EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104908/2020

Held in Glasgow on 8 to 12 August and 14 to 18 November 2022

5 **Employment Judge L Wiseman**
Members P McColl and S Keir

Ms K Mackay — **Claimant**
In Person

10

NTT Data Solutions Ltd — **Respondent**
15 **Represented by:**
Mr G Mitchell –
Solicitor

20 **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Tribunal decided to dismiss the claim.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 17
25 September 2020 complaining that she had been discriminated against because of the protected characteristic of disability. The complaints made were ultimately of indirect discrimination, failure to make reasonable adjustments, discrimination arising from disability and harassment.

2. The respondent entered a response in which it denied the complaints.

30 3. The respondent accepted the claimant was a disabled person at the relevant time. The claimant has Hereditary Spastic Paraplegia (HSP) which is a progressive impairment affecting the claimant's lower limbs.

Preliminary Issues

4. ***Disability:*** A preliminary issue arose regarding the issue of disability because the claimant, whilst describing anxiety and depression as a symptom of HSP, confirmed she intended to argue her disability was a single disability, being "HSP with anxiety and depression". The respondent did not concede the claimant was a disabled person with the single disability of HSP with anxiety and depression. This remained an issue to be determined by the Tribunal.

5. ***Without Prejudice:*** The respondent asserted a meeting which took place between the claimant and Ms Freeman on the 17 June 2020 was "off the record" and that the discussions were without prejudice. The Tribunal decided, with the agreement of both parties, that the most efficient way to deal with this was for the claimant, in her evidence, not to cover this meeting and the subsequent letter sent by Ms Freeman. The claimant was given the opportunity to be recalled after Ms Freeman's evidence but in the event it was decided this was not necessary because the claimant was satisfied all matters had been put in cross examination to Ms Freeman. The Tribunal require to determine whether the evidence regarding the informal meeting and Ms Freeman's subsequent letter were admissible or whether they were covered by the without prejudice rules.

6. ***Timebar:*** The respondent also reserved its position regarding timebar in respect of a number of allegations made by the claimant.

7. The Employment Judge had previously directed that the hearing would be restricted to determining only the merits of the case.

List of Issues

8. This case was subject to case management which focussed primarily on clarifying the claims being brought by the claimant. A vast amount of information was provided in this respect.

9. The respondent's representative prepared a List of Issues based on information taken from the Appendix to the Employment Tribunal's Preliminary Hearing Note dated 21 February 2022 which set out the legal

issues to be determined at the final hearing (page 144 -147). This was supplemented by the wording of the claims taken from the claimant's Paper Apart to the ET1 (pages 40 – 43) and the Scott Schedule (pages 1757 -1759).

10. It is helpful to set out the claims being brought.

5 *Point 6*

11. The claimant stated "*I set up a private meeting with my manager and provided as much detail as I could about my disability. I felt able to work full time without adjustments but that I would continue to struggle with excessive overtime and stress. I told my line manager, all symptoms and medicines that I was taking including the anti-depressants for migraines. As far as I am aware this information was passed to a more senior manager and to HR. I was not contacted by HR to discuss my disability. I was not referred to Occupational Health or any medical advisers.*"

12. This is a claim of indirect discrimination. The PCP is the respondent's expectation that employees do overtime. The group disadvantage is that overtime may result in exhaustion or fatigue and the claimant was put to that disadvantage. The date of the allegation is September 2018.

Point 7

13. The claimant stated "*In November 2018 I had spoken to my line manager about workload and stress and the need to be careful that I did not become ill again. We were very busy and I was fearful I would relapse*."

14. This is a claim of failure to make reasonable adjustments. The PCP is the respondent's expectation that employees do overtime, and the substantial disadvantage is that the claimant suffered exhaustion and fatigue. A reasonable adjustment would have been for her to do less work. The date of the allegation is November 2018.

Point 8

15. The claimant stated "*In January 2019 to July 2019 I was presented with a very excessive workload and no preventative steps were implemented to protect*

my physical health or mental health from this excessive workload. During January 2019 to July 2019 I repeatedly told my line manager that I was struggling with too much work, too much stress and I was becoming ill. However no action was taken."

5 16. This was a claim of failure to make reasonable adjustments (as above) but for the period January to July 2019.

Point 9

17. "*In October 2019 my role was changed without a consultation period and without my job title and duties being given in writing. The change of role*
10 *removed my Manager duties and left me feeling humiliated and demoted in October, November and December 2019. An external customer had been told about my role before me and I felt forced to take it. My role had already been reduced by 75% in July and then further by removing my management responsibilities.*"

15 18. This is a claim of harassment related to disability. The unwanted conduct was related to the external customer being told about a change in the claimant's contract in October 2019.

Point 10

19. "*I was told by HR that the role change was to help me. The role changes were*
20 *based on the company's own assumptions and not valid recommendations. No reasonable adjustments were discussed with me. Whilst the company state that this role change was not intended as a demotion, the process that was taken was humiliating. It showed total disregard for my part of the employment contract and my career aspirations. This triggered depression*
25 *and anxiety and a deep lack of trust with management and the company. This caused by mental health to deteriorate as I had no control over my career and I felt victimised and degraded as a disabled person.*"

20. This was a complaint of failure to make reasonable adjustments in October 2019. The PCP was the practice of not taking medical advice before role
30 changes are made. The substantial disadvantage was that the respondent did

not take account of the claimant's health and the reasonable adjustment would have been taking medical advice before a role change.

Point 11

21. "*At the end of December 2019 it became clear that I had worked 300 hours of unpaid overtime, which was roughly a 6 day week and 44 hours every week, all year on average*."

22. This was a claim of failure to make reasonable adjustments where the PCP was said to be the requirement to work overtime. The substantial disadvantage was exhaustion and fatigue, and the reasonable adjustment would have been not requiring the claimant to do overtime.

Point 12

23. "*In March 2020 a meeting with management and HR was held via telephone conference. The call became hostile and strained and I refuted that I needed mental health support. I felt very defensive and anxious. I do not believe that the call was the time or place or way to offer mental health support. My role change was refused*."

24. This is a claim of harassment related to disability.

Point 13

25. "*In March 2020 I agreed not to raise a grievance about my role change because it was the very weekend that the UK went into lockdown and as a UK Employee Board member, I felt strongly that my grievance should go on hold to allow HR to focus on all employees and not just me during the covid lockdown. In my letter I said I would not be raising a grievance at this time. I was told by a senior manager to stop "time wasting" and to stop "distracting" my manager with my personal issues. I was told by HR that I was a time consuming employee. My manager was told to only reply to work/duties related emails*".

26. This is a claim of harassment related to disability.

Point 14

27. "*After these statements in March 2020 I felt that I had no-one to speak to about my health concerns and the issues that were causing me anxiety during covid. The anxiety continued to increase as huge work target pressures were being put on all staff, but I did not feel I had anyone that I could speak to about my health concerns. My access to my manager was blocked and I had not received the support I needed from more senior managers*."

28. This is a claim of failure to make reasonable adjustments where the PCP is work targets and the substantial disadvantage was exhaustion and fatigue. The reasonable adjustment would have been a lower target or amended duties.

Point 15

29. "*On 18 April 2020 I called in sick with a sick note for two weeks because I was struggling with anxiety and I felt I was close to a nervous breakdown. I felt that the pressure being put on me during covid was not part of my regular duties and was excessive particularly because of the personal stress and also associated pandemic. I felt that the company was not providing me with a safe and healthy work environment during April with regards to covid stress, pressure and anxiety. I did ask for other duties, less stress and less pressure and this was refused, so I felt that I had no choice but to look after my personal health and take time off to recover*."

30. This is a complaint of failure to make reasonable adjustments where the PCP was the respondent's absence policy and the substantial disadvantage was not discounting disability related absence and the various triggers. The reasonable adjustment would be to ignore disability related absence.

Point 16

31. "*On the 19 May 2020 I returned to work on a phased return of part time work and reduced duties. Aside from my first day back, my manager did not speak with me until 7 weeks later and no support was put in place to assist me during*

my phased return. No-one monitored my duties, workload or stress despite doctor's recommendations not to be overwhelmed."

32. This is a claim of harassment related to disability.

Point 17

5 33. "*On the 27 May I was issued with a disciplinary and a letter of warning regarding my behaviour, with threats of "change is required" or I will be "managed out". I was very tearful at this meeting and I did apologise for previous behaviour where I had been time consuming. This letter was very threatening, very personal and it was harassment focussing on my health*
10 *issues*."

34. This is firstly a claim of harassment relating to disability. It is secondly a claim of discrimination arising from disability, where the claimant says the something arising was the likelihood that she would be fatigued and suffer mental health issues. The unfavourable treatment is that she would be
15 managed out of the business if she did not change her behaviour.

Point 18

35. "*On the 8 June I received a second warning letter*..."

36. This was a complaint of harassment relating to disability.

Point 19

20 37. "*On the 12 June 2019 a return to work interview was held with HR, 4 weeks after my return to work. This was too late to be having this discussion and I had concluded the company had no interest in helping me. I felt like I had been set up to fail on my phased return to work*."

38. This is a claim of failure to make reasonable adjustments where the PCP was
25 said to be the respondent's return to work process. The substantial disadvantage was the claimant's need for more support during that process. The reasonable adjustment was to change the process to give the claimant earlier support.

Point 20

39. "*On the 17 June I requested a one-to-one with HR as I was confused and dismayed at the repeated lack of help and support. I stated in writing that I was somewhere between a resignation and giving things one last chance for a duty of care. I had set up the meeting with the hope of being filled with confidence and assurance that things would change and a duty of care would be provided. Instead, this was not offered and I received negative comments from HR. I was told I had deep seated mental health issues; that my aspirations would never be achieved because too much damage had been done and it was recommended I leave the company and I was given my notice period without asking.*"

40. This is a claim of harassment related to disability.

Point 21

41. "*On Monday 22 June 2020, I escalated these comments to a member of the exec board as concerning, offensive and inappropriate. My complaint was treated as a grievance, with an informal investigation by one person and my complaint was not upheld. It was confirmed by this same person that she had reviewed the disciplinary letter of the 27 May 2020 and agreed with the content and approach and* 'change was required by me'".

42. This is a complaint of discrimination in terms of section 15 Equality Act. The something arising was said to be exhaustion and mental health deterioration. The unfavourable treatment was (i) the complaint being informally investigated by one person; (ii) the complaint not being upheld and (iii) the claimant being told that change was required by her.

Point 22

43. "*I was referred for a mental health assessment and counselling by HR in July 2020. I found this offensive. HR are not qualified to make medical diagnosis*".

44. This is a complaint of harassment related to disability.

Point 23

45. The claimant alleged Ms Freeman had exaggeratedly rolled her eyes during a meeting on the 8 June 2020 when the claimant was discussing her strengths and things she liked about the job. Ms Freeman was said to have done this to undermine the claimant and in direct reference to the claimant being able to work within her current role with a disability. This is a complaint of harassment related to disability.

Point 24

46. The claimant alleged Ms Freeman had asked if she wanted her to email company employees to tell them the claimant was disabled and that she needed to take breaks because she was disabled. The claimant found this offensive, degrading and stereotyping. This was a complaint of harassment related to disability.

Point 25

47. The claimant alleged Ms Knox had said to her "*it is your own fault you are sick, no-one made you do the hours*". This was alleged to have been said on receipt of the sick note on the 11 August 2019. The claimant found this comment offensive and humiliating. It was a remark of a derogatory nature regarding the claimant's deteriorating health as a disabled person. This was a complaint of harassment related to disability.

Point 26

48. The claimant referred to the letter dated 9 July 2020 from the respondent regarding obtaining a report from the claimant's GP. It was said "*In particular we are keen to obtain medical advice on whether you are disabled within the meaning of the Equality Act 2010*". The claimant asserted this statement undermined and degraded her by casting doubt on the authenticity of her condition. The claimant considered it highly offensive because it was obvious to any lay person that she had a significant disability. The letter suggested that if the claimant was not a disabled person she would not get support at work. The letter was sent by Ms Freeman under the guise of being from Ms

Lock. The claimant had asked for no contact with Ms Freeman and to ignore this was deceitful, dishonest and disrespectful. This was a complaint of harassment related to disability.

Point 27

5 49. The respondent's refusal to postpone the Unum meetings by 2 weeks on 13 August 2020. This was a complaint of harassment related to disability in circumstances where the claimant considered there was a reasonable basis for the request. The response was degrading, patronising, dictatorial, childlike and a breach of trust.

10 *Point 28*

50. The claimant alleged the respondent's response to the easter art email was harassment related to disability. The claimant asserted this incident had to be considered along with the incidents that happened on the 12 March 2020 because there was a pattern of behaviour. The claimant was walking on
15 eggshells and "*everything*" she did was wrong. The respondent knew the claimant was suffering from a mental health issue. The claimant was unaware she was unwell. The respondent's conduct was intimidating, hostile and frightening.

Point 29

20 51. The claimant alleged the comment by Ms Freeman on the 24 June 2020 that "*she told me she is resigning tomorrow. This is at least the 6th time*" and Ms Lock's response "*Bloody get on with it then, lol*" and Ms Freeman's response "*It is going to turn into a boxing match*" amounted to harassment related to disability. The claimant stated she had been struggling with whether to leave
25 or try to give the respondent another chance. The claimant felt discriminated, unsupported and misunderstood by HR. There was little effort made to see things from the claimant's perspective and understand why she was struggling with working conditions due to her disability. The respondent's conduct was offensive, false, fake and inauthentic. The respondent was encouraging her
30 to leave.

Point 30

52. The respondent's failure to understand the claimant's mental health issues (19 January 2021) amounted to harassment related to disability. The claimant asserted the respondent was going through the motions but not showing genuine support or genuine understanding of the claimant's mental health. Their conduct was humiliating, hostile, degrading, inauthentic, unsupportive, untruthful and dishonest.

Point 31

53. The claimant alleged that going to her home to collect company equipment with 24 hours' notice was an act of harassment. There was a nationwide lockdown in place. It was completely unnecessary for the respondent to visit the claimant's home. The way they did this was heavy handed and intimidating. The emails were aggressive and threatening and the claimant felt frightened about why the respondent was visiting her home instead of organising a courier.

Point 32

54. The claimant asserted Mr Sweeney's comment that she was "*attention seeking*" amounted to harassment related to disability. This was a direct reference to the claimant's mental health. It was insulting, degrading and hugely offensive and showed a lack of understanding and compassion for a person with a physical disability and a mental health disability.

Introduction

55. The Tribunal heard evidence from the claimant; Ms Sarah Seaton, a former employee of the respondent and Mr Philip Newman, Chief Operating Officer of the respondent. The tribunal also heard from Ms Kirsteen Knox, Partner Engagement Director (previously Delivery Director for the UK, and the claimant's line manager); Mr Scott Sweeney, Support Director (previously Service Delivery Director, and the claimant's line manager after Ms Knox); Ms Karen McLaughlin, Vice President of Managed Services and Ms Deborah Freeman, People Director.

56. The Tribunal were referred to a large number of productions (over 2500 pages, the majority of which were emails). We, on the basis of the evidence before us, made the following material findings of fact.

Findings of fact

57. The respondent is a professional services business. It sells software used by companies to run their business; implements the products for customers and provides support and maintenance services.

58. The claimant commenced employment with the respondent on the 28 September 2015 as a Senior Consultant in the Application Managed Services (AMS). The claimant was subsequently promoted to the position of AMS Functional Team Lead on the 1 May 2018. The contract of employment was produced at page 645.

59. Managed Services respond to issues encountered by the customer as they use the system. Issues are raised on "*tickets*". The claimant's role included managing a team of 4/5 Consultants, delegating work/tickets to the Consultants for action and resolution and dealing with her own workload. The claimant reported to Ms Kirsteen Knox, Delivery Director for the UK.

60. The workload for the claimant and her team came in via the "*tickets*". These had to be actioned within 48 hours. Work done on tickets was billable. The claimant also carried out non-billable work, which covered matters such as attending meetings and administration.

61. The claimant had difficulties managing her team and this mostly stemmed from the fact the claimant liked to review all tickets prior to delegating them. This created a bottleneck, added to the claimant's workload, was work which was not billable and delayed work getting to the Consultants. It also created a situation where the Consultants, who were all very experienced, were frustrated that they were not trusted by the claimant to get on with the work.

62. The claimant also had difficulty managing her workload within her contracted hours (37.5 hours per week).

63. The respondent's workload grew during 2017 and 2018 and all areas of the business were busy.

64. The respondent does not pay overtime and does not ask, expect or demand employees to work overtime. There are occasions, for example, a "*go live*" where employees will work additional hours in order to get a project started or finished. The general expectation of the respondent is that work should be done within the hours for which employees are employed. The claimant was a senior and experienced employee and was expected to manage her workload efficiently.

65. The claimant worked a large number of additional hours. The claimant was not asked, or expected, to work additional hours/overtime. The additional hours worked by the claimant were often non-billable and often recorded by the claimant under a "*miscellaneous*" heading. The claimant had a very high number of hours recorded under miscellaneous time.

66. The respondent was aware of the pressures of work on the teams and were trying to recruit additional staff and utilise resources from teams elsewhere (for example, India and Turkey). The respondent also encouraged the claimant to stop reviewing all of the tickets before delegating them.

67. The claimant had a period of sickness absence from the 29 August 2018 until the 1 October 2018. The reason for the absence was migraines.

68. Ms Knox met with the claimant to conduct a return to work meeting (a note of which was produced at page 669). The claimant told Ms Knox that she felt the stress of workload demands, and in particular the CMS contract, had contributed to her absence. The claimant also confirmed she had a disability and requested a separate meeting to discuss this. The claimant confirmed the disability was not the reason for, or connected with, her absence.

69. Ms Knox and the claimant agreed a phased return to work would be put in place, working half days until the end of October. There was also a discussion regarding flexibility in working hours with late starts to accommodate the claimant being slow in the mornings due to the medication for the migraines,

and reduced targets. Ms Knox counselled the claimant regarding the need to be disciplined with herself to ensure only half days were worked, and to delegate work to the team and make use of all resources available to deal with the tickets.

5 70. Ms Knox met with the claimant off site on the 23 October 2018 to discuss the claimant's disability. The claimant informed Ms Knox that she had HSP. The claimant had created a document (page 406) to explain her condition, which is a degenerative condition affecting her lower limbs. The document made clear there was no treatment for the condition and that the claimant may 10 eventually need a wheelchair. The claimant confirmed the upper part of her body "*including brain, heart, lungs, arms, hands, eyes, speech and cognitive processes are NOT affected*". The claimant was still, at that stage, going to the gym once a week for strength and co-ordination.

71. The claimant told Ms Knox that she wanted to control the information 15 regarding her disability, and deal with HR through Ms Knox. The claimant also stressed that she did not want to be seen differently or labelled as disabled. The claimant wanted to continue to work in the office and not at home. Ms Knox enquired whether any adjustments were needed in the workplace. The claimant confirmed no adjustments or aids were needed, and that she would 20 let Ms Knox know if this changed.

72. The claimant was pleased to be back at work and noted this in an email to Ms Knox (page 676). The claimant also advised Ms Knox, in an email dated 8 November (page 678) that working full time was easier, and she had caught up on everything. The claimant referred to her medication having made her 25 feel tired and groggy and that she intended to halve the dosage that month.

73. The claimant started to wear coloured glasses to help with the screen at work and lighting was moved to assist with reducing the glare of the screen. She also had flexible start times in the morning and had her target reduced from 72% to 65%.

