a distinct one which did not fall within any management or operational teams, and she worked independently with minimal supervision and seemed happy in her role.

14. Mr Knight held regular management meetings with his team, to which the Claimant was not invited, because Mr Knight thought the issues discussed at the meetings were not relevant for the Claimant in her role.

15. In September 2017, the Respondent informed the Claimant that due to the high level of changes taking place within the DNMA and other partners, they wished to extend the DNMA for a further year and then review the Alliance and Neighbourhood Manager role. This approach was agreed with the rest of the DNMA and funding was extended for a further year. The Claimant was instrumental in securing the extension.

Management by Zoe Pratten

16. In July 2018, Zoe Pratten became Head of Housing (North London) and the Claimant's Line Manager. The Claimant informed Ms Pratten that she had epilepsy and suffered from some stress connected to her role, but Ms Pratten was not aware while she was her line manager, that the Claimant suffered from anxiety.

17. While Ms Pratten was the Claimant's line manager, she was invited to Cascade meetings, which were meetings conducted by senior managers of the Respondent informing the staff of various matters and developments in the business. Ms Pratten did not invite the Claimant to any other team meetings, because she thought that the Claimant's role was unique and did not fit into other management and operational teams, and matters discussed at those meetings were not relevant for the Claimant in her role. Ms Pratten generally had limited interactions with the Claimant during the period when she managed the Claimant.

18. On 12 September 2018, the Claimant wrote to Ms Pratten making her aware that the DNMA agreement was up for renewal in October and suggesting they speak about it because the Respondent had indicated for some time that they no longer wish to fund the role. Ms Pratten asked the Claimant to provide her with relevant documents on the DNMA, which the Claimant did.

19. In September 2018, Mr Knight forwarded Ms Pratten review documents created by Jackie Kelly, Interim Head of Projects, in early 2018. These indicated the DNMA was not operating properly and suggested a full evaluation of it should take place by a steering group.

20. On 25 September 2018, the Claimant requested to take part in an anti-social behaviour training, and Ms Pratten replied an hour later actioning her request.

21. On 2 October 2018, following discussion between them, Ms Pratten sent a report to her manager, Catherine Kyne, reviewing the DNMA. This concluded that the DNMA agreement was not being adhered to in part, it noted that the Claimant had not been effectively managed since 2007 but had a good reputation in the borough. Ms Pratten recommended a further one-year extension to undertake a review involving the other DNMA members.

22. Ms Pratten wrote to the DNMA partners (copying the Claimant) on 15 October 2018 proposing a further one-year extension to allow for a full review, which was agreed by the DNMA partners. A meeting was originally scheduled for December, but then rearranged because Ms Pratten's house was burgled. Initially Ms Pratten was of the view that this review should include external stakeholders (local Councillors, MPs and residents' associations). However, on reflection, she changed her mind on this, having concluded the review should be focussed on the operational needs of the housing providers and therefore did not seek such views prior to organising a review meeting.

23. On 21 January 2019, Ms Pratten reminded the Claimant about undertaking mandatory safeguarding training.

24. A DNMA partners meeting took place in February 2019 attended by all partners, except for RBKC. All the attendees expressed the initial view that they did not see the continuing value in the Dalgarno Neighbourhood Manager role. It was agreed that each DNMA member needed to discuss matters, including the need for the Dalgarno Neighbourhood Manager role separately. Ms Pratten was then caught up in a housing department restructure. She wrote to the DNMA partners in March 2019 to say she aimed to produce a review by the end of April 2019. In the interim, the Claimant was misinformed by a staff of one of the partners that a decision had been made that her role was redundant.

25. Ms Pratten attempted to meet with the Claimant in June and early July 2019 to discuss the DNMA review, but for various reasons meetings had to be rearranged. Ms Pratten did not keep the Claimant updated on the progress of the DNMA review. She was busy with other projects and the DNMA review fell behind.

26. On 19 July 2019, Ms Pratten and the Claimant met. Ms Pratten informed her that the DNMA partners were in agreement that the requirement for the DNMA had changed. The meeting went on for some time reviewing the latest DNMA action plan and the Claimant's role and it was agreed it would be reconvened, initially on

24 July 2019, but that had to be rearranged because Ms Pratten was unwell. Ms Pratten forwarded the Claimant details of a one-day training course after the meeting on 19 July 2019.

Grievance

27. On 29 July 2019, the Claimant raised a grievance. In summary, she complained about uncertainty about her future and the lack of clear communication with her, as well as being excluded from discussions. In a chronology attached to her grievance the Claimant reported that she had been told that work related stress was causing her anxiety. She also acknowledged that she was on a two-year rolling contract, and that in October 2017 she had been told that the DMNA agreement extension would by only for one year, which the role was reviewed.

28. The grievance was heard by Paul Johnston, Director of Health and Safety. The grievance meeting took place on 6 August 2019. In the meeting the Claimant said that in terms of support for her epilepsy, she had never asked for anything the Respondent had not provided. Susan Clinton and Zoe Pratten were interviewed as part of the investigation.

29. Ms Pratten passed on to the Claimant some information about further potential training on 12 August 2019.

Iona McConnell temporary line management

30. While the grievance process was ongoing the Claimant was line managed by Iona McConnell, Head of Housing. They had their first 1-2-1 on 28 August 2019. At that meeting it was agreed that Ms McConnell would send a link for available e-learning. The Claimant said she had not identified any current training needs but would think about it.

Grievance outcome

31. On 30 September 2019, Mr Johnston informed the Claimant that he had partially upheld her grievance. In particular, in respect of failing to clearly communicate with the Claimant effectively over the previous 12 months about whether the Claimant would continue in her role and to provide ongoing training / development. The rest of the Claimant's grievance was not upheld. Mr Johnson decided that going forward the Claimant was to be permanently manged by Iona McConnell. Mr Johnson stated that it was '*extremely unlikely that the partnership will continue beyond October 2020*', that Ms Pratten would continue to lead discussions reviewing the DNMA and the Claimant would be kept informed, and there would be a focus on training and development in the interim.