30 74. Ms Knox shared the claimant's information with Ms McLaughlin, Vice President Managed Services UK and Ireland, and Ms Freeman, People

Director (page 681). Ms Knox did not share the document prepared by the claimant because she was waiting for the claimant to provide a soft copy. Ms Knox did share an email the claimant had sent (page 675) in which there was a link to an NHS site regarding HSP. Ms Knox also sought advice on action she needed to take, for example, a personal emergency evacuation plan.

75. Ms Knox, Ms McLaughlin and Ms Freeman were all pleased the claimant had come forward to disclose information regarding the disability, because it had been clear the claimant had been struggling with mobility issues for some time but would not have welcomed any enquiry about this. The claimant had, in fact been diagnosed with HSP in 2016.

76. The respondent experienced an explosion of work in 2019. Ms Knox raised with Ms McLaughlin the capacity planning for 2019 (page 698) in which she stated "…*we are drowning in tickets/workload*…" Ms Knox referred to Ms McLaughlin and her being keen to meet all the delivery team leads to discuss and go through each of the areas to try and get a better understanding of capacity model planning for 2019 because they could not continue with these volumes and having to react.

77. The claimant worked a large number of additional hours during this period. Ms Knox decided to seek permission for the claimant's overtime during January and February to be paid, as a goodwill gesture. Ms McLaughlin agreed to the payment as a one-off.

78. The claimant emailed Ms Knox on the 21 March 2019 (page 717) to say that she was exhausted and her migraines were back. She felt burned out and stressed because the workload kept increasing with no light at the end of the tunnel. The claimant concluded the email by saying that she would end up on sick leave again unless something was done soon because the amount of work she had to do was unrealistic and she could not take on any more tasks.

79. Ms Knox responded to the email (page 716) to say she acknowledged the position and that things continued to be very challenging. Ms Knox referred to the delegation of tickets without review as being one thing the claimant could do to ease her workload. Ms Knox also referred to the size of the claimant's

team, which had doubled in size, and to the fact Ms McLaughlin was working on a new structure to address this. Ms Knox concluded her email by stating "*Please try and stay strong Karen…we will get there and will reduce the number of burning fires…before we are all toast*".

5 80. The claimant emailed Ms Knox again on the 26 April 2019 (page 718) to say she had a migraine and would not be at work. The claimant stated she was "*really struggling physically right now. I've hit a wall of exhaustion. I feel broken and like a zombie. I need some time off*".

81. Ms McLaughlin considered that the areas which took up most of the claimant's
10 time were around people management. The focus therefore was on removing some elements of team management by reducing the size of the claimant's team and allowing her to focus on her skills. The plan was to give the claimant a smaller retail team to manage. The respondent considered this would reduce the claimant's workload and give her an opportunity to use her skills
15 (the claimant was an expert in retail).

82. The claimant initially questioned whether this was a demotion because her remit was decreasing (email dated 9 May on page 724). Ms Knox responded (page 723) to confirm it was not a demotion and that the company needed the claimant's expertise and seniority to lead the new team to support and grow
20 the retail-focussed customers. Ms Knox referred to the fact the claimant had very strong relationships with the retail customers, all of whom valued her contribution and specifically asked for her to be involved.

83. The claimant, having had time to reflect on the new role, emailed Ms Knox on the 12 May (page 720) to say that she was excited to have a smaller,
25 focussed, specialist area that she would grow and develop. The claimant thought the new role would be a good, fresh start for her to show what she could do. The claimant however noted that there would need to be an interim process to help until she took up the post.

84. The claimant emailed Ms Knox again on the 14 June (page 737) thanking her
30 for asking her to lead the new team. The claimant described it as a positive change.

85. The changes to the team were announced in June 2019 and the claimant took up her new role as Retail Team Lead on the 1 July 2019. The claimant had responsibility for managing three people. There were delays in building a new team because two people recruited to the team left shortly afterwards and had to be replaced.

86. The claimant was nominated for the Delta programme, which is a high performance global programme, for which only one nomination from Western Europe is made. The claimant was "*flattered*" to have been nominated and considered it a "*career high*". The claimant emailed Ms Knox on the 14 June (page 736) to thank her for putting her name forward and saying she would relish the opportunity. Ms Knox replied saying there was lots to look forward to with the new Retail team leader role and the added bonus of being a Delta candidate.

87. The claimant emailed Ms Knox on the 8 July (page 744) to complain that she was suffering from severe exhaustion and burn out because she had had 12 months of this and she was very frustrated with doing enough work for 3 people all the time. The claimant concluded by saying they needed more people.

88. Ms Knox emailed the claimant on the 12 July (page 749) regarding a project and the fact she had not been advised of difficulties sooner. Ms Knox had also just been made aware of the fact the claimant had been in the office working overnight by herself. Ms Knox made reference to the respondent's duty of care and the fact no-one had known the claimant was in the office working through the night.

89. The claimant responded to the email (page 748) stating she was considering her position with the respondent and was very close to handing in her notice or requesting a move. The claimant stated "*This isn't working between us. I need to move on*". The claimant also went on to say that nothing she did was ever good enough; that Ms Knox always wanted more done, but the claimant did not have the resources and that she felt she went above and beyond every day and was completely demotivated by working in delivery.

90. The claimant asked to meet with Ms McLaughlin. The meeting took place on the 25 July. The claimant told Ms McLaughlin that she felt unsupported by Ms Knox and the relationship was not working. Ms McLaughlin explained to the claimant that Ms Knox would be moving out of the department. (Ms McLaughlin was involved in discussions at Executive level regarding organisational changes which would mean Ms Knox moving to another role, and Mr Sweeney coming in to fill her role).

91. Ms McLaughlin considered, following her discussion with the claimant, that the matter had been dealt with and so was surprised when the claimant submitted an "*Informal letter of concern*" regarding her issues with Ms Knox (page 766). The claimant complained that Ms Knox had overloaded her with work and not supported her when she became exhausted and stressed, and that she felt intimidated, degraded and stressed by the way in which Ms Knox spoke to her.

92. Ms Freeman, People Director, acknowledged the letter and confirmed it constituted a formal grievance and would be treated as such. A grievance meeting took place and an outcome letter was issued to the claimant on the 21 September 2019 (page 786). The outcome letter noted, amongst other things, that the claimant had not wanted the letter of concern treated as a formal grievance. This was due in part to the fact Ms Knox was moving from the department to take up her new role.

93. Mr Sweeney moved into the Service Delivery role and took online management responsibility for the claimant in January 2020. (The claimant continued to have dealings with Ms Knox until she moved from the department).

94. The respondent had, in June 2019, taken on a new retail customer Missguided. Ms McLaughlin attended quarterly business review meetings with the customer where the focus was on how best to deal with a heavy workload which was increasing. One solution which was discussed was to assign a Solutions Architect, that is, a dedicated expert in solutions who could guide the customer in the use of the systems. There was no discussion about

who could fill such a role, but it was fairly obvious to all that the ideal candidate for the role would be the claimant.

95. Ms McLaughlin, Ms Knox and Mr Sweeney discussed the Solution Architect role and agreed the role would be ideal for the claimant because she had retail experience, was good at solutions and it would remove management responsibilities which appeared to be a time consuming issue for the claimant. It was considered a good career move for the claimant.

96. Ms Knox discussed the new role with the claimant in October 2019. Ms Knox's email of the 11 October (page 790) followed up on the initial discussion. Ms Knox explained, in the email, that the aim was to allow the claimant to be able to focus on the Solution Architect aspect of her job and to lighten the load by removing some team leader aspects (the claimant would, for example, have no team lead reporting to her). The respondent wanted to pilot the role with Missguided, with a view to adopting it for all retail customers.

97. The claimant responded (page 789) to say she understood why she had been asked and was happy to try it.

98. Mr Sweeney emailed the claimant to try to set up a meeting to discuss the new role. The claimant responded by emailing Mr Sweeney on the 11 November (page 793) to say that she had made a huge mistake by accepting the role. She stated she regretted her decision and that the role would drive her mad and be awful for her mental health.

99. Mr Sweeney responded by stating "*That is quite a statement to send me in an email. Let's discuss this and…the issues you are concerned with. It is a new way of working for us so there [will be] flex in how this will work going forward*".

100. Mr Sweeney and the claimant had a call to discuss matters. The claimant confirmed the issues were not specific to Missguided, but to a bigger problem with the respondent. Mr Sweeney asked specifically if the claimant had the support she needed and encouraged her to ask for help if she needed it. The claimant responded (page 791) that she did not need any support at the present time and was "*doing fine*". The claimant thanked Mr Sweeney for

reaching out and confirmed she would discuss matters further with him once she was a bit clearer in her own head.

101. Mr Sweeney formally took over as the claimant's line manager in January 2020. The claimant emailed Mr Sweeney on the 6 January 2020 (page 804) stating she had logged in and noted one of her team no longer worked for her. The claimant stated she knew changes were coming, but nothing had been communicated to her. Mr Sweeney responded to say he understood her frustration and that he would raise it with Ms Knox because it should have been communicated to everyone involved.

102. The claimant was concerned about the role change and the level of travel and the loss of her team leader duties. The claimant felt she had done more travelling in December and felt tired because of this. She was concerned there had been no consultation with her about increased travel. The claimant had, over the Christmas period, reached the conclusion that a change of department may be good for her.

103. The claimant emailed Mr Sweeney on the 8 January (page 806) in which she referred to the meeting which had taken place. The claimant confirmed she was serious about leaving and that the change to her role had been the straw that broke the camel's back. The claimant stated she would try to figure out what she wanted short and long term, and send it through to him for consideration.

104. Mr Sweeney responded that he wanted to ensure he fully understood her reasons for wanting to possibly move and also what he could do about the role to meet her objectives and also the respondent's requirements for customers. Mr Sweeney concluded by stating he looked forward to seeing how the claimant defined the Solution Architect role.

105. The claimant had told Mr Sweeney she was considering a move to Consulting (another side of the respondent's business). Mr Sweeney not only wanted the claimant to stay because she is a very experienced person and much valued for her technical skills, but the amount of travel involved in Consulting would not have suited her.

106. The claimant emailed Mr Sweeney on the 12 January (page 812). The claimant stated she struggled to say what her perfect role would be. She was mentally exhausted and stressed after a horrible year and this was affecting her decision making. If she stayed, it would have to be with certainty that the job would be feasible within a 40-hour working week. The claimant attached a 5-page document to her email in which she set out (i) why I want to leave managed services; (ii) why I want to move to consulting; (iii) what I think the new role is; (iv) concerns with new role; (v) what I would like short term; (vi) what I would like long term and (vii) a summary. The claimant, in the summary, included the statements that she liked going onsite to customers; the priority should be on reducing her workload and stress and she didn't mind the travel as she loved onsite customer-facing work.

107. Mr Sweeney replied to the claimant on the 12 February (page 811) because he had been taken aback at the amount of information provided by the claimant. A meeting had been arranged to discuss matters on the 13 February, and in advance of this Mr Sweeney set out his thoughts, which were primarily that the Solution Architect role would achieve much of what the claimant wanted. It was also stressed that Mr Sweeney wanted the claimant to be a fundamental part of Managed Services going forward. Mr Sweeney was very much of the view that as the role was a new one, it would be for him and the claimant to discuss and review any concerns she had with the role and come up with solutions.

108. The claimant made an application for flexible working (page 846). The claimant wished to change her contract to be partly remote (4 days) and partly office based (1 day). The claimant noted her level of travel was currently 50% and, in the weeks when she was on a customer site, she wished to work at home for the remainder of the week.

109. The claimant also asked Mr Sweeney for a pay rise (page 852).

110. Mr Sweeney emailed Ms McLaughlin and Ms Freeman to request a meeting to discuss the claimant's concerns (page 850). Mr Sweeney noted the claimant had said AMS was stifling her career, but she had asked for a pay

rise and a plan to take her to the next grade. Mr Sweeney felt he had spent a lot of time with the claimant to try to address her issues, but he was not making any progress in trying to shape the new role to suit the claimant. Mr Sweeney felt the claimant simply decided to work at home with little regard to her level or the management structure. Mr Sweeney also noted that in the flexible work application the claimant had described her travelling as 50%. Mr Sweeney disagreed with this and confirmed the claimant had only been asked to commit to up to 4 days per month travel (20%). Mr Sweeney concluded the email by saying he felt that he could not deal with this on his own any longer.

111. Ms Freeman, Ms McLaughlin and Mr Sweeney met to discuss the application for flexible working. The request was granted (page 1204) with effect from the 1 September 2020. The approval noted the travel pattern had never been at 50% and that estimated travel post-covid lockdown would be one day each week. Attendance at the office post-covid would be one day each week regardless of work on customer sites, although the claimant could advise of any particular difficulties.

112. The claimant subsequently withdrew the application for flexible working.

113. Ms Freeman and Ms McLaughlin decided to meet with the claimant to try to understand what was behind her lengthy email to Mr Sweeney regarding wanting to leave managed services, and to offer support and to address the concerns. The meeting took place on the 12 March 2020 by conference call. A note of the meeting was produced at page 861.

114. The claimant told Ms Freeman and Ms McLaughlin that she stood by what she had written. She had high levels of unhappiness and her workload had not been realistic. She had worked a 6-day week and was made ill with migraines. The claimant acknowledged this had been better since her role had changed.

115. The claimant confirmed that notwithstanding she had previously told Ms McLaughlin that she did not want to work at home, this was now what she wanted because she no longer enjoyed coming into the office. The claimant stated she did not feel valued and that she was bored. She said she could

easily manage a large team and really enjoyed managing people, notwithstanding the fact her team had expressed contrary opinions regarding the claimant's management style.

116. The claimant confirmed she did not wish to work in Managed Services and she wanted the opportunity to work in business development or pre-sales. Ms McLaughlin advised the claimant that business development was mainly staffed by grades higher than the claimant, and that she did not have the experience to work in pre-sales. The claimant responded confirming she did not really want a job in pre-sales.

117. Ms Freeman informed the claimant again that if she needed any support or considerations for her condition, she should talk to them and they would make adjustments in consultation with her. The claimant insisted this had nothing to do with her condition and only related to the way she was feeling about her job. The claimant was upset and Ms Freeman suggested stopping the meeting and continuing later. The claimant refused. Ms McLaughlin asked why she was so unhappy and whether she needed some emotional support. The claimant was adamant she did not need any support.

118. The claimant, following the meeting, sent an email to Ms Freeman and Ms McLaughlin (page 868) thanking them for their time. The claimant explained she had become upset because what she was experiencing and feeling, was very different to how they saw it. The claimant felt this highlighted how much her position with the respondent had deteriorated. The claimant said she wanted a career but felt like she did not have one.

119. Ms Freeman responded on the 19 March (page 878) to say she was shocked and disappointed with the claimant's email. Ms Freeman noted that if the claimant had lost trust in the company and the management team, she was not sure where they went from there. Ms Freeman confirmed they would like to get things back on track. She further confirmed the change of role was not driven by poor performance, but by the fact the claimant had said she did not have time to manage team lead responsibilities and was spending too much time on tasks such as managing people. Ms Freeman noted the claimant had

been working late hours, not delegating enough and had been absent for several periods with migraines due to workload and stress. Ms Freeman confirmed the respondent had a duty of care to ensure this did not continue.

120. Ms Laughlin also confirmed there had not been a demotion.

5 121. The claimant responded (page 879) to say she would try to write down why she felt it was a toxic environment and confirmed she actually did not want to leave.

122. The claimant emailed Ms Freeman and Ms McLaughlin on the 19 March (page 883) to explain her position. The email was broken into headings dealing with
10 demotion without consultation; how some of my colleagues treat me; how other people see me and changes for the future. The claimant concluded by saying she still hoped she was seen as a positive role model for the company. She did not want to leave managed services and wanted to help the company through the choppy waters of covid/lockdown. She hoped her relationship with
15 Ms Freeman and Ms McLaughlin would repair in time.

123. Ms McLaughlin and Ms Freeman were disappointed to read this email and the many contradictions contained within. It had been explained to the claimant on several occasions that there had not been a demotion: the company had made a change to support her following concerns about her workload and her
20 team. Also, although it is a high pressure environment, there is no culture of working long hours. The workload was done by the team and no-one else logged the hours the claimant worked or complained about the workload.

124. The claimant, having been told her previous team had made unfavourable comments regarding her management of them, took it upon herself to carry
25 out 360 degree feedback from her previous team. The form asked people whether they had enjoyed working under the claimant; whether they would want to be managed by her again; how they rated her as a manager etc (page 895). The responses received by the claimant were not at all favourable.

125. Ms McLaughlin emailed the claimant on the 20 March (page 890) to say that
30 given the current situation with covid/lockdown, where steps were having to

be taken to ensure the success of the business for the future, management did not have time for the claimant's constant emailing which was neither constructive nor supported the business. Ms McLaughlin confirmed that if the claimant had a grievance, she could raise it through the grievance procedure. Ms McLaughlin concluded the email by stating she had advised Mr Sweeney to stop responding to the claimant's emails on the subject of 360 degree feedback, and to respond only where the communication was relevant to the progression of a customer deliverable.

126. Ms Freeman also responded to the claimant (page 893) to say that seeking 360 degree feedback without reference to her and Ms McLaughlin was completely inappropriate. The management team had decided not to have 360 degree feedback as part of the performance process. Ms Freeman reiterated that the management team had tried very hard to support the claimant, but she was taking up much of their time. Ms Freeman asked the claimant to please focus on her work.

127. The country was in lockdown at this time. The respondent issued weekly updates regarding covid and protecting mental health during lockdown. There was a slow-down in work but Mr Sweeney assured the claimant in an email dated 27 April (page 938) that there was no need to worry about her job because there would be a rise in retail albeit they could not say exactly when. Mr Sweeney concluded his email by saying "*this is definitely not something for you to worry about or get anxious about*".

128. The claimant, earlier in the month, and without approval, sent out an easter art competition for employees and children (page 926). Ms McLaughlin had to email the claimant to say this was not appropriate because it was not authorised, would involve the executive in time that should be spent on keeping the business on track and would lead to questions being asked about why the claimant was not focussing on her work.

129. Ms Freeman also emailed the claimant about the Easter Art competition (page 925) to say communications needed to be agreed in advance so they did not create uncertainty over what was formal and what was not. Ms Freeman

concluded her email by saying "*Please, you must clear any comms to the wider business via me first*..."

130. The claimant responded to Ms Freeman in the following terms: "*Ahh so sorry Debbie. I thought because we had discussed it at the EB meeting it would be an ok employee competition…Apologies again. Anything else will send to you first for approval. Hope you get some time off this weekend. Happy Easter*".

131. The claimant emailed Ms Freeman on the 2 April (page 929) voicing concern that having to take holidays may not be good for the mental health of those living alone. The claimant in particular did not want to be on her own for 7 days when she could not exercise.

132. Ms Freeman responded (page 927) noting the claimant's concerns and confirming the claimant could take holidays at the rate of one day per week over the next 4 weeks if that made life easier for her. Ms Freeman also asked the claimant to let her know if she needed additional allowances because of her limited movement.

133. The claimant was absent from the 21 April 2020 until the 5 May 2020 with anxiety and depression. Mr Sweeney had to email the claimant on the 23 April (page 936) to advise her that she needed to distance herself from work altogether and completely shutdown from emails and logging on, otherwise she would not get the rest she needed mentally. Mr Sweeney told the claimant not to attend the question and answer session on the Monday, for her own wellbeing.

134. Mr Sweeney was due to meet with the claimant in advance of her return to work. The claimant emailed him on the 29 April (page 942) to say that one of the issues they would need to discuss was workload (or lack of) because coming back to a low workload would not be good for her. The claimant did not want to return if the workload was not there because she liked to be busy.

135. Mr Sweeney emailed Ms McLaughlin and Ms Freeman on the 1 May (page 951) to seek advice regarding the return to work meeting with the claimant. Mr Sweeney did not think he alone should meet with the claimant. Mr

Sweeney also raised the fact the claimant had posted a tweet about "*Why some people are #bullied. How workplace bullies pick their targets*". Mr Sweeney thought the tweet inappropriate because someone reading it could think it referred to him. Mr Sweeney also felt he had spent an enormous amount of time with the claimant and supported her fully in her role, but he did not think it was in his best interests to communicate directly with her.

136. Ms Freeman responded (page 950) to advise that he should honestly tell the claimant how he was feeling and that he had done all he could to support her. Also, the claimant should not return to work unless her GP advised it was safe to do so, and any phased return to work would have to be with the GP consent. Ms Freeman noted that with regard to the tweet, the claimant should be advised to take it down because it could have consequences for both her and the business because it implied criticism of the respondent.

137. The claimant advised Mr Sweeney on 4 May (page 959) that the GP had issued a further sick note for two weeks. The claimant stated the GP had wanted to sign her off for longer, but the claimant was keen to return to work as soon as possible because she missed it and was struggling with all the time on her hands.

138. Mr Sweeney advised the claimant again to stop logging in and working, otherwise she would not get better.

139. The GP had recommended a phased return to work commencing on 19 May. Mr Sweeney took HR advice regarding this and wrote to the claimant after the first week of her phased return to suggest how the phased return would be increased. The claimant responded (page 974) saying she would think about the proposal overnight and that the return to work had been harder than expected.

140. Mr Sweeney emailed Ms Freeman and Ms McLaughlin (page 973) asking that given the claimant's response to his proposal, that the phased return be managed by HR. Ms Freeman agreed.

141. Mr Sweeney was in contact with the claimant during her phased return to work via emails, telephone calls and meetings.

142. Ms Freeman telephoned the claimant to tell her to take down some tweets and to stop tweeting. The claimant had tweeted something about mental health and had accidentally tweeted something about suicide (neither of those tweets were produced for the tribunal). Ms Freeman told the claimant that the company had written a long letter to her and that she was to attend a remote meeting (bringing someone with her if she wished) to hear it. Ms Freeman also confirmed that in respect of the phased return to work, the claimant was, for the next four weeks, to work 10am until 2pm.

143. The meeting took place on the 27 May and Ms Freeman read out to the claimant the letter she had written (page 969). The letter was described as a "letter of concern" and explained there was concern regarding two things – the claimant's behaviour and the need for change. The letter was honest and forthright in its terms and was sent with a view to resolution and to stop things spiralling further out of control. The letter referred to the claimant's technical work being excellent and that the company had a high regard for her technical ability and wanted her to succeed.

144. The letter explained the company had concerns about aspects of the claimant's behaviour and that something had to change. It was noted the claimant appeared deeply unhappy with her job, the company, the management and every aspect of her working life. Ms Freeman wanted to get to the bottom of the issues and resolve them. The claimant had involved herself in areas of the business completely outside her area of responsibility, had expressed a real desire to fix things, but matters had not been resolved.

145. Ms Freeman noted the claimant had on several occasions told various managers that she wanted to leave, then stated she did not want to leave; that she didn't like her job, but then she did like her job but wanted different hours, more work, less work, more pay, working from home, not working from home and being demoted. Ms Freeman noted the claimant had complained of verbal abuse and bullying by multiple people and that the office was toxic.

The claimant had said her role bored her; she had continually criticised almost everyone she worked with and had distributed a long list of what she considered wrong with her role and had issued 360 degree feedback. Ms Freeman expressed concern about the effect on the claimant of the stress she said she suffered from, and the stress caused to others by the behaviours outlined in the letter. The company could not let this continue.

146. The company had, in response to “cries of help” moved the claimant to a role more suited to her technical skills. This had not resulted in improvement and the claimant had complained of demotion. Ms McLaughlin had told the claimant in blunt terms that she had not been demoted. The claimant had been nominated for the Delta programme and encouraged to participate in activities such as “*women in tech*”.

147. Ms Freeman referred to the very mixed messages sent by the claimant in the recent period of sickness absence about wanting to work and not wanting to work, and attempting to join meetings and calls and reading work emails despite being ill.

148. Ms Freeman reiterated the respondent’s duty was to try to get to the bottom of the claimant’s issues and then take steps to attempt to resolve them to see if the claimant was capable of working properly in an appropriate way. Alternatively, it may be necessary to fairly and appropriately manage the claimant out of the business.

149. Ms Freeman made reference to Ms McLaughlin suggesting the claimant needed emotional support, but the claimant denying it. Shortly after however the claimant had said she was really struggling and feeling very low. Ms Freeman stated the respondent thought the claimant needed support but could not be forced to accept it.

150. Ms Freeman noted she wished to obtain medical or psychiatric reports, or a report from the claimant’s GP. There would be a follow-on discussion at which Ms Freeman stated she wished to discuss the claimant’s health, mental health and discuss the claimant’s ability to perform to the required standard. This

was to be a full and frank discussion about the issues and what support could be given.

151. The letter was sent to the claimant after the meeting and Ms Freeman asked the claimant to take time to reflect and then come back to her.

5 152. The claimant emailed Ms Freeman on the 30 May (page 991) thanking her for her intervention, time and support. The claimant also thanked Ms Freeman for not issuing a formal disciplinary. The claimant stated she appreciated the softer, informal way in which her behaviour had been addressed. The claimant confirmed she was doing much better and was somewhat embarrassed at the 10 last 6 months, but she had to focus on a positive recovery and finding herself again.

153. The claimant emailed Ms Freeman again on the 1 June (page 989) attaching two documents detailing everything she had experienced. The claimant confirmed this was not a grievance but hoped it would give a clear picture of 15 the anger, frustration, sadness and lack of trust so there could be a conversation about how to mitigate some of these concerns.

154. The 21-page document attached to the email to Ms Freeman was produced at pages 994 – 1015. The first part of the document was a response to the letter of concern; the second part dealt with the mental health situation and 20 the third part dealt with past people behaviour.

155. This document was the first indication Ms Freeman (and the respondent) had that there may be mental health issues to be addressed. It was the first time the claimant had disclosed she had been prescribed antidepressants in 2018 to help with her migraines.

25 156. The claimant, at page 1001 of the document, stated she was comfortable with her disability (HSP) and that there were no psychological medical conditions associated with her disability. On page 1003 the claimant stated "*I do not have any mental health permanent conditions and I have no background of mental health issues. I've never been diagnosed with mental health issues, nor has 30 my family. There are no mental health issues connected to my disability*."

Further, "*My disability should not be a feature of future discussions as I do not feel it is relevant… I will be honest if I struggle or need adjustments at some point in the future. At present I don't need any change to hours or work duties*." On page 1006 the claimant stated, "*I've asked myself why I'm unable to keep up with workload and if it's disability related, but it's not*".

157. Ms Freeman responded to the claimant's email on the 8 June (page 1028) thanking the claimant for her response and inviting her to prepare a short bullet point summary of the 21-page document. Ms Freeman confirmed there would be a further discussion but that the claimant should take the letter as a very strong instruction that she had to do all she could to avoid a repetition of the behaviours outlined in the letter and that included sending a 21-page detailed note to HR.

158. The claimant provided a bullet point summary (page 1052) which included reference to two absences related to burnout; excessive workload; "*no history of mental health issues, depression or burnout. No history of sickness ever. Fully capable of full-time work and extra hours, no adjustments needed. Able to handle stress and pressure well*..."; didn't receive support from her managers; inappropriate comments from co-workers; fears and concerns over work culture and fears over duty of care in providing a safe and healthy work environment.

159. Ms Freeman conducted the claimant's return to work interview on the 12 June (page 1059). The claimant stated she was grateful for the change of manager and the reduced workload as of January 2020. In response to the question whether the employee had a disability, it was noted "*Yes, hereditary spastic paraplegia but Karen has documented on more than one occasion that her condition has no impact on either her ability to do her work or her mental health*." Further, it was noted the claimant felt her physical disability had no relevance to her absence. The form was signed by both Ms Freeman and the claimant.

160. The claimant emailed Ms Freeman on the 16 June (page 1058) to request an informal meeting. The claimant stated she felt like she was at a crossroads

and somewhere between resignation and one more chance for the respondent, and she needed an open and honest discussion.

161. Ms Freeman met with the claimant on the 17 June. The claimant had asked for an informal meeting and Ms Freeman confirmed at the start of the meeting that it was "*off the record and no notes would be taken*". Ms Freeman, during the discussion, said to the claimant that if she had deep seated mental health issues, the respondent would support her. There was discussion about the claimant remaining with the respondent and Ms Freeman confirmed that if the claimant wished to leave she would not be required to work her period of notice.

162. The claimant emailed Ms Freeman after the meeting (page 1048) to say that she had been deeply offended by Ms Freeman saying she had deep seated mental health issues. The claimant considered this was inappropriate because Ms Freeman was not a medical expert. The claimant was also concerned that Ms Freeman had stated her aspirations could never be realised within the respondent company. The claimant was upset she had been given her notice period when she had not resigned. The claimant stated she had noticed a decline in her mental health following the meetings and letter and that none of it was helping her recovery.

163. Ms Freeman responded on the 22 June (page 2065) stating she was shocked and saddened by the content of the claimant's email because matters complained of had either not happened or been taken out of context. Ms Freeman noted that it had been the claimant who had opened the meeting by confirming she was at a crossroads and thinking of leaving; that she had lost trust in the company and did not feel that her health and welfare were being taken care of. The claimant had also stated that she could not see that she would ever be happy or healthy at the company, and that her mental health was being affected.

164. Ms Freeman referred to the support which had been offered by Ms McLaughlin, Mr Sweeney and herself, but there came a time when enough was enough. The letter of concern, which the claimant described as blunt and

direct, had been written because the softer approach had not worked. Ms Freeman noted the claimant had thanked her for her input after the letter of concern, but her feeling was that despite hours of management time, the claimant could not tell them what it was she wanted, did not trust them to deliver it and then would change her mind anyway.

165. Ms Freeman stated she would never make the assumption that anyone had deep seated mental health issues, precisely because she is not a medical expert. She also rejected the suggestion she had said the claimant's aspirations to move to a higher grade would never be realised. Ms Freeman confirmed that what she had said was that the claimant, currently, was not at that level. Ms Freeman also confirmed that she had said to the claimant that if she wanted to leave, the company would not stand in her way. The comment regarding not being required to work a period of notice was said in that context.

166. The claimant contacted Ms McLaughlin on the 18 June, asking for a quick catch up. Ms McLaughlin spoke with the claimant on the 19 June, and a note of that conversation was produced at page 1065. Ms McLaughlin was aware of the terms of the letter of care and concern issued by Ms Freeman, and the claimant's 21-page response to it. Ms McLaughlin considered some positives had come out of the letter: for example, the claimant acknowledging (page 1000) that she knew and accepted the move to the Solution Architect role was not a demotion.

167. The claimant told Ms McLaughlin she wanted to apologise for her behaviour in the last few months: she could not explain why she had behaved like that. The claimant acknowledged she had definitely taken too much of people's time. The claimant said she was moving forward with her recovery, but there was still some way to go. The claimant asked Ms McLaughlin if she should stay in managed services. Ms McLaughlin told the claimant she did a fantastic job, customers liked her, and she was a gifted consultant. The claimant referred to her informal discussion with Ms Freeman and that she had got the impression it was in her best interests to leave. Ms McLaughlin confirmed that was not the case. The claimant went on to say she had taken things too far

lately and she took responsibility for the hours she had worked: she had become a workaholic.

168. The claimant emailed Ms McLaughlin the following day thanking her for her time and to ask if they could have another short discussion. Ms McLaughlin arranged a video call for the 22 June, and a note of that discussion was produced at page 1067. The claimant told Ms McLaughlin what she believed Ms Freeman had said in the informal meeting, and that she felt Ms Freeman was encouraging her leave. Ms McLaughlin, who had spoken to Ms Freeman about the informal meeting, told the claimant that the views expressed by the claimant did not match her impression having spoken with Ms Freeman. Ms McLaughlin asked the claimant to explain the way in which she felt her health and safety had been compromised. The claimant stated she felt at risk of a tsunami of work appearing from nowhere. The claimant told Ms McLaughlin that she had decided to resign.

169. The claimant emailed Ms McLaughlin on the 24 June (page 1119) asking to whom she should send her letter of resignation. The email went on to say she did not really want to resign but could not see a future with the company with no trust in HR. The claimant concluded by stating a huge thank you to Ms McLaughlin for all her support.

170. Ms McLaughlin responded (page 1118) to say she had passed the claimant's email to HR, and that Ms Freeman had agreed to limit her involvement with the claimant. Ms McLaughlin invited the claimant to avail herself of the support the respondent had offered and to discuss matters fully with her and others before making the decision to resign.

171. The claimant responded (page 1117) to say that since speaking up she felt so much better and was "*doing really well with* [her] *recovery now*".

172. The claimant emailed Ms McLaughlin again on the 2 July and 5 July (page 1116). The claimant, in the later email, stated she could not meet with Ms Freeman because discrimination and harassment were against the law, and Ms Freeman's comments had affected her mental health. The claimant referred to having sought legal advice. The claimant described the decision

to refer her for a "*mental health assessment*" as offensive and stated all trust had been broken.

173. Ms McLaughlin replied (page 1133) stating the allegations made in the email were serious and although not expressed as a grievance, it was being treated as a serious complaint. Ms McLaughlin re-read all the correspondence, spoke to Ms Freeman and took advice before responding to each of the points the claimant had raised.

174. The claimant subsequently emailed Ms McLaughlin on the 13 July (page 1159) to confirm she had decided not to resign. The claimant stated it had not been a bluff and she had come very close to it, but her professional integrity would not let her walk out, she did not want to be pushed out of job she was very good at, and the pandemic had left the market too risky to resign. The claimant concluded the email by stating she was not going to write anymore.

175. Ms McLaughlin (page 1159) acknowledged the claimant's email. She noted the claimant felt she had been badly treated and confirmed the respondent would – if the claimant would allow it – attempt to work with her to resolve whatever reasonable concerns she had.

176. The claimant had also emailed Mr Sweeney to apologise for her behaviour earlier in the year, and to apologise for the five-page document detailing why she wanted to leave managed services. Mr Sweeney advised both Ms Freeman and Ms McLaughlin about this.

177. Mr Sweeney also advised (email of the 8 July on page 1145) that the claimant had asked for a call to discuss an important personal issue. The claimant subsequently cancelled the meeting. Ms Freeman emailed Mr Sweeney to ask whether the claimant had explained why she had cancelled the meeting. Ms Freeman commented "she is looking for you to react". Mr Sweeney replied, saying the claimant had said she had a personal matter that may have required some time off to cover. Mr Sweeney said he agreed with what Ms Freeman had said, and commented "*attention seeking*". Mr Sweeney described this as an emotional comment reflecting what he felt at the time. He

had given the claimant a lot of support, but he had other people in the department to manage.

178. Ms Jade Lock, HR and Payroll Adviser, contacted the claimant by letter of the 8 July (page 1136) for consent for access to medical records and a report from the GP. Ms Lock explained the reasons for seeking a report included obtaining medical advice whether the claimant was disabled within the meaning of the Equality Act, and if so, whether there were any reasonable adjustments which could be made.

179. The claimant replied to this letter (page 1153) to say she considered the letter to be offensive.

180. Ms Lock contacted the GP by letter of the 27 July (page 1181) asking for a medical report regarding the current state of health of the claimant and the prognosis for future health.

181. The GP replied to say she was unable to assist because she believed that to answer many of the questions asked by the respondent would require an occupational health report.

182. The respondent sought an occupational health report from Unum (page 1224). There was concern that although the information in the report appeared to be correct, there was reference to someone other than the claimant. The respondent accordingly sought a second report and used Medigold.

183. The Medigold report, dated 1 October 2020, was produced at page 1276. The report confirmed the claimant was fit for work but would benefit from adjustments, for example, a stress risk assessment should be undertaken, a wellness recovery plan done and there should be regular sessions with her manager to provide support and check she is coping. The report confirmed the claimant was likely to fall within the terms of the Equality Act in relation to HSP, and may fall within that Act in relation to her mental health condition if medication was discounted.

184. The Unum report had also recommended weekly meetings between the claimant and her manager, and so these were set up. The claimant met with Mr Sweeney and Ms Lock, HR. The first meeting took place, but the claimant requested the second meeting be pushed back by a week because she was too busy to attend. This request was refused because the whole purpose of the meetings was to support the claimant and ensure she was not overloaded with work.

185. A stress risk assessment was carried out (page 1408).

186. Ms McLaughlin produced a list of the reasonable adjustments put in place for the claimant as at 10 November 2020 (page 547 – 549). This arose out of the occupational health report. The document listed the adjustments requested; the company response; the date it was implemented and notes. The agreed document was sent to the claimant on the 18 November (page 1436) and the claimant was asked to use the regular meetings with her line manager and HR to raise any challenges she was experiencing at work.

187. The claimant subsequently emailed Ms McLaughlin and Mr Sweeney on the 6 January 2021 (page 1529) to ask that the regular weekly meetings be moved to fortnightly. The claimant felt communication channels had been opened, and that she did not need "*weekly baby-sitting*". She wanted less meetings, and she wanted to come to work and "*feel like a normal person and not like a disabled person every week*".

188. Ms McLaughlin was concerned by this email because she felt the claimant was starting to pull back from what had been agreed, and this was concerning.

189. The claimant sent an email to Ms Freeman on the 18 October at 23.32 (page 1365). The claimant questioned whether there were notes from a review meeting, and went on to "*highlight some feedback*" which she described as being done "*constructively*". The claimant said she had been asked, in the meeting, whether she wanted Ms Freeman to send round an email telling other employees that the claimant needed to take breaks because she was disabled. The claimant stated she had declined this because she would find it degrading. The claimant went on to say that:

a. she did not want the company to speak on her behalf on these issues: she was not a baby.

b. she had told lots of people about her disability but as far as she was aware "***no part of my disability*** *inhibits or prevents me from doing my job. I need the company to focus on what I can do, not what I can't do. I don't believe Medigold or Unum recommended breaks as a defining part of my disability. I believe they recommended breaks because I'm not taking any breaks at present and it's a legal requirement for everyone to take breaks. Therefore I would not like to be singled out*."

c. when describing disability it is best not to use in the case of collective nouns. "*Karen needs to take breaks because she is disabled" is inappropriate, stereotyping and creates a negative perception of people with disabilities rather than individuals. This is offensive as you are labelling me as disabled rather than as Karen, an employee*."

190. The claimant requested that going forward a neutral person attend meetings with her and Ms Freeman, or that the meetings were recorded, otherwise the claimant would decline to attend. The claimant went on to say that whilst she could appreciate that Ms Freeman thought herself knowledgeable in this area of Diversity and Inclusion, her feedback was that Ms Freeman was not knowledgeable enough and she had lost all confidence in HR to understand how to manage and how to speak to staff with a disability. The claimant concluded her email by attaching an etiquette guide and recommending some reading and or training guides.

191. Ms McLaughlin responded to the claimant's email (page 1355) which she described as disrespectful, rude, and offensive and concluded by saying a written apology should be sent.

192. The claimant replied to Ms McLaughlin (page 1354) and tried to justify her email. The claimant then sent a second email (page 1353) asking to minimise contact with Ms Freeman.