Management by Ms McConnell and DNMA review Sept – Dec 2019

32. During the period Ms McConnell managed the Claimant, the Claimant's role remained outside the operational or management teams of the Respondent. The Claimant was invited to Cascade meetings, but not to other team meetings.

33. At their 1-2-1 on 2 October 2019, the Claimant and Ms McConnell discussed the plan for the Claimant's personal development, and the Claimant was provided with

a link to 'FutureLearn'. The Claimant was asked to think about her career goals and plans ahead of the next 1-2-1.

34. On the same day, Ms Pratten wrote to the DNMA partners extending the Alliance for a further year to give time for the review to be completed.

35. On 9 October 2019, the Claimant wrote to Ms McConnell and said she had reviewed the training and would like to take Prince2 (project management) training.

36. This was discussed at their 1-2-1 on 15 November 2019. Ms McConnell said she would follow up with Learning & Development team. Ms McConnell was busy thereafter, and there was some delay in this being actioned. The Claimant also expressed an interest in development, and Ms McConnell said she would see if she could arrange some shadowing. The Claimant was unclear about whether all the DNMA Partners had agreed to fund for another year.

37. On 26 November 2019, Ms McConnell put the Claimant in touch with Andrew Nowakowski to give her a better understanding of the roles in his team and the Tenancy Specialist Service. Ms McConnell also confirmed to her that all the DNMA Partners had agreed funding for one year, except for RBKC who had not responded.

38. On 4 December 2019, the Claimant saw Occupational Health. The Report comments that stress is known to exacerbate epilepsy but does not suggest that epilepsy or the Claimant's medication caused the Claimant to suffer from anxiety. It records that the Claimant stated that at the end of July 2019 the issues were resolved to a '*mutually acceptable solution*'. Regular meetings to review progress were recommended.

December 2019 – February 2020

39. In December 2019 and January 2020 Ms Pratten gathered responses from the Partners as to their views on the DNMA. None of the responses indicated positively that they felt there was a current need for the Dalgarno Neighbourhood Manager post, although two indicated they wanted to discuss it with their wider groups.

40. On 17 January 2020, a review meeting was held, at which the Partners who attended (all but Peabody) agreed that, subject to internal discussions with their managers/directors, there was not an ongoing need for the Dalgarno Neighbourhood Manager post. However, there was an intention of some ongoing collaborative work by way of a working group to be created later.

41. On 29 January 2020, the Claimant filled out a training request form for Prince2 training.

42. At their 1-2-1 on 5 February 2020 Ms McConnell informed the Claimant that it looked certain the DNMA would not continue after October 2020, although it was not yet formally confirmed. The Claimant said she was looking forward to a change and welcomed the opportunities it may provide. Ms McConnell said she supported the Prince2 training and would forward on the request to Learning & Development team, and that she was trying to arrange some shadowing for the Claimant. Ms McConnell made arrangements for work shadowing for the Claimant in early February, and forwarded on a role description to the Claimant to give her an idea of the sort of things available.

43. Learning & Development said that the application for Prince2 training had to be made in April/May, but Ms McConnell sought to get an exception for the Claimant.

Start of pandemic

44. The Respondent's employees started working from home from 18 March 2020 and due to the unprecedented circumstances caused by the pandemic, no 1-2-1s between Ms McConnell and the Claimant took place in March and April 2020, although the Claimant and Ms McConnell kept in touch via email.

45. The Claimant's appraisal took place on 1 May 2020. Ms McConnell again flagged that it was most likely that the Claimant's role would end that year.

June 2020

46. On 8 June 2020 Learning & Development sent an email about how to apply for professional development courses stating they were oversupplied with people holding the Prince2 qualification. Ms McConnell asked if the Claimant was still keen on doing the training and, if so, she would liaise the relevant people. The Claimant said she would think about it.

Redundancy

47. On 24 June 2020 at their 1-2-1, Ms McConnell informed the Claimant that it had now been formally confirmed the DNMA would not extend past October 2020 and so her role was at risk and during her 'at risk' period she would be offered an interview for any internal role for which she met the basic criteria. Ms McConnell said that Prince2 could go ahead via online training, but the Claimant expressed the view that she wanted the training to be face-to-face and said she would think about it.

48. The Claimant asked to take annual leave on 25 June 2020 as she was feeling anxious, and the next day was signed off until 12 July 2020 with 'anxiety and stress'. Ms McConnell confirmed she did not have to make a decision about training while she was off sick.

49. On 13 July 2020 at a return to work meeting the Claimant said her stress and anxiety was '*as result of the way Clarion has treated her in connection with her redundancy*'. The Claimant asked Ms McConnell to review the grievance outcome and advise if she felt the planned actions had been done. Prior to this date the Claimant had not indicated that she felt generally unsupported by the way Ms McConnell had managed and supported her.

50. After the meeting the Claimant said she felt unhappy about how it had gone and that she felt being "*pushed into a corner*". Ms McConnell replied saying sorry that the Claimant did not feel comfortable, but was unclear as to why the Claimant felt being pushed into a corner.

51. Following the Claimant's return to work, she was invited to a redundancy consultation meeting to take place on 23 July 2020.

52. On 20 July 2020, having reviewed the grievance outcome letter Ms McConnell emailed the Claimant stating that (in summary) the planned actions had been complied with so far as was possible, in light of the pandemic.

53. The redundancy consultation meeting took place on 24 July 2020 to accommodate the availability of the Claimant's union representative. At the meeting the Claimant was given the opportunity to comment on alternatives to redundancy and to identify any roles that she felt she should be assimilated in to. It was agreed the consultation period would be extended in light of the Claimant's sickness absence. The Claimant was reminded she would receive weekly email updates of available roles and would be interviewed ahead of other applicants if she met minimum criteria.

a. The Claimant was sent weekly email updates on available roles and a number of specific roles were highlighted to her. She was given an extension and able to submit a narrative application for a Resident Involvement & Scrutiny Manager Role ("RISM"). The Claimant scored poorly but was given a chance to interview anyway. The Claimant was given interview tips by Ms McConnell. The Claimant was not successful. A Neighbourhood Response Officer ("NRO") role was raised which the Claimant felt was not suitable. She was told she could consider applying for an upcoming Neighbourhood Response Manager ("NRM") role. She was given an extension to apply for a Head of Projects role but did not meet the minimum criteria to be interviewed.

54. At their 1-2-1 on 10 August 2020, there was further discussion about training. The Claimant said she had not got back in touch about shadowing opportunities as she felt this was the Respondent's responsibility. Ms McConnell offered to speak to contacts again. She also explained that funding for Prince2 had been agreed outside of the Learning & Development scheme. Ms McConnell asked if the Claimant had any ideas for other things they could do, and the Claimant said this was for the Respondent to come up with, not her. Subsequently Ms McConnell picked up on shadowing potentials again.

55. On 12 August 2020, Ms McConnell updated the Claimant that Prince2 training was now being offered in person and encouraged her to book. The Claimant responded saying she felt she was being pushed into a corner and asked to take time off for the '*stress and anxiety that dealing with this matter*' was causing her.

56. The consultation period ended on 13 August 2020, and Ms McConnell wrote to the Claimant with the outcome on 26 August 2020. On 27 August 2020 she was given formal notice of redundancy, with her employment ending on 31 October 2020 and a payment in lieu of further notice to 19 November 2020.

57. At their 1-2-1 on 8 September 2020, the Claimant said that she would look at booking a Prince2 course but did not accept that this would have met the outcome of her grievance.

58. On 11 September 2020, the Claimant updated Ms McConnell that the first Prince2 course would be in October but might change dates. She proposed buying a flexi-pass for the course so she could use it within a year, which the Respondent did.

Appeal

59. The Claimant appealed against her redundancy. In her appeal the Claimant did not suggest she had been mistreated because of her disability or anxiety.

60. The appeal hearing took place on 2 October 2020 and was chaired by Stephanie Noyce, Head of Money and Digital, who had not been involved in the Claimant's grievance or redundancy up until then. The Claimant was given a full opportunity to explain her grounds of appeal. At the end of the meeting the Claimant's companion said that he thought the Claimant had done a good job explaining herself despite her anxiety.

61. For the first time on 5 October 2020, the Claimant said that due to her epilepsy she was prone to experience high levels of anxiety.

62. By a letter dated 15 October 2020, the Claimant was informed her appeal was not upheld and was given detailed reasons for that decision.

63. The Claimant's employment ended on 31 October 2020.

The Law

Time Limit

64. Under s123 Equality Act 2010 ("**EqA**") a claim may not be brought after the end of:
(2)
a. *The period of 3 months starting with the date of the act to which the complaint relates, or*
b. Such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—
(a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.
(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

65. If a claim under the EqA is *prima facie* out of time, the Tribunal has a wide discretion to extend time where it would be "*just and equitable*" to do so.

66. In *Robertson v Bexley Community Centre t/a Leisure Link* 2003 IRLR 434, CA, the Court of Appeal held that when employment tribunals consider exercising the discretion under S.123(1)(b) EqA, '*there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule*.' The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and

equitable grounds. The law simply requires that an extension of time should be just and equitable — *Pathan v South London Islamic Centre* EAT 0312/13.

67. The relevant principles and authorities were summarised in *Thompson v Ark Schools [2019]* I.C.R. 292, EAT, at paragraphs 13-21, and in particular:
    a. Time limits are exercised strictly;
    b. The onus is on the claimant to persuade the tribunal to extend time;
    c. The decision to extend time is case- and fact-sensitive;
    d. The tribunal's discretion is wide;
    e. Prejudice to the respondent is always relevant;
    f. The factors under s33(3) Limitation Act 1980 (such as the length of and reasons for the delay and the extent to which the claimant acted promptly once he realised he may have a claim) may be helpful but are not a straitjacket for the tribunal.

EqA Burden of Proof

68. Section 136 EqA states:

> (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.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

69. The guidance set out in *Igen v Wong* [2005] ICR 9311 (approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054) sets out the correct approach to interpreting the burden of proof provisions. In particular:

    a. it is for the claimant to prove on the balance of probabilities facts from which the tribunal could conclude that the employer has committed an act of discrimination, in the absence of an adequate explanation (para 79(1), see also *Ayodele v Citylink Ltd and anor* [2018] ICR 748 at paras 87 - 106);

    b. it is unusual to find direct evidence of discrimination and *'[i]n some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in*"' (para 79(3));

    c. therefore, the outcome of stage 1 of the burden of proof exercise will usually depend on '*what inferences it is proper to draw from the primary facts found by the tribunal*' (para 79(4));

    d. '*in considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts'* (para 79(6));

    e. where the claimant has satisfied stage 1 it is for the employer to then prove that the treatment was "in no sense whatsoever" on the grounds of the

protected characteristic and for the tribunal to '*assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question*' (para 79(11)-(12));

f. *'[s]ince the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof*' (para 79(13)).

70. In ***Igen v Wong*** the Court of Appeal cautioned tribunals '*against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground*' (para 51).

71. In *Madarassy v Nomura International PLC* [2007] ICR 867 Mummery LJ stated that*: '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'* (para 58)*.*

Direct discrimination

72. Section 13 of EqA states: "*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*".

73. For treatment to be '*because of*' a protected characteristic, the characteristic does not have to be the only or main reason for treatment, it only has to be an effective cause (*Nagarajan v London Regional Transport* [1999] ICR 877).