193. Ms McLaughlin replied on the 21 October (page 1352) noting no written apology had been given yet, and this was expected. Ms McLaughlin confirmed that to agree to the claimant's request would mean a junior HR officer would need to take over, and this was not appropriate. Ms McLaughlin noted Ms Freeman had already agreed all calls could be recorded. Ms McLaughlin concluded by stating it was Ms Freeman's job to discuss disability and medical issues with the claimant.

194. The claimant sent an apology to Ms Freeman (page 1362).

195. The claimant emailed Ms McLaughlin on the 3 November (page 1406). The claimant wanted to apologise for the (20 page) document sent in January 2020. The claimant described that she had been in a very gloomy, negative, angry and complaining place and had let things fester. The claimant wanted to apologise for the things she had said and because it was not on the whole true. The claimant stated she was so much happier in a new team, and had no concerns about working with Mr Sweeney. The claimant acknowledged there had been no demotion.

196. Ms McLaughlin considered that whilst on the one hand it was good to receive the apology and acknowledgement of the behaviour and the support provided, it was still the same cycle of behaviour and apology.

197. The claimant sent an email dated 11 November 2020 (page 1414) to Ms Lock, Ms Freeman, Mr Sweeney and Ms McLaughlin entitled Updated document – Disability FAQs. The claimant stated she had researched the link between HSP and anxiety/depression and "*every website that lists HSP also lists depression/anxiety/stress in some way, as a known symptom and complication*". The claimant, in the Disability – FAQs document, stated in relation to the HSP that "*90% of the time it did not affect her work. The condition has no effect on my capability as a SAP Lead and my work is unaffected. However, the travel between sites and locations is becoming harder year on year*".

198. The claimant had added a section entitled Disability Info – Mental Health. The claimant noted there had been no formal diagnosis by a psychologist or

psychiatrist, just by her GP. She also noted there was no history of any mental health issues prior to the last few years and that she had "*NEVER*" suffered mental health issues previously and had no underlying conditions. The claimant noted she had suffered from anxiety since 2020 and depression since, likely, 2018.

199. The claimant emailed HR on the 19 January 2021 (page 1588) giving notice of her "*forced resignation*". The claimant noted she wished to leave immediately. The claimant asserted the company had not taken her claims of discrimination seriously and had not investigated or ensured she was kept free from harassment and discrimination. The letter of resignation concluded with the claimant stating trust had been irrevocably breached.

200. Ms Freeman was not surprised to receive the letter of resignation from the claimant. She advised her staff not to accept it too hastily.

201. Mr Sweeney phoned the claimant on the 19 January to ask if this was what she really wanted to do and whether there was anything that could be done to help. A note of the discussion, which lasted approximately 45 minutes, was produced at page 1586.

202. Ms Lock wrote to the claimant on the 28 January (page 1633) confirming the details regarding the claimant's resignation. The letter confirmed contact would be made with the claimant to arrange a courier to collect all company equipment.

203. Ms Elizabeth Bamford emailed the claimant on the 2 March 2021 (page 1714) to confirm the claimant's personal belongings would be delivered that evening, and that the claimant should leave equipment for collection on her doorstep.

204. Ms McLaughlin had organised the claimant's personal belongings for delivery. Ms McLaughlin sent a text message to the claimant at 17.59, and an email at 18.01 (pages 1716 and 1717) to inform the claimant that her husband would be dropping off the personal belongings. Ms McLaughlin confirmed that due to the covid lockdown, she had asked her husband to wear a mask, and to

leave the belongings on the claimant's doorstep. He would collect the equipment to be returned to the company from the doorstep.

205. Ms McLaughlin prepared a document (page 2204) based on information obtained from the electronic secure door pass into work. This registers who is in the office and the time in/out. Ms McLaughlin requested this information in February 2020 because the claimant had been suggesting she was travelling 50% of her time. Ms McLaughlin analysed the information (page 2207) and confirmed it demonstrated the claimant's average start time was 10.50am. It further demonstrated the claimant worked 40% of the time in the office; 30% of the time from home; 15% of the time on holiday; 7% of the time on development and leadership; 4% of the time off sick and 4% of the time on customer sites. Ms McLaughlin also looked at how long the claimant spent in the office, and this averaged out at 6 hours per day.

206. The claimant has, since leaving the employment of the respondent, obtained work as a contractor. The claimant described herself as "*flourishing and thriving*". She works full time, requires no reasonable adjustments at work and has no mental health issues.

207. The claimant obtained a report from Dr Farrugia, Consultant Neurologist in May 2021. The claimant wrote to Dr Farrugia to explain she had been asked to produce evidence that "*her ongoing symptoms are related to her neurological condition, namely HSP*." The claimant set out a number of questions for Dr Farrugia as follows:

"What are the secondary MENTAL symptoms of this medication condition, HSP, that Karen has experienced? Anxiety and Depression."

"Please confirm if you believe that Depression and/or Anxiety could be directly or indirectly medically linked to Karen's HSP neurological condition? Yes it is directly linked to Karen's HSP".

"Why is depression described as secondary symptoms to HSP? What physiological symptoms are linked that cause it? Quality of life is significantly impaired and decreases with increasing disease burden plus pain, fatigue".

"Why is stress or anxiety described as secondary symptoms to HSP? What physiological symptoms are linked that cause it? As for above, but also non-motor symptoms such as pain, cramp, spasticity, restless legs, poor sleep (secondary to pain) and bladder problems contribute to anxiety and depression."

"Are the physical symptoms of HSP linked to her mental health symptoms for Karen personally? Yes and there is literature to support the link. Patients with HSP have a significant disease burden – with limited mobility, pain, poor sleep and fatigue largely contributing to mental health problems."

208. Dr Farrugia went on to say that the claimant did not have a primary psychological mental health disorder but her problems were secondary. Dr Farrugia described a kaleidoscope effect with severe fatigue causing migraines and often anxiety and low mood as a consequence.

Claimant's submissions

209. The claimant produced a 46 page written submission which she spoke to. The claimant referred to the report she had obtained from Dr Farrugia in May 2021. The claimant had set out a number of questions for Dr Farrugia, one of which was *"what are the secondary mental symptoms of HSP that Karen has experienced?"* Dr Farrugia answered *"anxiety and depression".* The claimant asked *"please confirm if you believe that depression and/or anxiety could be directly or indirectly medically linked to Karen's HSP".* Dr Farrugia answered *"yes it is directly linked to Karen's HSP".* The claimant, based on this, sought to argue that her disability was HSP with anxiety and depression.

210. The claimant also argued that the respondent ought to have known about her depression and would have known if they had taken the advice of OH.

211. The claimant submitted her claim was not timebarred. She was at a substantial disadvantage because of HSP due to a PCP workload in 2018, 2019 and 2020. This was a continuing act until lockdown. There was a continuing campaign of harassment from 2018 to 2021.

212. The claimant submitted the informal discussions with Ms Freeman were not without prejudice because she was not looking to settle or compromise the dispute.

213. The claimant, in her submissions regarding the various claims, noted lengthy points from evidence given. This is not repeated here: what is set out below is the essence of the claimant's submissions regarding her claim.

214. Point 6 – the claimant submitted the PCP was the expectation that employees do overtime. The claimant had been put at a substantial disadvantage by this (exhaustion and burnout) which led to deteriorating mental health. A reduction in workload would have helped the claimant's mental health and reduced the claimant's disadvantage.

215. Point 7 – this was the same claim of failure to make reasonable adjustments in relation to a later period in November 2018. The claimant referred to the fact she is currently working full time without adjustments (except for travel). The claimant submitted the working environment of excess workload put her at a substantial disadvantage as her HSP progressed.

216. Point 8 – this is the same claim of failure to make reasonable adjustments in relation to the period January to July 2019.

217. Point 9 – Missguided was told the claimant would be the Solution Architect before she was told and this amounted to harassment. The respondent did not carry out *"due diligence"* to understand her disability and violated her dignity by not consulting with her and medics before telling the customer about the role change.

218. Point 10 – this was the same allegation in relation to the respondent's failure to seek medical advice before making a role change, which was said to be a failure to make reasonable adjustments.

219. Point 11 – this was a complaint that there had been a failure to make reasonable adjustments in relation to workload in December 2019. The PCP was the respondent's requirement to work overtime. The claimant complained the respondent, having been notified of her disability (HSP) failed to seek OH

advice. The claimant referred to exhaustion and burnout caused by high workload when she had a physical disability.

220. Point 12 – the claimant alleged the hostile phone call with Ms Freeman in March 2020 was harassment (related to disability). The claimant described this as the start of a campaign of harassment because she was struggling and had asked to leave managed services.

221. Point 13 – the claimant alleged the reference to *"time wasting"* and *"distracting"* amounted to harassment because she was struggling and exhibiting behaviour they did not like.

222. Point 14 – the claimant alleged there had been a failure to make reasonable adjustments in respect of the PCP of work targets and this placed her at the substantial disadvantage of exhaustion and fatigue. This was in March 2020 just as the nation had gone into lockdown. The claimant was returning from a two week absence and requested amended duties, but this was refused.

223. Point 15 – the claimant alleged there had been a failure to make reasonable adjustments to the absence policy to discount disability related absences and the various triggers. The claimant submitted she had become more ill and had been off for 4 weeks in April 2019. The respondent did not consider her disability or reasonable adjustments. The policy was only changed in early 2021 at the claimant's request. This put the claimant at a substantial disadvantage because she (and others) only received 75% pay.

224. Point 16 – the claimant alleged Mr Sweeney had not contacted her for 7 weeks after her return to work and this amounted to harassment. The claimant accepted Mr Sweeney had contacted her in the first few days after her return, and that he had responded to emails. The issue was that there had been no "checking in" with her and it had been unsupportive.

225. Point 17 - the claimant alleged Ms Freeman's letter of care and concern was an act of harassment and discrimination arising from disability. The claimant submitted her behaviour was related to/arose from her disability (that is, mental health issues). She found the letter degrading and derogatory. The

claimant, in relation to the discrimination arising claim, submitted the unfavourable treatment was that she would be managed out of the business if her behaviour did not change, and the something arising was the likelihood the claimant would be fatigued and suffer mental health issues. The approach taken exacerbated her anxiety and depression and created a state of confusion and hostility on her return to work.

226. Point 18 – the claimant alleged the letter of the 8 June from Ms Freeman was harassment. The claimant submitted the respondent had constructive knowledge that she had serious mental health issues but continued to exacerbate her mental health without considering the impact to her health. There was an intention to humiliate her.

227. Point 19 – the claimant alleged there had been inadequate support following her return to work in circumstances where Mr Sweeney had not contacted her for 7 weeks. The PCP was said to be the respondent's return to work process. The claimant submitted the GP had advised of a phased return and amended duties but the respondent failed to carry out any steps to action this for 4 weeks and this put the claimant at a substantial disadvantage because of increased anxiety. The claimant had, by the time reasonable adjustments were discussed, rehabilitated herself to full time hours, but this had left her feeling tired, confused and afraid.

228. Point 20 – the claimant alleged the comments made by Ms Freeman at the informal meeting amounted to harassment. The claimant asserted she had been told by Ms Freeman that she had deep seated mental health issues which was hurtful and offensive. She had also been told that her aspirations would never be achieved in the company as too much damage had been done. The claimant considered it was clear from this that her career path was blocked/over. It was recommended the claimant leave the company and she was given her notice period. The claimant felt encouraged to leave.

229. Point 21 – the claimant alleged that Ms McLaughlin's investigation of her complaint regarding Ms Freeman was an act of discrimination arising from disability. The claimant considered the complaints should have been

investigated formally by an independent person. The claimant had been told to change her behaviours because she had reported discriminatory comments, and the cycle of abuse was allowed to continue.

230. Point 22 – the claimant alleged that the referral for a mental health assessment was harassment. The claimant submitted this was offensive because Ms Freeman had said she had deep seated mental health issues.

231. Point 23 – the claimant alleged Ms Freeman rolled her eyes in an exaggerated manner during the meeting on the 8 June 2020 when the claimant was explaining her strengths and things she liked about her job. The claimant submitted Ms Freeman had been dismissive and acted with contempt and disdain.

232. Point 24 – the claimant alleged Ms Freeman's enquiry whether the claimant wanted HR to email colleagues to say the claimant needed breaks because she was disabled was harassment. The language used was not inclusive and was linked to disability and offensive.

233. Point 25 – the claimant alleged Ms Knox had, when provided with a sick note, stated *"it is your own fault you are sick, no-one made you do the hours"* amounted to harassment. The claimant submitted this created a humiliating and offensive environment. The conduct was unwanted and Ms Knox had been gaslighting and confusing her.

234. Point 26 – the claimant alleged the statement by the respondent that they were keen to obtain medical advice on whether she was a disabled person within the meaning of the Equality Act was harassment. The claimant found the wording offensive and blunt. The claimant submitted the respondent knew of her physical disability: it was obvious she was disabled. The claimant suggested the respondent took action to undermine her because she had started the process of early conciliation with ACAS.

235. Point 27 – the refusal to postpone Unum meetings by two weeks was harassment. The claimant submitted the respondent continually showed no effort to understand her mental health and continually exacerbated her

anxiety. It was not an unreasonable request to move the meeting and the refusal created a frightening and hostile environment.

236. Point 28 – the response to the easter art trail email was harassment. The claimant submitted this was part of the campaign against her. The response had been overly harsh, aggressive and lacking in compassion. Ms Freeman failed to consider if this could be behaviour arising from the claimant's mental health.

237. Point 29 – the comment about resigning and it turning into a boxing match amounted to harassment. The claimant submitted the email trail was offensive and judgmental. The comments confirmed the claimant's concern that the respondent did not want her to remain and was intent on making her life hell to manage her out. This created a frightening situation.

238. Point 30 – the failure by the respondent to understand the claimant's mental health issues on the 19 January 2021 amounted to harassment. The claimant submitted the respondent merely went through the motions, but their actions were not genuine and were done with hostility and disdain. The claimant identified each of the actings of the respondent as harassment and harmful to her.

239. Point 31 – the collection of the laptop by Mr McLaughlin was harassment. The claimant submitted that a fair and reasonable employer would have arranged a courier to collect the equipment. The claimant further submitted it had been intimidating for the respondent to visit her home with 24 hours' notice. The emails were aggressive, threatening and intimidating.

240. Point 32 – the comment that the claimant was attention seeking was harassment. The claimant submitted this was a direct reference to her mental health and was insulting and degrading and offensive.

241. The claimant submitted the respondent had shown contempt and disdain towards her because of her disability behaviours. They had not investigated reasonable adjustments in a timely manner; they blamed her for the symptoms linked to her disability and were out of their depth in dealing with

her. HR overstepped the mark repeatedly and there had been a campaign of harassment against her because she was ill.

Respondent's submissions

242. Mr Mitchell provided written submissions which he spoke to at the hearing. The submission was divided into four parts: disability and knowledge; time bar; admissibility of without prejudice discussions and claims set out in the paper apart and Scott schedule.

Disability and Knowledge

243. Mr Mitchell noted the respondent accepted the claimant's condition of HSP constituted a disability in terms of section 6 of the Equality Act. It was not accepted the claimant (as asserted) had HSP with Depression and Anxiety. Mr Mitchell submitted the claimant had not proven HSP with depression and anxiety as a single disability in terms of section 6 of the Equality Act. The claimant had migraines in 2018. She suffered mental health issues from November 2019 to June 2020 which the tribunal may find, at times, met the definition in part in terms of substantial impairment in respect of day to day activities for short spells. However, the claimant was at work for the majority of this period and had no substantial absences from work from mid-May 2020. The respondent did not accept the claimant was disabled in terms of anxiety and depression at any point during her employment.

244. The tribunal would also require to determine if/when the respondent had knowledge of any such disability. The claimant accepted that the first time the words *"anxiety and depression"* were specifically stated to the respondent was in the sick note of 21 April 2020 (page 933). The claimant did mention fatigue, stress, exhaustion but even on her own evidence, she did not realise she potentially had anxiety and depression. The claimant herself stated, and maintained, HSP had no impairment on cognitive matters. It was submitted that even if the tribunal considered the claimant to have been disabled in terms of anxiety and depression (as part of her HSP), the respondent had no knowledge (constructive or actual) of this before April 2020, or at all.

Time bar

245. The respondent submitted that any claims prior to 2 June 2020 were timebarred because many of the issues had been resolved by then and the claimant had apologised for her behaviour (she apologised to Mr Sweeney on the 6 July and to Ms McLaughlin in November 2020. Mr Mitchell noted overtime came to an end in December 2019/start of 2020 and by Spring of 2020 the claimant was saying there was not enough work. Also the claimant's job changed in October 2019.

246. Mr Mitchell noted the claimant argued there was a continuing act because she was still at a substantial disadvantage in May 2020. That was not the relevant question. Mr Mitchell submitted there was a gap between December 2019 and May 2020 that broke any suggestion of a continuing act.

Admissibility of without prejudice discussions

247. The respondent's position was that the discussions between Ms Freeman and the claimant on the 17 June 2020 were held "off the record" or on a without prejudice basis and the content of the meeting was therefore not admissible. Ms Freeman sent the claimant a letter marked "without prejudice" on the 22 June 2020, following the meeting, and the content of the letter was also inadmissible.

The claims

248. Point 6 – Mr Mitchell submitted there was no expectation that employees do overtime and as such there was no such PCP. The respondent accepted overtime was needed from time to time, but there was no requirement or expectation that employees would do overtime as a provision, criterion or practice. Further, the claimant did not tell Ms Knox at any time that she suffered from anxiety and depression and was taking anti-depressant medication. The disability as at September 2018 was HSP and, if the tribunal accepted there was a PCP as defined by the claimant, there was no substantial disadvantage. It was submitted the claimant was a night owl and worked different hours.

249. Point 7 – the claimant was not disabled in respect of anxiety and depression and there was no such PCP.

250. Point 8 – the respondent's position was the same as above: there was no such PCP, the disability was HSP and if it was suggested the disability was anxiety and depression at this time, the respondent had no knowledge of that.

251. Point 9 – there was no harassment in circumstances where the claimant was later very pleased with the role change implemented from 1 January 2020. The change lowered her workload and focussed on her technical strengths. It was submitted that even if the role changed amounted to harassment it was not related to disability (or alleged disability).

252. Point 10 – it was submitted there was no PCP of not taking medical advice before role changes were implemented. Further, the claimant's disability at the time was HSP and she had repeatedly stated that no adjustments were needed. The respondent had already agreed the claimant, if visiting a customer site and staying overnight, could book a hotel with good facilities the night before in order to avoid an early start. All of the evidence supported the fact that at this time the claimant was enthusiastic about travel and undertaking travel without difficulty.

253. Point 11 – the respondent's position regarding an alleged PCP in respect of a requirement to do overtime was set out above. Mr Mitchell invited the tribunal to note that the claim as pled did not refer to travel, although the claimant now sought to introduce that.

254. Point 12 – the claimant alleged the telephone call with Ms Freeman and Ms McLaughlin in March 2020 amounted to harassment. Mr Mitchell invited the tribunal to prefer the evidence of Ms Freeman and Ms McLaughlin that they had genuinely and sincerely enquired whether the claimant needed support. This was supported by the fact the claimant later thanked Ms McLaughlin and stated she felt Ms McLaughlin had been *"warm"* to her. The claimant also stated in the meeting that this had nothing to do with her disability. The claimant did raise the issue of a Business Development role, but this was

reasonably refused because the claimant did not have the necessary experience for the role. This was not hostile.

255. Point 13 – the claimant alleged that being told to stop distracting her manager and stop time wasting amounted to harassment. Mr Mitchell submitted this was not harassment because it did not relate to disability. The respondent had a grievance procedure and if the claimant had issues to raise she could have used that procedure. The claimant, instead, repeatedly lodged dozens of pages of issues and complaints but did not want them resolved via the grievance procedure. In circumstances where Mr Sweeney had 40 other staff to manage, it was accurate to say the claimant's actions could be interpreted as time wasting and/or distracting.

256. Point 14 – the claimant alleged adjustments should have been made to her work targets. It was submitted that work targets were for the purposes of bonus entitlement. The claimant's utilisation target was reduced from 72% to 65%. Further, the claimant's workload did reduce during covid. The claimant was not blocked from speaking to her manager Mr Sweeney: the claimant was told to stop contacting him about the 360 degree feedback. The claimant was still able to speak to Mr Sweeney about health and other matters. Mr Mitchell reminded the tribunal that as at March 2020 the only disability of which the respondent had knowledge was HSP.

257. Point 15 – the claimant alleged there was a failure to make reasonable adjustments in respect of discounting disability absences. It was submitted the respondent's absence policy provided 75% pay to employees after 15 days absence for three months, and thereafter Unum met 75% of full pay for up to two years. The alleged disadvantage applied to all employees and therefore did not represent a disadvantage. In any event the respondent did make adjustments to thresholds in its absence policy for the claimant (page 624 – 627). It would not have been a reasonable adjustment to ignore disability-related absences.

258. Point 16 – the claimant alleged harassment because she was given inadequate support during a return to work. The claimant was on sick leave

form the 20 April to the 18 May 2020. The fit notes gave the reason for absence as anxiety and depression. This was the first time this had been claimed by the claimant. The GP advised the claimant should return to work on a phased basis with a low workload and this is what happened. The claimant, however, insisted at times on working beyond the terms of the agreed phased return and contacted Mr Sweeney asking him to ensure there was sufficient work for her. There was no face to face contact because of the pandemic, but Mr Sweeney was in contact with the claimant via email and teams meetings. It was submitted Mr Sweeney did not behave as alleged and there was no harassment.

259. Point 17 – the claimant alleged the letter of care and concern from Ms Freeman amounted to harassment and discrimination arising from disability (it being said the unfavourable treatment was the threat she would be managed out of the business if she did not change, and the something arising was the likelihood the claimant would be fatigued and suffer mental health issues). It was submitted the letter was not a disciplinary and it did not focus on health issues: it focussed on behaviour unrelated to health. The claimant had repeatedly told the respondent that there were no mental health issues associated with her HSP and that her HSP had no impact on her ability to do her work or on her mental health. Accordingly, it was denied the claimant was or would have been fatigued or suffer mental health issues because of the letter. The letter was issued out of care and concern for the claimant because the respondent wanted her to succeed. Mr Sweeney was overwhelmed and asked for his management interactions with the claimant to be reduced. Mr Sweeney was the second line manager; the claimant's job role had been changed twice to try to support her, yet she continued to complain unreasonably about her job, but would not raise a grievance and refused offers of support. It was submitted that given the circumstances, the letter of care and concern was neither harassment nor discrimination arising from disability. If the tribunal decided there had been unfavourable treatment because of something arising from disability, the respondent had a legitimate aim in trying to address the claimant's behaviour and seek change.

260. Point 18 – the claimant alleged the letter of the 8 June from Ms Freeman was harassment. Mr Mitchell adopted his above submission. He added that Ms Freeman made clear in the letter that the previous letter did not constitute a warning. It was no unreasonable to ask the claimant to provide a bullet point summary of her 20 page document so the issues could be addressed.

261. Point 19 – the claimant alleged there had been a failure to make reasonable adjustments regarding the inadequate return to work process in June 2020 (because the return to work interview had taken place 4 weeks after she had returned to work). Mr Mitchell referred to point 16 above, and submitted there was no PCP regarding having a return to work interview four weeks after the return to work. The pandemic was ongoing and given the fact extensive support was provided and the claimant had said she did not need any adjustments and was not suffering any mental health issues, this was reasonable and there was no duty to make reasonable adjustments.

262. Point 20 – the claimant alleged she had been harassed during the informal meeting with Ms Freeman when Ms Freeman said she had deep seated mental health issues, her aspirations would never be achieve and she was given notice. Mr Mitchell's primary position was that this claim must fail because it was covered by the without prejudice rules. In the alternative, Mr Mitchell invited the tribunal to prefer Ms Freeman's evidence, and he submitted the context of the discussion was the claimant's email where she had referred to resignation. This was not related to disability and therefore the claim must fail.

263. Point 21 – the claimant alleged that Ms McLaughlin investigating her complaint about Ms Freeman amounted to discrimination arising from disability. The unfavourable treatment was that the complaint was informally investigated by one person, the complaint was not upheld and the claimant was told that change was required. The something arising was exhaustion and mental health deterioration. Mr Mitchell submitted that Ms McLaughlin had treated the claimant's letter as a serious complaint and she had investigated it and provided an outcome. It may not have been perfect, but there was no unfavourable treatment and it did not arise from a consequence

of disability in circumstances where there was no disability relating to exhaustion.

264. Point 22 – the claimant alleged the referral to occupational health and counselling was harassment. The claimant found this offensive because HR were not qualified to make medical diagnosis. Mr Mitchell invited the tribunal to prefer the evidence of the respondent's witnesses regarding the reason why the referral was made.

265. Point 23 – the claimant alleged Ms Freeman had rolled her eyes in an exaggerated way and that this amounted to harassment. Mr Mitchell invited the tribunal to prefer the evidence of Ms Freeman to the effect that she had not acted as alleged. It was submitted that even if Ms Freeman did roll her eyes in an exaggerated way, it was not because of disability (HSP). Mr Mitchell reminded the tribunal that the claimant had consistently told the respondent that her disability had no impact on her ability to do her job and that her condition had no impact either on her ability to do her work nor her mental health.

266. Point 24 – the claimant alleged that being asked if she wanted HR to email employees to tell them the claimant needed to take breaks because she was disabled was harassment. Mr Mitchell invited the tribunal to have regard to Ms Freeman's evidence regarding the fact that this discussion had arisen because of the claimant complaining that her diary got "bombed" by other people (a reference to meetings etc being put in her diary by others). Ms Freeman, having had regard to the Vocational report and the occupational health report, knew the claimant had to ensure she took regular breaks. In a discussion with the claimant regarding the OH report, Ms Freeman asked the claimant if she wanted her to send an email to colleagues about breaks. Mr Mitchell submitted this did not amount to harassment.

267. Point 25 – the claimant alleged that when presented with a sick note on the 11 August 2019 Ms Knox said to her that it was her own fault she was sick and that no-one made her do the hours and this amounted to harassment. Mr

Mitchell invited the tribunal to prefer the evidence of Ms Knox that she had not said those words. Mr Mitchell submitted this complaint was timebarred.

268. Point 26 – the claimant alleged that seeking a report from her GP regarding whether she was a disabled person in terms of the Equality Act was harassment. Mr Mitchell submitted it was perfectly reasonable and recommended practice to ask a medical practitioner (or OH) if an employee is disabled in terms of the Equality Act and if so what reasonable adjustments were recommended. It was not harassment.

269. Point 27 – the claimant alleged the refusal to postpone Unum meetings by 2 weeks was harassment. Mr Mitchell submitted Unum had recommended regular meetings short meetings with her manager to support her health and well being. Such a meeting was planned for the 13 August 2020. The claimant asked to postpone it and this was refused. Mr Mitchell submitted the respondent wanted the meetings to go ahead as planned and recommended and their refusal to postpone was not, in the circumstances, harassment.

270. Point 28 – the claimant alleged the respondent's response to her planning an easter art event was harassment. Mr Mitchell submitted the respondent was not aware at this time that the claimant was suffering from a mental health issue. The claimant accepted (page 996) that she should have asked permission to send and email to 500 staff in the UK asking them to each submit an easter art work at a time when lockdown and resources were limited. This was not part of her remit and not authorised. It was entirely reasonable for Ms Freeman to email the claimant and say it was a poor use of judgment and that she should have sought permission. This was not harassment and not related to disability in any event.

271. Point 29 – the claimant alleged comments made in emails of the 24 June 2020 amounted to harassment. Ms Freeman emailed Ms Lock to say *"she told me she is resigning tomorrow. This is at least the 6th time".* Ms Lock replied *"Bloody get on with it then, lol".* Ms Freeman replied *"It is going to turn into a boxing match".* Mr Mitchell submitted the claimant was not aware of these emails at the time and only recovered them (and read them) in August 2020.

The exchange had nothing to do with disability. The reference to boxing match referred to the exchange of emails going back and forth which Ms Freeman anticipated from experience (and which happened). The claimant did not in fact resign until six months later. It was submitted this was not harassment and was not related to disability.

272. Point 30 – the claimant alleged the respondent's failure to understand mental health issues amounted to harassment. Mr Mitchell submitted this allegation was unfounded. The respondent 6/7 months trying to understand the claimant's mental health but were hindered by the claimant. Mr Mitchell referred to the respondent obtaining the claimant's consent to contact her GP for a report; having the claimant assessed by occupational health; meeting with a vocational rehabilitation consultant to discuss the recommendations from the first OH report; obtaining a second OH report and agreeing a table of adjustments with the claimant. The respondent repeatedly offered support which was rejected by the claimant. There was no harassment and the respondent's actions were not related to disability.

273. Point 31 – the claimant alleged the collection of the company equipment by Mr McLaughlin was harassment. Mr Mitchell submitted the claimant did not comply with the terms of her contract to return company equipment immediately. The respondent was sympathetic to her position given the nationwide lockdown. The respondent advised the equipment would be collected from the claimant's doorstep. The claimant was given notice of this and Ms McLaughlin text and emailed the claimant to advise her that her husband would be collecting the equipment. It was submitted this was not harassment and not related to disability.

274. Point 32 – the claimant alleged Mr Sweeney's comment about attention seeking was harassment. Mr Mitchell noted this was an internal email sent at a time when the claimant had threatened to resign several times. The comment was not related to disability and was not harassment.

275. Mr Mitchell invited the tribunal to dismiss the claim.

Credibility and notes on the evidence

276. The tribunal found there were a number of issues with the claimant's evidence. First, the claimant told the respondent of her HSP in October 2018. This was two years after the condition had been diagnosed. The claimant did not tell the respondent about anxiety and depression until June 2020. The claimant, when asked about this in evidence, accepted she had not told the respondent about it because she did not think it was affecting her work.

277. The claimant, throughout the period of her employment with the respondent insisted she did not have mental health issues and that no mental health issues were associated with HSP. It was only after the termination of her employment, and upon receiving the report from Dr Farrugia, that the claimant made a link between HSP and anxiety and depression. (We acknowledged the claimant did, in November 2020, tell the respondent that she had researched the link between HSP and anxiety and depression, and that HSP websites listed anxiety and depression as a known symptom. The claimant, however, went on to say HSP did not affect her work 90% of the time.)

278. The claimant, at this hearing, sought to argue her case on the basis of a link between HSP and anxiety and depression. This caused some confusion in the hearing when cross examining the respondent's witnesses because the claimant's questions were frequently premised on *"the disability"* being HSP and anxiety and depression, whereas the respondent's witnesses all understood the reference to disability being to HSP. The claimant added to this confusion at times by referring to anxiety and depression as being the disability.

279. The claimant's refusal to tell the respondent about anxiety and depression, or engage in discussion about it, put the respondent in the unenviable position with regards to trying to understand the situation, make adjustments and offer assistance. The claimant put the onus on to the respondent to ask about anxiety and depression, or to infer from her conduct that she had anxiety and depression. However, each time the respondent tried to broach the subject with the claimant they were rebuffed in no uncertain terms, and indeed some

of those offers of support/assistance are now legal claims of harassment in this tribunal. The contradiction lying at the heart of the claimant's case was that whilst the claimant wanted to now argue that she had been "crying out for help", the evidence demonstrated she had resented enquiries about her mental health, insisted there was no link between HSP and anxiety and depression and rejected any approach/offer of support.

280. Second, the tribunal found the reliability of the claimant's evidence was undermined by a near constant changing of position and inconsistency in her evidence. The tribunal acknowledged positions can change, particularly with a progressive disability, but the degree of change in the claimant's case was constant and at times for no apparent reason. For example:

- the claimant complained about workload being too high, but then questioned Mr Sweeney about whether there was enough work for her to do upon her return to work;
- the claimant complained about workload, but had to be told by Mr Sweeney to stop doing work whilst off sick;
- the claimant did not want to work at home, but then did not want to come into the office;
- the claimant made a request for flexible working which the respondent granted, but then withdrew her request;
- the claimant would raise a complaint and say it was not a grievance, but then complain it had not been treated as a grievance;
- the claimant was very pleased with her new role, but then told Mr Sweeney she did not want to do it;
- the claimant agreed her reduced workload was better but then said she was bored;
- the claimant accepted Ms McLaughlin's explanation that she had not been demoted, but subsequently raised this again as an issue;

- and the claimant complained about support and adjustments not being made but asserted enquiries by the respondent whether support was required amounted to harassment.

281. Third, the claimant's credibility was undermined by the fact the claimant, throughout, insisted that the amount of travel in the Solution Architect role was 50%. The claimant conceded at this hearing that this was not correct, and was in fact 20% as stated by the respondent. Further, the claimant, having complained about travel, then said to the respondent that she enjoyed travel and visiting customers on-site.

282. The claimant's credibility was also undermined by a degree of re-writing of history. By this we mean the evidence the claimant gave the tribunal was often not supported by the documents (predominantly emails) which had been sent at the time of events. For example, the claimant's evidence regarding her perception of harassment was, on occasion, not supported by what she had said or done at the time.

283. Fourth, the claimant complained about having to work a very high number of hours. The claimant, in her evidence, spoke about working 60 hours per week (6 days a week). The document produced by the claimant (page 690) did not support that evidence, and tended to suggest the claimant worked 40 hours per week in the majority of weeks. The claimant's position was also undermined by the evidence that she told Ms McLaughlin, at a meeting in October 2020 (page 1341) that she did not work 50 – 60 hours per week. Further, the document produced by the respondent showing the times of the claimant's entry to and exit from the office (page 2203) did not support the claimant's position.

284. Fifth, there were a number of points where the tribunal preferred the evidence of the respondent's witnesses to that of the claimant. (a) The claimant invited the tribunal to accept Ms Knox, Mr Sweeney and Ms McLaughlin had told the customer, Missguided, that the claimant would be the Solution Architect, before this had been discussed with the claimant. The claimant asserted this put her in the position of having to accept the role. Ms Knox told the tribunal

that she had not told Missguided that the claimant would be the Solution Architect. Mr Sweeney disagreed with the claimant's suggestion the customer had been told first and Ms McLaughlin told the tribunal the Solution Architect role was discussed with Missguided but "no names were mentioned, just the concept". Ms McLaughlin acknowledged the customer "may reasonably have assumed it would be the claimant". We preferred the evidence of the respondent's witnesses because they had direct knowledge of the discussions they had had with Missguided (particularly Ms McLaughlin). We accepted the customer may well have assumed – and indeed, hoped – the claimant would be the Solution Architect, but that is fundamentally different to the customer being told the claimant would have the role prior to it being discussed with the claimant.

285. The claimant asserted Mr Sweeney had not contacted her for 7 weeks after she returned to work in May 2020. The claimant conceded there were many emails from Mr Sweeney to her during this time. The claimant then asserted those emails had been in response to emails sent by her. The tribunal preferred the evidence of Mr Sweeney regarding this matter and found as a matter of fact that Mr Sweeney did have/make contact with the claimant during her return to work. Mr Sweeney had initial contact with the claimant regarding the phased return to work and the plan he had put in place to slowly reintroduce work. Mr Sweeney did not micro-manage the claimant's return to work, but equally it was being overseen by him and HR. There were many emails in the productions between the claimant and Mr Sweeney at this time. In the circumstances we could not accept the assertion Mr Sweeney had not made contact with the claimant for 7 weeks.

286. There was a dispute between the evidence of the claimant and that of Ms Freeman regarding statements made during the informal meeting. The claimant asserted Ms Freeman had said she had *"deep seated mental health issues"*, that her aspirations in the company would never be achieved as too much damage had been done and that it was recommended she leave the company and was given her notice period without asking. We preferred the evidence of Ms Freeman and accepted that what had been said by her had

been misrepresented, misquoted or taken out of context by the claimant. The tribunal, in particular, accepted there was a discussion during the informal meeting where Ms Freeman told the claimant that help was available for employees, which covered all levels, for example, for those employees with basic needs to those with more complex needs. The point was that if the claimant had deep seated mental health issues, help was available and could be provided.

287. We accepted Ms Freeman did not say the claimant's aspirations in the company would never be achieved as too much damage had been done. We preferred Ms Freeman's evidence that she confirmed the claimant could apply for any vacancy in the company, but she also expressed the view that the claimant was not at grade 6 level.

288. We also preferred Ms Freeman's evidence that she did not give the claimant notice. We accepted that in response to the claimant making reference to leaving, Ms Freeman said the company would not stand in her way and that she would be able to leave without having to work her period of notice, which would be paid. Ms Freeman confirmed the length of the notice period.

289. There was also a dispute between the evidence of the claimant and Ms Freeman regarding an allegation that Ms Freeman had, at a meeting, rolled her eyes in an exaggerated fashion. We preferred and accepted Ms Freeman's evidence that this had not occurred.

290. The claimant asserted Ms Freeman had asked whether the claimant wanted Ms Freeman to write to other employees to inform them the claimant needed to take breaks because she was a disabled employee. We preferred Ms Freeman's evidence regarding this matter and found as a matter of fact that there was a discussion in which the claimant told Ms Freeman, in relation to managing her time, that one issue was that people would put meetings in her diary without reference to her. Ms Freeman advised the claimant to put lunch times and breaks in her diary and asked the claimant if she wanted HR to write to the people who were most guilty of "diary crashing" to say they would need to ask the claimant first before putting something in her diary.

291. The tribunal preferred the evidence of Ms Freeman in the above matters because (as set out below) we found her to be both a credible and reliable witness, who had a very good recall and understanding of the facts and issues in this case.

5 292. Sixth, the claimant's evidence was given through the prism of having been discriminated against by the respondent. The claimant saw events only through those spectacles and at times this undermined her evidence and made it incredible and/or unreliable because the claimant could not conceive of any interpretation being placed on events other than her own.

10 293. The claimant's witnesses did not add much to her case. Ms Seaton was formerly employed by the respondent and now works with the same company as the claimant. Ms Seaton is a disabled person and is home based. Ms Seaton supported the claimant's evidence regarding a large number of additional hours requiring to be worked in order to keep on top of the workload.
15 She also felt there had been a lack of care and a dysfunctional management style. There were no issues of credibility or reliability regarding Ms Seaton's evidence, although the tribunal had to balance this against the fact Ms Seaton was a less than satisfied employee with her own axe to grind with the respondent regarding certain issues.

20 294. Mr Newman, Chief Operating Officer, was a credible witness but he was far removed from any of the issues the claimant raised and his evidence added nothing helpful to the claimant's case.

295. The tribunal found the respondent's witnesses to be both credible and reliable. Ms Knox was straightforward in her evidence and whilst she acknowledged
25 the claimant's team was very busy, she rejected the suggestion the claimant had been required to work so many additional hours. Ms Knox also rejected the claimant's suggestion that her miscellaneous time had been proportionate to the workload. Ms Knox explained miscellaneous time was work done for a customer which could not be billed and could not be put down as non-billable.
30 The claimant's miscellaneous time was 2 – 3 times higher than the amount of other team leaders. Ms Knox further explained that she took steps to try to

encourage the claimant to delegate effectively. The respondent also took steps to put measures in place to help with the workload: for example, resources in India and Turkey were made available to utilise and the respondent was trying to recruit to increase the number of employees.