74. The focus in determining whether there has been direct discrimination is on the motivation, intention and knowledge of the decision maker (knowledge of others cannot be imputed) (*Gallop v Newport City Council (No.2)* [2016] IRLR 395). It is not necessary for the decision maker to have actual knowledge of the specific *condition*; the question is whether they have knowledge of the underlying facts which amount to the disability (i.e., the presence of an impairment with a long-term and substantial adverse effect on the individual's ability to carry out normal day-to-day activities) (*Urso v Department for Work & Pensions* [2017] IRLR 304 paras 52 – 60).

75. It is possible for an employer unconsciously to discriminate against the claimant. "*All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the*

evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. ……. Members of racial groups need protection from conduct driven by unrecognised prejudice as much as from conscious and deliberate discrimination." (see Nagarajan v London Regional Transport [1999] IRLR 572, HL)

Discrimination arising from disability

76. Section 15 of EqA states: *(1) A person (A) discriminates against a disabled person (B) if -*

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

77. The elements of discrimination arising from disability can be broken down as follows:

a) Unfavourable treatment causing a detriment

b) Because of "something"

c) Which arises in consequence of the claimant's disability

78. "Unfavourably" is not defined in the EqA. The Equality and Human Rights Commission's Statutory Code of Practice on Employment ("**the Code**") at paragraph 5.7 states that it means that the disabled person "*must have been put at a disadvantage*". The Code notes that: "*Even if an employer thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably*."

79. In *Basildon and Thurrock NHS Foundation Trust v Weerasinghe* [2016] ICR 305 Langstaff P explained the two step test required for a s.15 claim. He said it did not matter in which order the tribunal approaches these two steps: "*It might ask first what the consequence, result or outcome of the disability is, in order to answer the question posed by "in consequence of", and thus find out what the "something" is, and then proceed to ask if it is "because of" that that A treated B unfavourably. It might equally ask why it was that A treated B unfavourably, and having identified that, ask whether that was something that arose in consequence of B's disability*."

80. In *Pnaiser v NHS England and anor* [2016] IRLR 170 EAT, Mrs Justice Simler considered Weerasinghe and other authorities and summarised the proper approach to determining s.15 claims as follows in paragraph 31:

"(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the

respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her Skeleton).

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

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

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

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of Weerasinghe as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram

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

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

81. It is no defence if the respondent did not know that the 'something' leading to the unfavourable treatment was a consequence of the disability (see In *City of York Council v Grosset* [2018] ICR 1492).

82. Employers can avoid liability if the treatment was a proportionate means of achieving a legitimate aim. Examples of legitimate aims in the context of s.15 claims include:
    - Health and safety
    - Safeguarding vulnerable persons
    - Protection of the public
    - Business needs e.g. ensuring the business can meet its contractual obligations.

83. In many cases, the aim may be agreed to be legitimate, but the argument will be about proportionality. This will involve an objective balancing exercise between the reasonable needs of the respondent and the discriminatory effect on the claimant. The principles in relation to justification were helpfully summarised by HHJ Eady QC in *Ali v Torrosian and ors* UKEAT/0029/19/JOJ at paras 14 – 21. There is no need to repeat them here, as based on our primary conclusions the justification issue does not arise.

Unfair Dismissal - Redundancy

84. Section 139 of the Employment Rights Act 1996 ("**ERA**") defines redundancy dismissal as:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
have ceased or diminished or are expected to cease or diminish.

85. It is important to bear in mind that tribunals are only concerned with whether the reason for the dismissal was redundancy, not with the economic or commercial reason for the redundancy itself.

86. In determining whether an employee was dismissed for reason of redundancy the tribunal must decide:
(i) was the employee dismissed?
(ii) if so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish?
(iii) if so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution? (*Safeway Stores plc v Burrell* 1997 ICR 523, EAT).
It is for the employer to prove the asserted reason for dismissal. If it fails to do so, the dismissal will be unfair.

87. A reason for dismissal is "*is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee*." (*Abernethy v Mott, Hay & Anderson* [1974] ICR 323).

88. Section 98(1) ERA states: "*In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
(a)the reason (or, if more than one, the principal reason) for the dismissal, and
(b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
(2)A reason falls within this subsection if it—

……

(c) is that the employee was redundant, or"

89. If the employer relies on redundancy as the reason for dismissal and satisfies the tribunal that the definition of redundancy in S.139 ERA is made out, the tribunal is nonetheless entitled to find that there was another reason for dismissal.

90. To establish some other substantial reason ("SOSR") as the reason for dismissal where there has been a business reorganisation, the employer does not have to show that a reorganisation or rearrangement of working patterns was essential. This reason is not one the tribunal considers sound but one '*which management thinks on reasonable grounds is sound*' — *Scott and Co v Richardson* EAT 0074/04

91. If the employer shows that the reason for the dismissal is a potentially fair reason under section 98(1), the tribunal must then consider the question of fairness, by reference to the matters set out in section 98(4) ERA which states:
"*Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case."

92. Procedural fairness is an integral part of the reasonableness test is section 98(4) of ERA. In redundancy dismissals "*the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation*" (*Polkey v AE Dayton Services Ltd* 1988 ICR 142, HL).

93. In deciding whether the adopted procedure was fair or unfair the tribunal must not fall into the error of substitution. The question is not whether the tribunal or another employer would have adopted a different and, what the tribunal might consider a fairer procedure, but whether the procedure adopted by the respondent "*lay within the range of conduct which a reasonable employer could have adopted*" (*Williams v Compair Maxam Ltd* [1982] ICR 156).

94. A fair consultation would normally require the employer to give the employee "*a fair and proper opportunity to understand fully the matters about which [s/he] is being consulted, and to express [her/his] views on those subjects, with the consultor thereafter considering those views properly and genuinely*." (per Glidwell LJ in *R v British Coal Corporation and Secretary of State for Trade & Industry ex parte Price and others* [1994] IRLR 72) cited with approval and as applicable to individual consultation by EAT in *Rowell v Hubbard Group Services Ltd* 1995 IRLR 195, EAT "*when the need for consultation exists, it must be fair and genuine, and should… be conducted so far as possible as the passage from Glidewell LJ's judgment suggests*".