296. There were two material points where we preferred Ms Knox's evidence to that of the claimant. Firstly, we preferred Ms Knox's evidence that at the meeting with the claimant on the 23 October 2018, where the claimant disclosed she had HSP, the claimant gave Ms Knox an information sheet to explain the condition. The claimant also told Ms Knox that she wanted to control the information regarding her disability and she did not want to deal with HR but would do so through Ms Knox. Secondly, we preferred Ms Knox's evidence that she did not disclose to Missguided the name of the Solution Architect prior to the claimant being told about the role.

297. The tribunal also found Mr Sweeney to be a clear, credible and straightforward witness. Mr Sweeney gave an honest account of the time he spent with the claimant trying to resolve issues and find a way forward with the Solution Architect role. We preferred his evidence regarding contact with the claimant during the return to work.

298. The tribunal found Ms McLaughlin to be a credible and reliable witness. She impressed the tribunal as someone who had tried very hard to understand and support the claimant. Ms McLaughlin made herself available to the claimant whenever the claimant wanted to meet/talk, offered very sensible and balanced advice (for example, encouraging the claimant to take time to consider her position when she stated she wished to resign) and tried on a number of occasions to broach the subject of emotional support with the claimant.

299. The tribunal also found Ms Freeman to be a credible and reliable witness, who was straightforward in her evidence, had a very good grasp and recollection of the facts and was able to give a comprehensive explanation for her actions and decisions. Ms Freeman impressed the tribunal as someone who was honest, straightforward and did not shy away from the difficult

conversations. We, for these reasons, preferred Ms Freeman's evidence to that of the claimant in the points set out above.

Discussion and Decision

Disability and Knowledge

300. The first issue for the tribunal to determine, as set out in the List of Issues, is whether the condition upon which the claimant sought to rely as her disability, amounted to a single disability in terms of section 6 of the Equality Act. There was no dispute regarding the fact the claimant has HSP. The respondent accepted the claimant was a disabled person in terms of the Equality Act in respect of that condition.

301. The dispute between the parties arose because the claimant, at the initial preliminary hearing, stated her disability was HSP. The claimant, at the next preliminary hearing, made reference to depression and anxiety and there was confusion whether it was being said depression and anxiety were a symptom of HSP or a second disability. The claimant confirmed, in an email dated 6 June 2022 (page 328), that she sought to rely on "HSP with depression and anxiety" as a single disability for the purposes of her claim. The claimant confirmed she did not intend to seek to argue that anxiety and depression was a separate disability.

302. The claimant produced a medical report from Dr Farrugia, Consultant Neurologist (page 565A). This was not an independent report: Dr Farrugia had treated the claimant as a patient at her neurology clinic since 2015. Dr Farrugia, in her report, answered the questions put forward by the claimant. Dr Farrugia confirmed anxiety and depression were symptoms of HSP and were linked to the condition because quality of life was significantly impaired and decreased with increasing disease burden, plus pain and fatigue.

303. The claimant did not call Dr Farrugia to speak to the report, and the claimant did not refer to it other than to describe it as "proof" that anxiety and depression were related to the HSP.

304. The tribunal understood the claimant did not seek to argue that anxiety and depression was a disability in terms of the Equality Act. Accordingly the tribunal did not require to determine that issue. If the tribunal had been required to determine that issue we would have had insufficient evidence about the impact of anxiety and depression on the claimant's ability to carry out normal day to day activities. The claimant spoke wholly about the work situation and gave no evidence regarding impact on normal day to day activities. We noted the claimant, with the exception of two short periods of sickness absence, worked throughout this period. There was also insufficient evidence regarding whether the impairment (if it was an impairment) was long term.

305. The tribunal concluded, from its reading and understanding of Dr Farrugia's report, that anxiety and depression are symptoms which may flow from, or be caused by, the disability of HSP. Anxiety and depression were not, themselves, a disability in this case.

306. We decided the claimant was a disabled person in terms of the Equality Act because of the impairment of HSP. The respondent conceded the claimant was a disabled person in terms of the Equality Act because of this impairment. We next considered the issue of the respondent's knowledge of the disability (HSP). The respondent accepted it had knowledge of this from October 2018.

307. The respondent further accepted, with regard to anxiety and depression, that the claimant had an absence for anxiety and depression in April/May 2020 but returned to work full time. The respondent had no knowledge of *"mental health issues"* until the claimant provided Ms Freeman with her 21 page document in early June 2020. The claimant did not tell the respondent that she had been prescribed anti-depressants in 2018 as a treatment for the migraines. Further, the claimant accepted she had not told the respondent that she had spoken to her GP about increasing the antidepressant medication in April 2019. It was put to the claimant in cross examination that notwithstanding 2500 pages of productions from the claimant, there was nothing to suggest she had told the respondent she had anxiety and depression or that she was taking antidepressants. The claimant accepted this.

308. We were satisfied the respondent did not have knowledge of any condition other than HSP, which they understood (from the claimant and the information she provided) was a physical disability, until June 2020.

309. The real issue for the claimant in this case is that she now seeks to argue something (that the anxiety and depression were symptoms of HSP) which she completely and forcefully denied during the course of her employment. The claimant told the respondent repeatedly that she did not have any permanent mental health issues, had never been diagnosed with mental health issues and no mental health issues were connected to her disability of HSP (page 1003). Again, at the return to work meeting with Ms Freeman, the claimant stated (page 1061) that her disability was HSP and it had no impact on her ability to do her work or her mental health.

310. The claimant's consistent position throughout her employment was that she had a physical disability. The claimant insisted HSP did not impact on her mental health and resented any suggestion by the employer that she may need emotional support. It is this that the claimant now seeks to re-write by arguing that the disability was HSP with anxiety and depression. We could not accept that argument for the reasons set out above.

Timebar

311. The respondent asserted the claimant's claim was time barred to the extent that it relied on any act of discrimination taking place on or prior to 2 June 2020. The respondent supported that assertion by pointing to various acts which it said had been resolved by that time. The claimant asserted there had been a continuing act from 2018 until 2021 when she left.

312. The tribunal noted the claimant contacted ACAS on the 11 July 2020, and was issued with an Early Conciliation certificate dated 27 July 2020. The claim form was presented to the Employment Tribunal on the 17 September 2020. The tribunal further noted the allegations said by the respondent to be time barred were points 6 – 17 on the List of Issues.

313. The tribunal had regard to the terms of section 123 Equality Act which provides that claims have to be brought within three months of the act complained of or such other period as the tribunal considered just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of that period. A tribunal must determine whether there has been continuing discrimination over a period of time, or a series of distinct acts.

314. We also had regard to the case of ***Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530*** where the Court of Appeal made clear that tribunals should look at the substance of the complaints in question and determine whether they can be said to be part of one continuing act by the employer. Also, in ***Aziz v FDA 2010 EWCA Civ 304*** the Court of Appeal noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents.

315. The tribunal, in determining this issue, had the benefit of hearing all of the evidence and reaching the decisions set out below. The tribunal, for the reasons set out below, dismissed the claims set out at points 6 – 17. We concluded, accordingly, that these claims were timebarred because either they did not occur as alleged by the claimant or were one-off incidents. In the circumstances the allegations made at points 6 – 17 could not, and did not, form part of a continuing course of conduct.

316. The tribunal decided points 6 – 17 on the List of Issues were timebarred.

Without prejudice

317. The respondent argued the discussions which took place at the meeting between Ms Freeman and the claimant on the 17 June 2020 were *"without prejudice"* and therefore inadmissible. The context in which the discussions took place was that the claimant told Ms Freeman in an email that she was at the point of resigning and wanted a different discussion. A meeting was arranged and, at the start of the meeting, the claimant was advised it was an "informal meeting" and *"off the record".* The tribunal noted that it was not until

Ms Freeman wrote to the claimant after the meeting, that the words "without prejudice" were used.

318. The tribunal considered that if the meeting was to be "without prejudice", it was not sufficient to tell an employee a meeting was informal and off the record, because those terms could mean different things to different people. We decided, for that reason, that the evidence regarding the meeting was admissible.

The Claims

319. We decided to deal with the complaints in the following order:

- indirect discrimination;
- failure to make reasonable adjustments;
- discrimination arising from disability and
- harassment.

Indirect discrimination (point 6)

320. We had regard firstly to the statutory provisions set out at section 19 of the Equality Act, which provides that a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice (PCP) which is discriminatory in relation to a relevant protected characteristic of B's. The section goes on to provide that a PCP is discriminatory in relation to a relevant protected characteristic of B's if A applies/would apply, it to person with whom B does not share the characteristic; it puts/would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, it puts/would put B at that disadvantage and A cannot show it to be a proportionate means of achieving a legitimate aim.

321. There are four elements to a complaint of indirect discrimination:

- the identification of the PCP;

- the construction of a pool for comparison comprising those individuals who are potentially affected by the PCP at issue;
- the test of particular disadvantage; and
- objective justification.

5 322. The burden of proof lies with the claimant to establish the first, second and third elements.

323. The claimant identified the PCP as being the respondent's expectation that employees do overtime. The tribunal noted a PCP should be construed widely and that it could include formal and informal policies, rules, practices,
10 arrangements and such like.

324. There was no dispute regarding the fact the claimant did work additional hours. The issue for the tribunal was whether there was an expectation by the respondent that employees would do overtime. This was a very generally defined PCP and we questioned what the term *"expectation"* actually meant:
15 was it an expectation that employees work additional hours every day/week/month, was it an expectation that employees work reasonable additional hours or was it an expectation that employees would work the hours necessary to finish the work? This was not a point addressed by the claimant, although the tribunal inferred from the claimant's evidence that she defined
20 the PCP as being an expectation by the respondent that employees would work whatever hours were necessary to conclude the work. We drew this inference because it was clear from the claimant's evidence that this is what she believed was expected of her.

325. We, in considering this issue, had regard to a number of points. First, we had
25 regard to the terms of the claimant's contract (page 650) where the hours of work were stated as being 37.5 hours per week. The clause went on to say that *"It is expected that you will be able to finish your work within your normal hours. However, you may be required to work additional hours if it is necessary for the proper performance of your duties .."* We considered this to
30 be a relatively standard clause in the contract of a salaried employee. It

recognises the usual peaks and troughs of work and the fact there may be occasions, for example the launch, or conclusion, of a project when employees may work additional hours to achieve the launch or conclusion. We did not consider this clause could be interpreted as an expectation that employees would work a large number of additional hours or that they would work whatever hours were necessary to conclude the work.

326. Second, the respondent does not pay overtime (albeit a payment may be made in exceptional circumstances). The position of the respondent, and the evidence of the respondent's witnesses, was that employees should be working their contracted hours, albeit there may be occasions where additional hours may be needed, for example, for a particular project or piece of work.

327. Third, the claimant was a senior salaried employee, expected to manage her time efficiently. Ms Knox acknowledged the claimant worked a lot of hours but stated *"[the claimant] felt she needed to work those hours to manage the workload".* There was no requirement, or request, by Ms Knox for the claimant to work those additional hours and no expectation by her that the claimant would work additional hours. In fact the evidence demonstrated the respondent encouraged the claimant to take steps to reduce her hours (see below).

328. Fourth, although the claimant worked additional hours, there was no evidence to suggest other team leaders, or members of her team, worked additional hours. We took from this that there was no evidence of a general expectation that employees would work additional hours. In fact, the evidence of Ms Knox was that the claimant worked hours far in excess of the other team leaders, and this was raised with the claimant.

329. Fifth, the respondent's business was very busy during 2018 and 2019.

330. Sixth, there a lack of clarity regarding how many hours the claimant did work. The claimant suggested she had worked approximately 60 hours per week (6 days a week). There was evidence however (page 1341 being Ms McLaughlin's notes of a meeting in October 2020) that the claimant told Ms

McLaughlin that she agreed she did not work 50 – 60 hours per week, and that it would be more accurate to say that the claimant struggled to deliver her work within 40 hours. The claimant's assertion regarding her hours was also not supported by the document produced by Ms McLaughlin (page 2203) which recorded the times employees entered and left the office. The tribunal does not, in making these observations, seek to suggest the claimant did not work additional hours. Our observations are made to support the point that there was a lack of clarity regarding the number of hours worked by the claimant.

331. Seventh, there was evidence to suggest the claimant would not take advice to reduce the number of hours she worked. The evidence of the respondent's witnesses was that the claimant, rather than delegate tickets to her team, liked to review all of the tickets before allocating them to a team member for action. This not only caused a bottle-neck and a frustration for the team members, but also meant the claimant's work was not getting done whilst she carried out the task of reviewing all tickets. The claimant then spent additional hours catching up on her work. The claimant was repeatedly asked/told to delegate the tickets, but would not change her practice. There was also evidence of the claimant having to be told not to work whilst off sick, getting involved in activities outside her remit and finding it difficult to work reduced hours when on a phased return to work and informing the employer that she preferred to work full time. The claimant also referred to herself as a *"workaholic"* in an email to Ms McLaughlin. We concluded from all of this that the claimant found it difficult to be disciplined with herself to work to the contracted hours.

332. The tribunal noted the claimant's argument which was, essentially, that she had no option but to work additional hours in order to keep up with the workload. We also had regard to the evidence of Ms Seaton regarding the hours she worked.

333. The tribunal acknowledged the very busy and pressured environment in the respondent's workplace during 2018 and 2019 but concluded, having had regard to all of the points set out above, that there was no expectation by the respondent that employees do overtime. We recognised there are peaks and

troughs of work and times when salaried employees may need to work additional hours to launch/conclude a project or piece of work, but that is different from the position advanced by the claimant. The claimant's additional hours were far in excess of the hours done by her team and other team leaders. The claimant suggested she had the busiest team, but this was rejected by the respondent in circumstances where all areas of the company had been busy during 2018 and 2019. We accepted the respondent's evidence on this point.

334. The tribunal decided the PCP, as framed, was not simply a restatement of the contractual position: it suggested the expectation of the employer was something more. We further decided, having had regard to all of the points set out above, that the claimant had not established the PCP of there being an expectation that employees do overtime to the extent she did.

335. We should state that even if the claimant had established the PCP, the claimant did not produce any evidence of group disadvantage. It is for the claimant to construct the pool for comparison comprising those individuals who are potentially affected by the PCP, but there was no evidence regarding this matter, and it was not addressed by the claimant. Further, in a claim of indirect disability discrimination, the reference to persons who share a protected characteristic, is a reference to persons who have the same disability. Accordingly, the claimant must establish that the "particular disadvantage" affects those who share the claimant's particular disability and that she was subjected to that disadvantage. This was not addressed by the claimant, who focussed entirely on the impact on her of working excessive additional hours due to the high workload.

336. The tribunal decided to dismiss this claim because the claimant has not established the PCP, and even if the PCP had been established, the claim must fail because the claimant did not address the other component parts of the complaint of indirect discrimination.

Failure to make reasonable adjustments (points 7, 8, 10, 11, 14, 15 and 19)

337. Section 20 of the Equality Act sets out the duty to make reasonable adjustments. The section provides that where a provision, criterion or practice (PCP) of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer has a duty to take such steps as it is reasonable to have to take to avoid the disadvantage.

Point 7

338. The claimant asserted the PCP of the respondent's expectation that employees do overtime, placed her at a substantial disadvantage (exhaustion and fatigue) and that a reasonable adjustment would have been for her to do less work. The date of this allegation was November 2018.

339. The issue of the PCP is addressed above: the tribunal found the claimant had not established the PCP. The tribunal decided this claim must fail because the claimant has not established the PCP.

Point 8

340. This claim was the same as point 7 except it covered the period of January to July 2019. We decided to dismiss this claim because the claimant has not established the PCP.

Point 10

341. The claimant asserted there had been a failure to make reasonable adjustments in October 2019 when the respondent "failed" to take medical advice before making a change to the claimant's role. The PCP was said to be the practice of not taking medical advice before role changes are made.

342. The tribunal considered whether there was a provision, criterion or practice of not taking medical advice before making a role change. The tribunal noted the respondent had not, before making a change to the claimant's role, taken medical advice, however there was no evidence to inform the tribunal of the respondent's practice generally. The tribunal inferred, however, that the

respondent's practice would be not to take medical advice prior to making a role change.

343. The tribunal next considered whether that PCP put the claimant at a substantial disadvantage. The substantial disadvantage was said by the claimant to be that the respondent did not take into account the claimant's health. We could not accept that assertion because the respondent did take the claimant's health into account insofar as they were aware of the claimant's disability (HSP) and had been told by the claimant that she did not require any aids or adjustments at work. The respondent was also aware the claimant travelled as part of her role, and undertook travel for the Delta programme and for holidays. The respondent also understood very clearly from the claimant that she would let them know when she needed any adjustments at work.

344. The respondent had also agreed with the claimant that she could book a hotel with good facilities the night before a site visit so that she did not have to travel early on the day. The claimant could also work at home after a site visit. The respondent did not believe the travelling aspect of the new role would be more than the claimant currently carried out.

345. The tribunal, having had regard to this evidence, concluded the PCP did not place the claimant at a substantial disadvantage because the respondent did take into account the claimant's health when making the role change.

Point 14

346. The claimant asserted the respondent had failed to make reasonable adjustments in March 2020. The PCP was said to be work targets and the substantial disadvantage was exhaustion and fatigue.

347. The tribunal noted there was very little evidence about work targets. We did not know, for example, whether the work target referred to by the claimant in point 14 was the same as the utilisation target which was referred to in evidence. The respondent suggested (in submissions) that a work target was

for the purposes of bonus entitlement. The tribunal heard no evidence about bonuses. Further, if there was a work target, we did not know what it was.

348. We understood the claimant had a utilisation target which we believe was related to billable hours, which had been reduced from 72% to 65% but, as stated above, we did not know whether this was the same target as the work target referred to in this point. We concluded that in the absence of any evidence/clarity regarding work targets, that the claimant had not established the PCP. We decided to dismiss the complaint for this reason.

Point 15

349. The claimant asserted the respondent had failed to make reasonable adjustments on 18 April 2020. The PCP was said to be the respondent's absence policy and the substantial disadvantage was not discounting disability related absence and the various triggers. The reasonable adjustment would have been to ignore disability related absence.

350. The respondent's Absence and Lateness Policy was produced at page 1912. The Policy noted that a doctor's certificate was required for absences of more than 7 consecutive days. It set out what information had to be provided by an employee and how often employees were expected to make contact with the company during an absence. Clause 7.5 provided that all entitlement to company sick pay was calculated on a rolling year basis and was subject to the employee's SuccessFactors account being up to date with all absence types and compliance with notification and certification procedures. The tribunal accepted this was the PCP in place as at April 2020.

351. The claimant asserted the substantial disadvantage was that she had been placed on 75% pay because of her absence and, because of her disability, she could not avoid the triggers.

352. The tribunal, when considering this matter, noted we were provided with very little evidence regarding the respondent's absence policy and payment of sick pay. There was agreement between the parties that the claimant had raised an issue regarding sick pay and in response to this the company had changed

the policy (in early 2021). We did not however know what "triggers" the claimant referred to and we did not know when payments of 75% of pay were made.

353. The claimant did not provide evidence regarding the periods when she asserted she was paid 75% of pay and thereby put at a substantial disadvantage. The tribunal did note a document at page 624 – 627 where it appeared there were occasions when the claimant was paid 75% pay and occasions when the claimant was paid full pay. We concluded that in the absence of evidence from the claimant and/or the respondent's witnesses regarding the reason for the different payments, the tribunal did not have the factual basis upon which to make a decision regarding substantial disadvantage because there may have been good (that is, non-discriminatory) reason why 75% of pay was paid on occasion.