Analysis and Conclusions

95. The Tribunal has reached all the conclusions unanimously.

Time Limit Issue

96. Dealing with the time limit issue first. The Respondent submits that anything occurring before 29 September 2020 is *prima facia* out of time, the acts complained of are distinct in nature and therefore do not amount to a continuing act. The Respondent argues that the Claimant has failed to provide any evidence why it is just and equitable to extend the time limit and the burden is on her. Therefore, the

Tribunal should not consider the complaints related to the matters prior 29 September 2020.

97. The treatment complained of are:

(i) Being excluded from reviews of her role between October 2018 and October 2020;
(ii) Not being kept informed of any discussions with Dalgarno stakeholders between October 2018 and October 2020;
(iii) Not being provided with training and development since 2017;
(iv) Not being invited to all or any team meetings since 2017, during which time the Claimant's immediate line manager was one or other of Adam Knight, Zoe Pratten and Iona McConnell;
(v) The Claimant's dismissal; and
(vi) From 24 June 2020 when she was told she was at risk of redundancy until her employment ended on 31 October 2020, the pressure applied on the Claimant prevented her from being able to engage effectively in the redundancy exercise.

98. The Claimant's dismissal is plainly in time. We find that complaint (vi) is a continuing act, as it is an alleged state of affairs (the pressure applied by the Respondent on the Claimant), which is alleged to had lasted from the announcement of her redundancy to the Claimant's dismissal.

99. Complaints (i) – (iv) are the so-called "discriminatory omissions". Do decide whether these are in time or out of time, the Tribunal need to establish when the Respondent decided not to act, or when the Respondent acted in a way inconsistent with doing an act (see paragraph 68 above). For example, when did the Respondent decide not to invite the Claimant to team meetings? Or when did the Respondent act in a way inconsistent with inviting the Claimant to team meetings? That is likely to be the date of the first team meeting the Claimant was not invited to.

100. The way the Claimant puts her claim with respect to complaints (i) – (iv) is such that all those "failures to do something" occurred between some date in 2017 and October 2018, and therefore significantly out of time. She did not present any evidence or arguments why she could not have presented those complaints earlier and why it would be just and equitable to extend the time limit.

101. Therefore, we find that the complaints (i) and (iv) are out of time and there is no justification for extending the time limit. However, if we are wrong on this, and considering that we have taken the necessary evidence and heard arguments on all these matters, we shall deal with each of the complaints and make our conclusions on the merits.

Is the Claimant's anxiety something arising from epilepsy?

102. The Respondent accepts that the Claimant at all material times was disabled within the meaning of s.6 EqA by reason of her epilepsy and that the Respondent knew of the Claimant's epilepsy since July 2016. However, the Respondent argues

that the Claimant's anxiety was not "something arising" from the Claimant's disability (epilepsy). It contends, the Claimant has provided no medical evidence to suggest that there is such a connection between the epilepsy and anxiety. Until 5 October 2020, the Claimant's consistent position was that her work-related stress *exacerbated* her epilepsy and not the other way round. Her medical records support only the position that her anxiety might worsen her epilepsy. If the Claimant's epilepsy medication caused her to suffer stress or anxiety, such medication would not have been increased as it was.

103. The Claimant argues that her anxiety was consequential to her epilepsy. She worried about the effects of her medications. Changing medications was something that made he anxious. The fact that the medical notes do not record that does not mean that she did not feel that way.

104. Documentary evidence in front of us suggest that the source of the Claimant's anxiety was her work problems and not her epilepsy. That what she had been telling the Respondent until October 2020. Medical notes state that she experienced no side effects from the medication.

105. However, we consider that having a serious medical condition, such as epilepsy, and undergoing medical treatment, involving taking strong medication, might well cause the person to suffer stress and anxiety, even if the condition itself or the medical treatment do not cause such symptoms in neurological sense. This could be due to an emotional superimposition on the symptoms (anxiety/stress) the medical condition the person is suffering from (epilepsy).

106. Further, considering how the Claimant came to learn about her disability (the Claimant passing out in her car and causing an accident, finding herself empty-handed on a dark street in the middle of London, not knowing how she got there) it is understandable that she felt anxious about living with the condition.

107. As "in consequences of" could describe a range of causal links, this is a looser connection and may involve more than one link in the causal chain. Therefore, on the balance, we find that the Claimant's anxiety was something arising from her disability (epilepsy). We will deal with both conditions in answering the "because of" question.

Burden of Proof

108. We have considered whether we should apply the burden of proof rules in dealing with the complaints. However, we have decided that based on the evidence in front of us, we can and should make positive findings as to the reasons for the alleged treatment, and therefore there is no need to apply the burden of proof rules.

Direct disability discrimination and discrimination arising from disability

109. We shall deal with each allegation one by one and then give our overall conclusion.

(i) *Being excluded from reviews of her role between October 2018 and October 2020*

110. The first review was carried out by Jackie Kelly, Interim Head of Projects, in early 2018. This was done with the Claimant's knowledge and input. Ms Pratten in doing her review in September 2018 asked the Claimant for information on her role, which the Claimant provided. Therefore, the Claimant knew that her role was under review. She admits that in her evidence and various contemporaneous documents confirm that (for example, her grievance letter).

111. The Claimant argues that she was kept in the dark about the discussions with the DNMA Partners about her role and should have been directly involved in the discussions. Ms Pratten evidence is that she felt it would not be appropriate to have the Claimant present during the discussions with the Partners about the future of the DNMA because those discussions necessarily involved considerations about the future of the Claimant's role. In our judgment it was an entirely reasonable management decision for Ms Pratten to make.

112. Ms Pratten review plan (page 139 of the bundle) describes the scope of the review and the steps in the review process. We find this to be genuine business considerations, not designed in any way to achieve a pre-determined outcome. She sent her plan for review and approval to her manager, who agreed with the approach.

113. There is simply no evidence in front of us from which we could conclude that the Claimant's epilepsy or anxiety played any part in Ms Pratten's decision not to include the Claimant in the review of the future of the DNMA and the Claimant's role to a greater extent.

114. We appreciate and understand why the Claimant felt strongly that she should have been included in the review. We understand that the role was something she deeply cared about, and by all accounts she had done a very good job and had made the Alliance to work effectively, thus significantly improving the estate. She wanted to protect her role and to advocate with the Partners for the continuation of the Alliance. However, in the situation like that it remains the management prerogative to decide how to go about implementing projects of that kind and who from their staff should be involved.

115. We find that the reason the Claimant was not included to a greater extent in the review of her role was because Ms Pratten had decided that including the Claimant would not be appropriate in the circumstances where the discussions with the Partners about the future of the DNMA would necessarily involve the discussion about the future of the Claimant's role and discussing that subject in the Claimant's presence was not appropriate.

Not being kept informed of any discussions with Dalgarno stakeholders between October 2018 and October 2020

116. The Claimant knew it was a rolling contract and previously was involved in helping with getting it extended. She knew the rolling extension periods in 2017 changed from two years to one year. She also knew the discussions with the Partners were planned in September/October 2018. She provided information to Ms Pratten for the purposes of the discussions.

117. Ms Pratten wrote to the Partners on 15 October 2018. The meeting was planned for December but was postponed until February 2019. Therefore, there was nothing happening between October 2018 and 8 February 2019, for the Claimant to be informed about.

118. It is true that the Claimant was not informed about the meeting with the Partners in February 2019. However, this was due to Ms Pratten concentrating on her other priorities (housing department restructure, roll out of a new housing management system) and not because of the Claimant's epilepsy or anxiety. In any event, Ms Pratten did not progress the project until 27 March 2019 when she sent her email to the Partners to set up another meeting. Meanwhile, the Claimant inadvertently learned from a Partner's staff that the discussion had taken place about the future of her role.

119. The Respondent acknowledged as part of the Claimant's grievance outcome that she should have been kept updated by Ms Pratten on the discussions with the Partners. This issue was fixed by the Respondent appointing, first on an interim basis and then permanently Ms McConnell as the Claimant's manager.

120. We find that Ms McConnell had been communicating with the Claimant regularly and effectively through their 1-2-1s, staring from 28 August 2019, and also via email. We accept Ms McConnel evidence on that, which are supported by numerous contemporaneous documents in the bundle.

121. The Claimant was told as part of her grievance outcome that it was "*extremely unlikely that the partnership will continue beyond October 2020. In the interim, Zoe will continue to lead on the review of this service and you will be kept informed of our discussions with other stakeholders during 1:1s with Iona*".

122. We find that the Respondent has kept the promise, and Ms McConnell kept the Claimant informed. In particular, following the Partners' meeting on 17 January 2020, when the indicative decision to stop the DNMA had been taken. The Claimant was not informed of that meeting and the outcome. On 5 February 2020, Ms McConnell told the Claimant that "*it now looks certain that the DNMA will not continue post October 2020*". The Claimant clearly understood that. On 12 February 2020 she wrote to Ms McConnell stating: "*The reason why I am raising this is I would ideally like to have completed the training at least 3 months before my employment is likely to end (Oct. 20)*".

123. The intervening pandemic for obvious reasons caused problems with having regular 1-2-1s and the finalising of the DNMA cessation. However, on 1 May 2020 Ms McConnell again told the Claimant at the performance review meeting that her

role was likely to end. "*It is likely that Emma's role will end in the coming year and she has embraced this uncertainty and is working on investigating new opportunities and developing her skills and knowledge. This resilience and positive attitude is of real credit to Emma.*" On 24 June 2020, the Claimant was formally put at risk and the redundancy consultation process commenced.

124. Therefore, although the Claimant was not specifically informed about the February 2019 and January 2020 meetings with the Partners in advance of the meetings, and there was a lull in the communications caused by the pandemic, we find that the Claimant was generally kept informed about the ongoing review of the Alliance and the increasing likelihood of it (and with it her role) ending in October 2020.

125. More importantly, we see no connection whatsoever between Ms Pratten's decision not to inform the Claimant about those meetings in advance or not to provide the Claimant greater details about the discussions at the meetings and the Claimant's epilepsy or anxiety. We find that was a management decision taken by Ms Pratten for the same reason as why she chose not to invite the Claimant to those meetings. That is because the discussions with the Partners about the future of the Alliance necessarily involved the discussion about the future of the Claimant's role, and Ms Pratten decided that it would be inappropriate to have such discussions in the Claimant's presence.

126. The Claimant was unable to present any evidence to show that her epilepsy and/or anxiety had anything to do with that decision, and indeed with any other treatment she complains about. She simply put to us a rhetorical question: "*What else could it be?*". The answer to that question, in our view, is the explanations provided by the Respondent for each of those matters.

Not being provided with training and development since 2017

127. Firstly, we do not accept that internal training attended by the Claimant since 2017 is not a real training, as she argued. We note that the Claimant attended 10 courses since 23 February 2018 (see page 908 of the bundle). We do not accept the Claimant's submission that because the training was something she needed to do her job it should be discounted.

128. Further, we note that the Claimant did not complain as part of her grievance that she was not offered sufficient training. In so far as the Claimant says that the Respondent should have offered her training that would have assisted her not only with doing her job but also to step up to a higher or a different role, we find that the Respondent was prepared to do so and did offer the Claimant to go on the PRINCE2 training, which training she selected from the list of available training courses offered to her by the Respondent. We reject the Claimant's submission that the offer was not genuine or that the Respondent was in some way at fault by not offering it earlier. The Respondent offered the PRINCE2 training to the Claimant, but she did not want to do it online. For obvious reasons at during the pandemic it was possible to offer it face-to-face.

129. When the Claimant requested to be allowed to attend an anti-social behaviour training course, Ms Pratten approved it straight away. Ms McConnell sent the Claimant various training options and referred her to the Respondent's training portal (FF2 e-learning). The Claimant said in her evidence that she did not know what FF2 was, however it appears she made no attempts to find out.