354. The tribunal could not conclude the claimant was put at a substantial disadvantage by the respondent's absence policy in circumstances where we did not know why some occasions of absence were paid at 75% and others (the majority it would appear) were paid at full pay.

355. We decided to dismiss the complaint for this reason.

Point 19

356. The claimant asserted the respondent had failed to make reasonable adjustments on the 12 June 2020 in respect of the return to work process. The PCP was said to be the respondent's return to work process and the substantial disadvantage was the claimant's need for more support during that process, and in particular earlier support.

357. There was no dispute regarding the fact the claimant had been absent on a period of sickness absence from the 20 April until the 18 May 2020. The reason for the absence, as stated on the fit notes, was anxiety and depression. The GP recommended (on the fit note produced at page 966) that the claimant would benefit from a phased return to work and noted "will be suitable for gradual introduction of duties however will need to be careful not

to be overwhelmed with stress related to work tasks and duties may have to be revised in light of this".

358. The claimant and Mr Sweeney had discussions regarding the return to work and arrangements were put in place for the claimant to return to work on a phased basis and with a gradual introduction of duties/workload. (This was during the pandemic and the period of lockdown and there had been a slowdown in workload for many employees in any event.)

359. The claimant's complaint in point 19 related to the fact the return to work interview was conducted 4 weeks after she had returned to work. The claimant asserted the return to work interview should have been done much earlier so there could be a discussion about what changes she needed.

360. The tribunal in considering the PCP of "the respondent's return to work process" noted the Absence and Lateness Policy (page 1655) stated a return to work meeting may be held. Ms Freeman told the tribunal that it was usual to do the return to work interview at the end of the phased return. This explained why the claimant's interview had been done after the four week phased return. We concluded from these facts that the respondent's return to work process included the practice of doing the return to work interview at the end of a phased return. We accepted this was the PCP.

361. The tribunal next asked if that PCP put the claimant at a substantial disadvantage. The claimant argued that leaving the return to work interview until the end of the phased return put her at a substantial disadvantage because by then it was too late to discuss what adjustments might be necessary. The tribunal acknowledged there could, on the face of it, be merit in what the claimant argued, but this was undermined by the facts in this case. We say that because the claimant had already had a discussion with Mr Sweeney regarding the phased return to work and what she could do. Mr Sweeney had identified what work the claimant was going to do and how this could be developed if appropriate. In those circumstances the return to work interview with Ms Freeman at the end of the phased return was akin to a review.

362. The tribunal noted, with regards to the claimant's assertion that by the time of her meeting with Ms Freeman, it was too late to discuss what adjustments might be necessary, that the claimant did not, either to Mr Sweeney, Ms Freeman or in her evidence and submissions to the tribunal, actually suggest she needed adjustments to be made. In fact, it was the claimant's position (see below) that no adjustments were required.

363. We noted, in the return to work form signed by both the claimant and Ms Freeman (page 1059) the following points:

- Is the employee able to resume normal duties? Karen feels able to do more hours. People keep putting meetings in her diary for outside her working hours. Plan is to do 10 – 4 for next 2 weeks and review. Supported and agreed.

- Is further treatment necessary? *"Yes, finding it hard to do her job part time. Not enough time to do everything…"*

- Did the employee indicate that factors at work may have caused or contributed to their absence? *"Yes, excessive workload and excessive stress over a long period of time led to physical exhaustion and mental health issues."*

- If factors at work may have caused or contributed to the absence, what action is to be taken to support the employee? *"Grateful for change of manager and reduced workload as of January 2020…"*

- Does the employee have a disability? *"Yes, HSP but Karen has documented on more than one occasion that her condition has no impact on either her ability to do her work or her mental health."*

- Was the employee's disability the reason for, or connected with, their absence? *"Karen feels that her physical disability has no relevance to her absence".*

364. The tribunal also had regard to the fact that notwithstanding the claimant's GP had recommended a gradual introduction of duties/workload, the claimant

wrote to Mr Sweeney stating she wanted to ensure there was enough work for her to come back to when she returned to work because “coming back to a low workload would not be good for me”. We also had regard to the fact that on two occasions, prior to returning to work, Mr Sweeney had to advise the claimant to stop logging on to work, and to focus on her recovery.

365. We concluded that in circumstances where the respondent put in place the recommendations of the GP, and no other adjustments were in fact required by the claimant, the PCP of having the return to work interview at the end of the phased return did not put the claimant at a substantial disadvantage. The tribunal decided to dismiss this complaint for that reason.

366. We, in conclusion, and for the reasons set out above, decided to dismiss the complaint of failure to make reasonable adjustments.

Discrimination arising from disability (points 17 and 21)

367. We had regard firstly to the statutory provisions set out in section 15 of the Equality Act. The section provides that a person discriminates against a disabled person if s/he treats the disabled person unfavourably because of something arising in consequence of the disabled person’s disability and s/he cannot show that the treatment is a proportionate means of achieving a legitimate aim.

368. There are four elements to a claim under section 15, and they are:-

- there must be unfavourable treatment;
- there must be something that arises in consequence of the claimant’s disability;
- the unfavourable treatment must be because of (that is, caused by) the something that arises in consequence of the disability and
- the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

Point 17

369. This claim relates to the letter dated 27 May 2020 (page 969) sent by Ms Freeman to the claimant. The claimant in the claim stated: *"I was issued with a disciplinary and a letter warning of my behaviour, with threats of "change is required" or I will be "managed out". I was very tearful at this meeting and I did apologise for previous behaviour where I had been time consuming. This letter was very threatening, very personal and it was harassment focussing on my health issues."*

370. The claimant asserted the unfavourable treatment was the threat she would be managed out of the business if she did not change her behaviour, and the something arising was the likelihood the claimant would be fatigued and suffer mental health issues.

371. The first issue for this tribunal to determine is whether the threat of being managed out of the business, as contained in the letter of the 27 May 2020, was unfavourable treatment. The term unfavourable treatment is not defined in the Equality Act, but the Equality and Human Rights Commission Code of Practice on Employment states that it means that the disabled person must have been put at a disadvantage.

372. The letter sent by Ms Freeman was a very frank and honest letter insofar as it identified concern with aspects of the claimant's behaviour, the need for change, and the support the company wanted to give. Ms Freeman noted it was apparent the claimant was deeply unhappy with her job, the company, management and every aspect of her working life and Ms Freeman cited examples of this. Ms Freeman referred to fact the respondent had moved the claimant to a different role as a response to her *"cries of help"*, however that had resulted in the claimant asserting she had been demoted. Ms Freeman noted the behaviour of continual mixed messages was not appropriate. Ms Freeman also referred to the claimant taking up a disproportionate amount of management time and that this needed to change.

373. The letter included a paragraph which stated: *"Our duty to you is, if possible, to get to the bottom of your issues. We will then take steps to attempt to*

resolve them and in so doing work with you to see if you are capable of working properly and normally in an appropriate way with whatever changes are reasonable. Alternatively, it may be necessary to fairly and appropriately manage you out of the business – it is that serious."

5 374. The letter went on to say *"We think you do need support but can't force you to accept it"*. Ms Freeman noted the first step was to work out whether there was some underlying cause for the claimant's concerns and behaviours. She recognised this may be medical in terms of mental issues or the physical effect of the claimant's condition. Ms Freeman asked the claimant to work with 10 the respondent to gain as full an understanding as possible of the issues. This may involve obtaining occupational health reports and/or a report from the GP.

375. Ms Freeman invited the claimant to take time to reflect on the letter and then to come back to her to discuss it further. The claimant did this and on the 30 15 May, she emailed Ms Freeman thanking her for her time and saying she appreciated the intervention, time and support. The claimant thanked Ms Freeman for not issuing a formal disciplinary. The claimant also confirmed she was "doing much better" and was somewhat embarrassed at the last 6 months.

20 376. The claimant then sent a 21 page document in response to the letter sent by Ms Freeman. The claimant acknowledged her behaviour had been unprofessional, inappropriate, erratic and emotionally charged, bordering on rude and that this was due to mental health issues. The claimant described Ms Freeman's letter as the "olive branch" which was needed and appreciated.

25 377. The tribunal considered the claimant's email and document demonstrated the claimant understood the respondent's letter was not a formal (or informal) disciplinary. The letter was a voicing of concern about behaviour that was not appropriate but it also demonstrated a real desire on the respondent's part to understand what the issues were and to try to address/resolve them. It was 30 the essence of an olive branch. It was an opportunity for the claimant to go to

the respondent and tell them what was going on, how she was and what support she needed.

378. The tribunal also considered that as at May 2020 the claimant had had one period of absence for 4 weeks for anxiety and depression. She had returned to work on a phased basis, working up gradually to full time and had confirmed to the respondent that her disability (HSP) had no impact on her mental health and no relevance to her absence. The respondent (Ms McLaughlin and Ms Freeman) had both asked the claimant whether she needed support/emotional support, but the claimant refused and her consistent message to the respondent was that she was *"better"*, *"there are no mental health issues connected to my disability", "my disability should not be a feature of future discussions as I do not feel it is relevant"* and *"at present I do not need any change to hours or work duties"* (these statements were made in the claimant's response to Ms Freeman's letter – page 1003).

379. The claimant's consistent message to the respondent was mired in inconsistency and by that we mean that whilst the claimant, in her response to Ms Freeman's letter, spoke of being on a very high level of antidepressants and dealing with stress and exhaustion and mental health issues, she also said she was feeling better, she had no mental health permanent conditions, she had never been diagnosed with mental health issues, there were no mental health issues connected to her disability and she did not need any changes to her hours or work duties. The claimant consistently rejected the respondent's attempts to support and/or offer support.

380. We asked ourselves whether, in the circumstances of this case, the "threat" of being managed out of the business was unfavourable treatment: did it subject the claimant to a disadvantage? We decided, having had regard to the circumstances and context, that the "threat" did not amount to unfavourable treatment. We reached that conclusion because the letter was a genuine attempt by the respondent to try to understand the issues and offer support. The respondent wanted to work with the claimant to resolve matters, but also wanted the claimant to understand the situation was serious. Further, the claimant's response at the time was to thank the respondent,

acknowledge her behaviour had been unprofessional and inappropriate and to understand and appreciate the olive branch which was being extended to her.

381. We should state that even if we had found the letter was unfavourable treatment, we would have had to go on to ask whether the unfavourable treatment was caused by something arising in consequence of the claimant's disability. The something arising in consequence of disability was asserted by the claimant to be the likelihood that she would be fatigued and suffer mental health issues. The tribunal understood that the argument being made by the claimant was that her behaviour was caused by her mental health issues which were symptoms of her disability. We considered there were two difficulties with that argument. Firstly, there was no evidence before the tribunal to support the claimant's argument that her behaviour was caused by mental health issues. We considered there was evidence, however, demonstrating the claimant displayed the same/similar behaviours prior to any diagnosis of mental health issues. For example, the claimant insisted on reviewing all tickets before allocating them to her team, even when told not to do so because it was causing delay and additional workload for her in circumstances where the claimant had complained about the workload; the claimant, having complained about the workload and asked for action to be taken, insisted her disability did not impact on her ability to do her job and that she needed no adjustments; the claimant, having complained about workload, had to be told by Mr Sweeney that she should not be working whilst on sickness absence; the claimant led Ms McLaughlin to understand the complaint about Ms Knox had been resolved following their discussion, only for the claimant to subsequently raise a grievance about it and the claimant constantly emailed and changed her position.

382. Secondly, the respondent had no knowledge of mental health issues as at the date of the (alleged) unfavourable treatment. The claimant had had one absence for anxiety and depression in April/May 2019. The claimant had returned to full time work following a phased return to work. The claimant did not disclose anything further to the respondent about mental health issues

until early June 2020. The claimant argued the respondent ought to have known she had mental health issues because of her behaviour. That was not an argument we could accept. The respondent's witnesses are not medically qualified to make any assessment about the claimant's mental health. Ms Freeman and Ms McLaughlin tried to broach the subject of mental health with the claimant but they were very firmly rebuffed. The claimant's consistent message to the respondent was that she did not need support and did not have mental health issues. The claimant took offence at the respondent's attempts to address the issue.

383. The tribunal concluded for these reasons that even if there had been unfavourable treatment, that treatment was not caused by the claimant's fatigue and mental health issues. We decided for these reasons to dismiss this claim.

Point 21

384. The claimant stated *"On Monday 22 June 2020 I escalated these comments to a member of the exec board as concerning, offensive and inappropriate. My complaint was treated as a grievance, with an informal investigation by one person and my complaint was not upheld. It was confirmed by this same person, that she has reviewed the disciplinary letter of the 27 May 2020 and agreed with the content and approach and "change was required by me".*

385. The unfavourable treatment was that the complaint was informally investigated by one person, the complaint was not upheld and the claimant was told that change was required. The something arising was exhaustion and mental health deterioration.

386. The tribunal, in considering whether there was unfavourable treatment, had regard to the factual circumstances. The claimant had received the letter of the 27 May 2020 from Ms Freeman and had responded to it in early June with a 21 page document. The claimant subsequently contacted Ms McLaughlin to ask for a quick *"catch up".* Ms McLaughlin spoke with the claimant on the 19 June (page 1065) and on the 22 June (page 1067). The claimant told Ms McLaughlin she was unsure about staying in managed services. The claimant

told Ms McLaughlin she felt Ms Freeman was encouraging her to leave and asserted Ms Freeman had made various statements in the informal off-the-record meeting. The claimant also raised the issue of her health and Ms McLaughlin reiterated that Ms Freeman could provide support and assistance from a work perspective. Ms McLaughlin also reminded the claimant that she had told the respondent she does not need external help.

387. The claimant emailed Ms McLaughlin on the 24 June (page 1119) asking to whom she should send her letter of resignation. Ms McLaughlin responded to say she noted the claimant wished to resign, but invited her to avail herself of the support the Company had offered and to discuss matters fully with Ms McLaughlin and others before making such a decision.

388. The claimant emailed Ms McLaughlin on the 5 July (page 1115) saying she could not meet with Ms Freeman and that discrimination and harassment to a disabled person was against the law and that Ms Freeman's comments had affected her mental health. The claimant considered that asking her to stay and speak to HR was a breach of her dignity at work. The claimant asserted, amongst other things, that the decision to refer her for a mental health assessment was offensive.

389. Ms McLaughlin considered the claimant's email was a serious complaint and she treated it as such. Ms McLaughlin re-read all of the correspondence, spoke to Ms Freeman, sought legal advice and then responded to the claimant (page 1133).

390. The claimant asserted there had been unfavourable treatment in circumstances where there had been no neutral investigation and a failure to follow the grievance procedure. The tribunal accepted the respondent did not expressly follow their grievance procedure. The issue for the tribunal to consider was whether the way in which the respondent dealt with the matter was unfavourable treatment.

391. The tribunal accepted Ms McLaughlin's evidence about the steps she took to investigate the issues raised by the claimant. We noted Ms McLaughlin, in her response to the claimant, told the claimant the steps she had taken. We could

not accept the claimant's assertion, in her submissions, that Ms McLaughlin and Ms Freeman were "colluding". The fact Ms McLaughlin discussed many of the same issues with the claimant as had been raised with, and by, Ms Freeman was not collusion, but rather arose from the fact that these were issues of concern which had also been raised and discussed by Ms McLaughlin with the claimant.

392. We were satisfied that notwithstanding the fact the respondent did not follow their grievance procedure, there was an investigation by a neutral person at a very senior level. Indeed the investigation was carried out by a person whom the claimant regarded as being approachable, understanding and on her side. We noted that in terms of the respondent's grievance procedure the grievance ought to have been raised with the claimant's line manager. We considered that to have had a more senior manager investigate the grievance must have been to the claimant's advantage.

393. We accepted Ms McLaughlin reviewed all of the correspondence, interviewed Ms Freeman and took legal advice before responding to the claimant. We noted the claimant did not complain that Ms McLaughlin had failed to take matters into account or had taken into account matters which ought not to have been taken into account. The fact Ms McLaughlin did not uphold the grievance was a decision she was reasonably entitled to reach. We concluded, for these reasons, that there was no unfavourable treatment.

394. We should state that even if there had been unfavourable treatment, we would have concluded (for the reasons set out above) that the unfavourable treatment was not caused by the claimant's exhaustion and mental health deterioration. We decided for these reasons to dismiss this complaint.

Harassment (points 9, 12, 13, 16, 17, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32)

395. The relevant statutory provisions are set out in section 26 of the Equality Act which provides that a person harasses another if s/he engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating the [claimant's] dignity or creating an

intimidating, hostile, degrading, humiliating or offensive environment for [the claimant].

396. There are three essential elements of a harassment claim:

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

397. The tribunal, in deciding whether conduct has the proscribed effect, must take each of the following into account: the claimant's perception (the subjective question); the other circumstances of the case and whether it is reasonable for the conduct to have that effect (the objective question). It was stated in ***Pemberton v Inwood 2018 ICR 1291*** that in order to decide whether any unwanted conduct has either of the proscribed effects, a tribunal must decide both whether the claimant perceives themselves to have suffered the effect in question and whether it was reasonable for the conduct to be regarded as having that effect. It must also, of course, take into account all other circumstances.

398. We also had regard to the case of ***Richmond Pharmacology v Dhaliwal 2009 ICR 724*** where it was said that whilst it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially insensitive comments or conduct, it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase. If the tribunal believes the employee was unreasonably prone to take offence then, even if she did genuinely believe her dignity to have been violated, there will have been no harassment … whether it is reasonable for the employee to have felt her dignity to have been violated is quintessentially a matter of factual assessment for the tribunal. It will be important to have regard to all the relevant circumstances including the context of the conduct in question.

399. The tribunal, in determining the allegations made by the claimant, approached each one by asking the following questions:

(a) did the conduct alleged by the claimant occur;

(b) if so, was the conduct unwanted by the claimant;

(c) if so, did the conduct have the proscribed effect? In answering this question the tribunal had regard to (i) the claimant's perception; (ii) all other circumstances and (iii) whether it was reasonable for the conduct to be regarded as having that effect on that particular individual and

(d) was the unwanted conduct related to disability.

400. The tribunal noted that the *"other circumstances"* referred to in point (c)(ii) above, will usually be used to shed light both on the claimant's perception and on whether it was reasonable for the conduct to have that effect.

401. The tribunal also noted that it is for each individual to determine what they find unwelcome or offensive, and there may be cases where there is a gap between what the tribunal would regard as acceptable and what the individual in question was prepared to tolerate. It does not follow that because the tribunal would not have regarded the acts complained of as unacceptable, the complaint must be dismissed (***Reed v Steadman 1999 IRLR 299***).

402. The claimant brought 17 complaints of alleged harassment. There are some themes which appear in relation to a number of complaints and those are that the tribunal considered the claimant to be hypersensitive with a tendency to unreasonably take offence. The claimant was hypersensitive regarding the issue of disability: the claimant wanted to be in control of what she told the respondent, when she told them and what adjustments she needed. The tribunal could, on the one hand, understand this, but, on the other hand, the claimant took this to a hypersensitive level. The claimant, at this hearing, spoke of *"cries for help"* and was highly critical of the way in which (she believed) the respondent had dealt with her, but the evidence disclosed the efforts of the respondent to speak to the claimant about health/mental health issues and offer support, were wholly rebuffed. An example of this was Ms Freeman's response to a question asked by the claimant suggesting she [the claimant] did not know what adjustments she needed: Ms Freeman, replied

"but each time we discussed it you said no adjustments were needed and you almost resented us asking". Ms Freeman's evidence was supported by the notes/minutes of the various meetings. This essentially encapsulated the issue: the claimant said she wanted/expected help from the respondent, but when it was offered/suggested, the claimant rejected it, resented it and was hypersensitive about it.