130. Ms McConnell tried to arrange for the Claimant work shadowing opportunities, she referred the Claimant to Andrew Nowakowski, CIHCM – Tenancy Specialist Manager, she got for the Claimant an exceptional approval to take PRINCE2 training.

131. Therefore, we find that the Claimant was provided with reasonable training and development opportunities, and in particular when Ms McConnell became her line manager.

132. We also find that the Claimant was not put under any undue pressure to attend any training. The fact that Ms McConnell tried to arrange PRINCE2 training for the Claimant, and, in our view, going above and beyond what was required, cannot be reasonably said to be Ms McConnell putting pressure on the Claimant. It was Ms McConnell doing her best to try and organise it for the Claimant, and doing that at the Claimant's request.

133. It is bewildering why, having asked for the PRINCE2 training, the Claimant complains that she was put under pressure to attend it, when it was organised for her by Ms McConnell, and at the same as complaining that the training was not offered to her earlier. The Claimant's complaint about the lack training is also inconsistent with her closing submissions, in which she said that the redundancy process was unfair because she was "*bombarded with training*".

134. In any event, to the extent some training was not offered or offered late or with respect to any other administrative issues with the offered training, we find all that had no connection whatsoever with the Claimant's epilepsy or anxiety. The Claimant was not able to explain why she says there was any such connection, other than saying: "*Things changed since I was diagnosed with epilepsy*", however, without giving any adequate explanations what exactly has changed and why she says the change had anything to do with her epilepsy or anxiety. She says: "*What else could that be?*" There are perfectly sensible and obvious explanations for that, as was explained by the Respondent.

135. We appreciate that the Claimant might feel that some job opportunities might have been missed due to her not being able to undertake PRINCE2 training earlier. That is unfortunate, but the Respondent's not being able to offer that training earlier was not because of her epilepsy or anxiety, but due to it having to follow its normal administrative process before the training could be approved and the intervening pandemic.

Not being invited to all or any team meetings since 2017, during which time the Claimant's immediate line manager was one or other of Adam Knight, Zoe Pratten and Iona McConnell

136. The Respondent accepts that the Claimant was not invited to operational team meetings. We find that the reason for that is that the Claimant's successive managers simply thought that those meetings were not relevant for the Claimant to attend. Both Mr Knight and Ms Pratten said in their oral evidence that with the benefit of hindsight they should have invited the Claimant to their team meetings, and not doing that was a poor management call on their part. However, both clearly stated that the Claimant's epilepsy and anxiety had nothing to do with their decisions not to invite to. We accept their evidence on that. The decision not to invite the Claimant was purely based on their views at that time that the Claimant's role was not "operational" and sat outside their operations and management structure. Whether it was right or wrong management decision is not for us judge.

137. We also accept that neither Ms Knight nor Ms Pratten knew of the Claimant's anxiety at that time and there were no obvious reasons for them to think that the Claimant was suffering from anxiety. Therefore, they could not have excluded her from their meetings *because of* her anxiety.

138. We note that the Claimant never took any proactive steps with her managers to enquire about team meetings, and for someone employed for a considerable period of time it would have been an obvious step to take if one wished to be included in team meetings. The Claimant never raised any complains about not being invited to the meetings. It appears she was content to operate independently and to have minimal interactions with her line managers and fellow employees. She happily worked directly with the Partners and other stakeholders. Also, the Claimant presented no evidence to show that before her being diagnosed with epilepsy she was invited to team meetings. The Claimant, however, was invited to Cascade meetings, as other employees.

139. Therefore, we find that the Claimant's not being invited to team meetings since 2017 was not in any way connected with her epilepsy or anxiety.

The Claimant's dismissal

140. We will deal with this allegation when we deal with the Claimant's claim for unfair dismissal.

From 24 June 2020 when she was told she was at risk of redundancy until her employment ended on 31 October 2020, the pressure applied on the Claimant prevented her from being able to engage effectively in the redundancy exercise.

141. This allegation is put only as part of s.15 EqA claim (discrimination arising from disability), i.e. that the alleged pressure was applied *because of* the Claimant's anxiety. There is no failure to provide reasonable adjustments claim in front of us. During the hearing the Claimant indicated that she wanted to amend her claim to

include a new claim for failure to make reasonable adjustments, but then on reflection decided against that.

142. We find no evidence of any undue pressure being applied on the Claimant as part of the consultation process. We accept that the redundancy process was anxious time for her. However, we find that Ms McConnell approached all discussions with the Claimant in a thoughtful and measured way. Ms McConnell was responsive and considered to the Claimant. We reject the Claimant's allegation that she was "*pushed into a corner*" by the Respondent or was "*bombarded with training*".

143. For the sake of completeness, we say that any natural pressure associated with the redundancy process was simply the Respondent following its legal duties in consulting the Claimant and not because of the Claimant's anxiety.

Unfair dismissal

Was there a genuine redundancy situation?

144. We find there was a genuine redundancy situation arising from the Partners' decision at the meeting on 17 January 2020 that there was no ongoing need for the DHM role and that they wished to withdraw from the Alliance. That meant that the Respondent's requirements to carry on the business for the purposes of which the Claimant was employed, that is coordination and promotion of the Alliance, has ceased or was about to cease.

145. We reject the Claimant's contention that it was a sham. We find it was a genuine decision. The fact that one Partner did not attend the January 2020 meeting and that that Partner and another Partner did not reply to the Respondent formally confirming their withdrawal from the DNMA is not sufficient for us to conclude that the decision was not genuine. Most of the Partners expressly stated that they did not wish to continue to fund the Alliance and saw little value in the Claimant's role. They voted to end the DNMA, and that was a valid decision under the terms of the DNMA agreement. The Claimant accepted in her evidence that if the Partners were not prepared to fund her role, her job would disappear.

146. We accept that there was an intention to form a working group between the Partners following the dissolution of the DNMA. However, that was meant to be a very different arrangement to the formal Alliance agreement with contractual funding obligations on the Partners. In any event, it appears that the working group has never been set up, and no coordinator role, similar to the Claimant's, had been planned as part of the working group.

147. The fact that the Respondent did not consult more widely with local Councillors, MPs, residence groups, in our view, is irrelevant. It was the Respondent's and other Alliance Partners' business decision, and they were entitled to take it without a wider consultation. For the same reason it is irrelevant whether or not an alternative source of funding could have been found for the

Claimant's role. It was a business decision not to continue with the Alliance, and the Partners' view was that the coordinator role was obsolete. It is not for this Tribunal to judge the business rational of the decision.

Was the Claimant dismissed by reason of redundancy?

148. We accept that Ms McConnell agreed with Ms Pratten that in the circumstances there was no need for the Claimant's role, that there was a genuine redundancy situation. Then, in consultation with HR, Ms McConnell decided to dismiss the Claimant because of that state of affairs. Therefore, we find that the Claimant was dismissed by reason of redundancy.

Was the decision to dismiss the Claimant for the reason of redundancy fair or unfair?

Was an adequate warning given?

149. The Claimant knew it was a rolling contract and that her job was dependent on the on-going funding by the Partners. In September 2019, as part of her grievance outcome, she was expressly told that it is extremely unlikely the role would continue beyond October 2020. In February 2020, she was told that it looked certain that the role would end. The Claimant was given at risk notice on 24 June 2020, and her employment ended on 30 October 2020, which was more than a year after the first warning.

150. We find it was more than an adequate warning. We accept that having been in the role, which kept being extended, the Claimant would have been upset to learn that it finally had come to an end. However, warnings had been given well in advance, and the decision would not have come as a big surprise.

Selection

151. The Claimant's role was unique, and she was in the pool of one. The Claimant did not argue that the pool should have been extended to include other employees, and we see no obvious reasons why the Respondent should have pooled the Claimant with other employees, given the unique nature of the Claimant's role. In our view, in those circumstances, to keep the Claimant in the pool of one was well within the range of reasonable responses.

Was consultation reasonable?

152. The redundancy consultation process started on 24 June 2020. The Claimant was absent due to illness until 12 July 2020. The Respondent extended the consultation process by 2 weeks for that reason. There was the second consultation meeting between the Claimant and Ms McConnell on 24 July 2020. In addition to the consultation meetings, there were also 1-2-1 meetings and email exchanges between the Claimant and Ms McConnell during the entire consultation process.

153. We find that the consultation was meaningful. Options to avoid redundancy were discussed, alternative roles considered and offered, training opportunities discussed and offered to the Claimant. The Claimant was given the opportunity to comment on alternative options and provide her suggestions and ideas on how to avoid her redundancy. The Claimant was sent email updates on available roles.

154. Although the letter of 26 August 2020 states that the consultation process ended on 7 August 2020, in reality Ms MConnell continued to stay engaged with the Claimant in attempting to find alternative options. For example, at their 1-2-1 meeting on 10 August 2020, arranging shadowing for the Claimant. Ms McConnell continued to do so even after the formal notice of redundancy had been issued to the Claimant on 27 August, for example, during their 1-2-1 meeting on 8 September and 9 October 2020, arranging shadowing on 11 September, arranging PRINCE2 voucher for the Claimant.

155. We find it was a genuine and reasonable consultation process.

Reasonable Steps to avoid dismissal

156. We find that the Respondent took reasonable steps to find an alternative role for the Claimant to avoid dismissal. The Claimant was put on the at risk register and received weekly updates on available roles. She applied for RIMS role. Despite scoring low she was invited to an interview. She was unsuccessful.

157. Ms McConnell drew to the Claimant's attention other roles (NRO and NRM roles). The Claimant said that she was not interested in the NRO role because it was a step down.

158. The Claimant was given an extension of time to apply for Head of Projects role. She scored low and did not meet minimum criteria to be invited for an interview.

159. We find these were genuine and reasonable steps to avoid the Claimant's dismissal.

Overall Conclusions

160. Having analysed each step of the process, we need to step back and look at the whole picture to decide whether in the circumstances the decision to dismiss the Claimant fell within the range of reasonable responses.

161. We find that the overall process was fair and diligently followed by the Respondent. Ms McConnell made every effort to support the Claimant. The Claimant was allowed to appeal the dismissal. We find the appeal was handled properly with due consideration to the stress and anxiety the situation was causing to the Claimant. Unfortunately, it was not possible to find an alternative role for the Claimant.

162. Therefore, we find that in the circumstances the decision to dismiss the Claimant was within the range of reasonable responses and therefore her dismissal was fair. It follows that the Claimant's claim for unfair dismissal fails and is dismissed.

Was the decision to dismiss the Claimant an act of direct disability discrimination or discrimination arising from disability?

163. Returning to the allegation that the Claimant's dismissal was an act of direct disability discrimination or discrimination arising from disability. Given our findings on the reason for the dismissal we also have no difficulty in concluding that the Claimant's epilepsy and/or anxiety played no part whatsoever in the Respondent's decision to dismiss her.

164. Together with our findings and conclusions on other allegations of direct discrimination and discrimination arising from disability, and considering the entire picture, we find that the Respondent did not discriminate against the Claimant because of her disability (epilepsy) or something (anxiety) arising from her disability.

165. In reaching this conclusion we bear in mind the possibility of unconscious discrimination. However, given clear and cogent explanations provided by the Respondent's witnesses in relation to each treatment complained of, and the fact that their evidence are corroborated by contemporaneous documents, we find no reason to consider that the Claimant's epilepsy or anxiety in any way operated on the Respondent's managers' minds when they acted or not acted in the ways the Claimant complains about.

166. It follows that the Claimant's claims under section 13 and section 15 EqA fail and are dismissed.

Employment Judge P Klimov
1 May 2022

Sent to the parties on:

03/05/2022

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For the Tribunals Office

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