403. The claimant had a tendency to fixate on words and misconstrue what had been said/written and this often led to the claimant unreasonably taking offence. An example of this was when the respondent wished to seek a medical report. The claimant was critical of the respondent for not obtaining a medical report or seeking occupational health advice sooner (for example, one of the claims before the tribunal is that there had been a failure to make reasonable adjustments when the respondent failed to take medical advice prior to moving the claimant to a different role). The claimant then unreasonably took offence when the respondent did seek a medical report, and part of that offence arose from the fact the claimant fixated on words in Ms Lock's letter and misconstrued it.

404. There was also some re-writing of history in what the claimant told the tribunal in her evidence (see above in credibility) and this is noted in some of the complaints dealt with below.

Point 9

405. The claimant stated: *"In October 2019 my role was changed without a consultation period and without my job title and duties being given in writing. The change of role removed my manager duties and left me feeling humiliated and demoted in Oct/Nov/Dec 2019. An external customer had been told about my role before me and I felt forced to take it. My role had already been reduced by 75% in July and then further by removing my management responsibilities."*

406. The complaint of harassment was made in relation to the external customer being told about the role change before the claimant.

407. The first issue for the tribunal is whether the conduct alleged by the claimant occurred. The claimant asserted the respondent had told the customer about the claimant's role change before informing the claimant, and in this way put her in the position of having no option but to accept the change. The tribunal, in considering this assertion, preferred the evidence of the respondent's witnesses and found as a matter of fact that although the customer was told of the Solution Architect role, the claimant's name was not disclosed to the customer until after the respondent had advised the claimant.

408. We, having decided the conduct alleged by the claimant did not occur, concluded there had not been unwanted conduct and the claim was dismissed for this reason.

409. (The claimant also referred in the narrative setting out the complaint of a lack of consultation regarding the role. We could not accept that assertion: the claimant was consulted about the role because it was a new concept which the respondent wished to introduce. The claimant was told of the job title and the intention of Mr Sweeney was to discuss and agree the job description and duties with the claimant (and this is what happened)).

410. There was a dispute between the claimant and the respondent's representative about the scope of the allegation made by the claimant. Mr Mitchell, in his submissions, noted the claim pled by the claimant did not include the issue of travel, and therefore, whilst the claimant had spent time in evidence on this point, it did not form part of this claim. The claimant took the contrary view. We noted that whilst travel had been raised by the claimant with the respondent as an issue, this claim was about the fact the claimant believed the customer had been told of the role change before her, and this placed her in the position of having no option but to accept the role. We accordingly concluded this claim did not include any issues about travel.

Point 12

411. The claimant stated: *"In March 2020, a meeting with management and HR was held via telephone conference. The call became hostile and strained and I refuted that I needed mental health support. I felt very defensive and*

anxious. I do not believe that the call was the time or place or way to offer mental health support. My role change was refused."

412. This was a claim of harassment related to disability. The unwanted conduct was the telephone conference call.

5 413. There was no dispute regarding the fact a telephone conference call took place on the 12 March between the claimant, Ms McLaughlin and Ms Freeman (page 861). We accepted the conference call was (now) conduct which was unwanted by the claimant. We use the term "now" because at the time the claimant's response to the call was to email Ms Freeman and Ms
10 McLaughlin thanking them for their time.

414. We asked whether the telephone conference call had the proscribed purpose or effect. The tribunal acknowledged the perception of the claimant, as set out in her evidence and submissions, was that the call was *"hostile and strained",* that she felt *"attacked and undermined"* on the call and that she had been
15 *"accused"* of needing mental health support.

415. We, in considering the other circumstances, had regard to the following points. We accepted Ms McLaughlin's evidence that the purpose of the conference call was for Ms McLaughlin and Ms Freeman to try to understand what was behind the claimant's lengthy email about wanting to leave
20 managed services. The claimant's email was used as a structure for the meeting.

416. The claimant told the respondent she was unhappy and that her workload was not realistic, although that had improved. Ms Freeman described the Solution Architect role as *a "great opportunity for growth"* and an opportunity for the
25 claimant to use her technical capability. Ms McLaughlin also described the role as being *"absolutely the right one"* and confirmed the claimant's performance was viewed *"very positively"* and that she had *"the skills and strengths to make this role a success".* The claimant responded that she felt bored in her current role and stagnant. The claimant reiterated she did not
30 want to work in managed services, and wanted the opportunity to work in business development or pre-sales. Ms McLaughlin explained it was

important to manage the claimant's expectations and business development roles were higher graded, and the claimant had no experience of pre-sales.

417. Ms Freeman said to the claimant that, whilst it had been said before, if she needed any support or consideration for her condition, then she should talk to them and they would make adjustments in consultation with her. The claimant responded to this by insisting this was nothing to do with her condition and only related to the way she was feeling about her job. The claimant became upset and Ms McLaughlin asked why she was so unhappy. Ms McLaughlin suggested it sounded like the claimant needed some emotional support. The claimant was adamant she did not need any support.

418. Ms McLaughlin, in her evidence, described the meeting as being quite the opposite of harassment. She and Ms Freeman had wanted to support the claimant and understand what could be done to address her concerns.

419. The claimant emailed Ms McLaughlin after the meeting (page 868 sent at 22.43) saying the meeting felt like it was 2 against 1. The claimant explained she had got upset because she was struggling to believe she had a future in managed services. The claimant stated that what she wanted was a career. She felt she worked in a negative environment; her confidence and self-esteem were at an all-time low; she didn't feel she was flourishing and didn't feel valued.

420. The claimant sent another email to Ms McLaughlin on the 19 March (page 879). The claimant stated she would try to explain in a letter why she called it a toxic working environment and why she wanted to leave. The claimant then said *"I actually don't want to leave, I keep saying I do because of **** that happens but I end up wanting to stay anyway. Please don't doubt my commitment to the business".*

421. The tribunal noted this call had been arranged following upon the claimant informing Mr Sweeney that she was happy with the change to her role (because it reduced the number of people in the team she had to manage and freed up time for her to focus on work/her strengths) but then telling him she did not want to do the role, and following this up with a 5 page document

explaining why she wanted to leave managed services. Ms McLaughlin and Ms Freeman wanted to understand what was behind the lengthy email, in essence they wanted to understand why the claimant wanted to leave managed services (which is where the claimant's technical knowledge and skills are) and whether anything could be done to address her concerns. We considered this to be a reasonable management response, particularly in circumstances where the Solution Architect role was seen by the respondent as being an ideal role for the claimant, not only in terms of her skills, but because it would address concerns regarding workload and managing a team.

422. We also considered it a reasonable management response because Ms McLaughlin and Ms Freeman clearly wanted to encourage/provide an opportunity for, the claimant to talk to them about support. The claimant was not *"accused"* of needing mental health support: it was quite the opposite. Ms Freeman made a very open reference to the claimant's *"condition"* and confirmed the respondent *"would make adjustments in consultation with [her]".* Ms McLaughlin made reference to the claimant's unhappiness sounding like the claimant needed some emotional support. The tribunal would describe these as very gentle enquiries, made with a view to supporting the claimant.

423. The claimant's response to these enquiries was to completely and totally rebuff them: the claimant was adamant she did not need any support. The claimant insisted her unhappiness and desire to leave managed services was nothing to do with her condition, and related only to how she felt about her job.

424. The tribunal also had regard to the fact that the claimant, having set out her reasons for wanting to leave managed services, and having had the meeting with Ms McLaughlin and Ms Freeman, then confirmed she actually did not want to leave managed services. The claimant also apologised to Mr Sweeney for her behaviour earlier in the year and for wanting to leave managed services.

425. We next asked if it was reasonable for the conference call to be regarded as having that effect on the claimant. The tribunal, in considering this issue, were satisfied firstly that it was reasonable for the respondent to arrange the meeting to understand why the claimant wanted to leave managed services. We noted there was nothing either in the evidence of Ms Freeman and Ms McLaughlin, or in the notes of the meeting, to support the perception of the claimant that she was *"attacked and undermined".* Indeed, it was quite the opposite, with Ms Freeman and Ms McLaughlin both expressing the view that the claimant was technically very skilled and highly regarded not only by the respondent but also by the retail customers she dealt with. We also noted that although the claimant referred to being *"accused"* of needing mental health support, this did not sit comfortably with the fact the claimant also made reference to the *"offer"* of mental health support.

426. The tribunal formed the impression from the claimant's evidence and the documents that the claimant was hypersensitive and unreasonably prone to taking offence, particularly in respect of enquiries about her health. The claimant wanted on the one hand to criticise the respondent for not taking action to make adjustments or refer to occupational health, but on the other hand challenged/resented any attempt by the respondent to ask about her health as harassment.

427. The tribunal, having had regard to all of the above points, decided the telephone conference call did not have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

428. We should state that if we are wrong in our above conclusion, we would have had to determine whether the unwanted conduct (which had the proscribed effect) was related to the claimant's disability. The meeting took place to try to understand why the claimant wanted to leave managed services. We considered whether the reasons for wanting to leave managed services were because of the claimant's disability. We had regard to the claimant's document at page 814 (sent in early January 2020) setting out why she wanted to leave managed services. The following reasons were given:

- unrealistic and unhealthy workload
- unhappy co-workers;
- low job satisfaction;
- poor career progression;
- treated like a resource;
- awful tools and working processes;
- depressing place to work;
- pressure on targets;
- poor communication from senior managers;
- feels very transactional, robotic;
- transactional style management;
- no time for training;
- negligible pay difference between grades, so it's not worth the extra workload/hassle;
- salaries are not competitive;
- have asked for years to be included in pre-sales as functional expert;
- change of role without joined up discussion;
- feel like a ticket administrator/slave and
- overall lack of trust in believing I will have a healthy workload, healthy working culture and progressive career.

429. We also had regard to the fact that as at January 2020 the respondent understood the claimant's disability was HSP, which is a physical impairment, for which the claimant needed no adjustments. The tribunal understands the claimant now wishes to link the workload to the migraines to the anxiety and

depression to the HSP, but that was not the position she took at the time, nor was it the information she gave to the respondent.

430. We concluded, having had regard to the reasons why the claimant wanted to leave managed services, and the respondent's knowledge and understanding of the claimant's disability at that time, that the unwanted conduct was not related to the claimant's disability. The conduct was related to the fact the claimant was unhappy and had expressed a desire to leave managed services and the respondent wished to understand why the claimant felt like that in circumstances where her technical skills and ability were valued highly by the respondent and customers in managed services.

431. We decided to dismiss this complaint because the unwanted conduct did not have the proscribed effect and, even if it had, the unwanted conduct was not related to the claimant's disability.

Point 13

432. The claimant stated *"In March 2020 I agreed not to raise a grievance about my role change… In my letter I said I would not be raising a grievance at this time. I was told by a senior manager to stop "wasting time" and to stop "distracting my manager with my personal issues." I was told by HR that I was a time consuming employee. My manager was told to only reply to work/duties related emails."*

433. This allegation referred to an email sent by Ms McLaughlin to the claimant on the 20 March 2020 (page 890), entitled Confidential – 360 degree Feedback. Ms McLaughlin wrote:

"With the current climate that we face, where we are having to take steps to ensure the success of the business for the future, we simply do not have time for this level of communication that is neither constructive nor supports the business. I must please ask you to stop distracting management and other members of my team. If you have a grievance, there is a proper grievance process to follow.

You have indicated that you do not wish to make a grievance, and that the matter has been brought to a conclusion.

Future career development should be discussed in the normal manner through the defined appraisal process, and as confirmed to you several times this will happen in 6 months under your new manager.

Further, I have advised Scott to stop responding to your email on this topic and to respond only where your communication is relevant to the progression of customer deliverables."

434. The tribunal accepted the email had been sent by Ms McLaughlin, and that to receive an email in those terms amounted to unwanted conduct for the claimant.

435. We next asked whether the unwanted conduct had the proscribed purpose or effect. We noted the claimant perceived this to be part of a campaign of ongoing harassment because she was ill. The claimant asserted the concepts of her being time consuming and wasting time created a frightening and humiliating environment. The claimant also interpreted the last paragraph of the email to mean she was not to contact Mr Sweeney.

436. The other circumstances of the case which it is relevant to consider are that the country had just gone into national lockdown which placed a very large degree of uncertainty on businesses. Mr Sweeney acknowledged he was feeling the pressure of a slow-down in work and how this would impact on revenue targets.

437. The claimant has a propensity to send a lot of emails which can be very lengthy. The tribunal accepted Mr Sweeney's evidence that he had had a lot of communication with the claimant during the first three months of taking on line management responsibility for her. He described this as time-consuming but something he wanted to work through in order to retain the claimant.

438. Mr Sweeney received a number of emails from the claimant at or about this time: for example, (i) the claimant expressed worry about her job because of the pandemic, but was assured by Mr Sweeney that her job was not at risk;

(ii) the claimant was off sick but had to be told by Mr Sweeney to stop logging on to work; (iii) the claimant sent an email to Mr Sweeney about her return to work and asking him to ensure there was enough work for her to do; (iv) the claimant asked if there were additional duties she could take on; (v) the claimant had to be told to stop tweeting; (vi) the claimant had to be told again to stop logging in to work and (vii) the claimant emailed Mr Sweeney asking for a pay increase.

439. The claimant had, during the telephone conference call with Ms McLaughlin and Ms Freeman, learned that previous members of her team had expressed concerns regarding her management style. The claimant pursued Ms Freeman for details about this. The claimant then took it upon herself to carry out 360 degree feedback with former members of her team.

440. The claimant emailed Ms McLaughlin and Ms Freeman (page 891) to say she had collected the feedback and asked them to review it. The claimant concluded her email by saying *"I can't even imagine how busy things must be for HR and the Exec right now ….. This week has been tough, thank you for your support for all employees .."*

441. Ms Freeman responded to explain to the claimant that what she had done was *"completely inappropriate"* and there were good reasons why the company had decided not to use 360 degree feedback. Ms Freeman referred to the management team having *"limited bandwidth currently"* and that they had *"tried very hard to support you and you are continuing to take up much of our time".* Ms Freeman urged the claimant to focus on client deliverables whilst the company worked through the most challenging of times.

442. Ms McLaughlin responded to say that what the claimant had done was unnecessary, not how 360 degree feedback worked and that the claimant should not have done what she did.

443. The tribunal noted the claimant repeatedly went through a process/cycle of raising issues and complaints but not wanting either to accept the company's response or to have them resolved through the grievance procedure. It was

this to which Ms McLaughlin referred when saying to the claimant that if she had a complaint then she should use the grievance procedure.

444. The tribunal also had regard to the fact that during her evidence the claimant asserted Ms McLaughlin's email (above) meant she could not contact her manager and this left her without anyone to whom she could raise issues. This assertion was incorrect. The email from Ms McLaughlin was entitled 360 degree feedback and it very clearly said *"I have asked Scott to stop responding to your emails on this topic"* (our emphasis).

445. The tribunal next asked if it was reasonable for the conduct to be regarded as having that effect on the claimant. The tribunal acknowledged the claimant may not have liked being told to stop time-wasting and distracting management and would have disagreed that that was what she was doing, but objectively it was not reasonable for the conduct to be regarded as having the effect perceived by the claimant in circumstances where the claimant had done something inappropriate, was reasonably informed of that, was still able to raise issues with her line manager and/or Ms McLaughlin and still able to raise a grievance (as had been suggested by Ms McLaughlin). We considered we were supported in that view by the fact the claimant did continue to raise issues.

446. We concluded, for these reasons, that the unwanted conduct did not have the proscribed effect. We should state that even if we had found the conduct did have the proscribed effect, we would have decided the unwanted conduct was not related to the claimant's disability. We say that because the conduct was related to the fact the claimant had sent out 360 degree feedback which was not authorised to be used, and was wholly inappropriate. There was no suggestion the sending of the 360 feedback was related to the claimant's disability. We decided to dismiss this claim.

Point 16

447. The claimant stated *"On the 19 May 2020 I returned to work on a phased return of part time work and reduced duties. Aside from my first day back, my manager did not speak with me until 7 weeks later and no support was put in*

place to assist me during my phased return. No-one monitored my duties, workload, or stress despite doctor's recommendations not to be overwhelmed."

448. The tribunal considered firstly whether the alleged conduct occurred. The claimant asserted her manager, Mr Sweeney, did not speak with her until 7 weeks later. We, in considering this assertion, preferred the evidence of Mr Sweeney who told the tribunal there was no face-to-face contact at the time because of lockdown, but there had been phone calls and teams meetings. Mr Sweeney also referred to email correspondence at pages 975, 986, 1016, 1018, 1021, 1023, 1025, 1033, 1043, 1044, 1063, 1088, 1090 and 1092.

449. The claimant accepted the above but argued Mr Sweeney's emails were only replies to her, and the real issue was that there had been no *"checking in"* with her.

450. The tribunal was not entirely sure what the claimant meant by *"checking in"* with her in circumstances where the respondent had put in place a phased return to work and gradual introduction of duties as recommended by the claimant's GP and Mr Sweeney had discussed this with the claimant. We noted Mr Sweeney, when seeking advice from HR, stated he had *"work lined up for Karen to help ease her in and we still have Dinesh manage the Retail queue for now".* This indicated to the tribunal that thought and consideration had been given to what was required for the claimant's return to work.

451. We concluded the assertion made by the claimant was not supported by the tribunal's findings of fact: by this we mean, we were satisfied (having accepted Mr Sweeney's evidence) Mr Sweeney did have contact with the claimant during the period of her return to work; support had been put in place to assist her during the phased return to work and duties and workload were monitored insofar as Mr Sweeney had lined up work to help ease the claimant back in to work and he still had in place a person to manage the Retail ticket queue. We decided the alleged conduct did not occur and therefore, there was no unwanted conduct. We decided to dismiss this claim.

Point 17

452. The claimant asserted Ms Freeman's letter of the 27 May 2020 (see above for details) amounted to harassment related to disability.

453. There was no dispute regarding the fact the letter had been sent to the claimant and the tribunal accepted the letter of the 27 May 2020 amounted to unwanted conduct.

454. The tribunal next asked if the unwanted conduct had the proscribed purpose or effect. The claimant's perception was that the letter was not one of care and concern, but instead it was a disciplinary letter which she found degrading and derogatory and focussed on the "threat" of being managed out of the business. The claimant also perceived that in asking her to change her behaviour, the respondent was asking her to change her disability, and this was humiliating.

455. The tribunal noted these statements were undermined by the fact the claimant's immediate response to the letter was to email Ms Freeman and thank her for her intervention, time and support (page 991). The claimant thanked Ms Freeman for not issuing a formal disciplinary, and appreciated the softer, informal way in which her behaviour had been addressed. The tribunal further noted the claimant clearly understood the letter was not a disciplinary (formal or informal) and understood at the time the purpose and intent of the letter.

456. The tribunal, in considering the other circumstances, had regard to the terms of the letter and the circumstances which led to it being issued. We have set out (above) details of the content of the letter, its purpose and objective and we do not repeat those matters here except to summarise that the letter was not a formal or informal disciplinary letter, and this was subsequently acknowledged by the claimant. We considered the letter was a voicing of concern about behaviour that was not appropriate but it also demonstrated a real desire on the respondent's part to understand what the issues were and to try to address/resolve them. It was the essence of an olive branch. It was an opportunity for the claimant to go to the respondent and tell them what was

going on and how she was feeling. The claimant did not take this opportunity in the meeting, but she did subsequently provide a 21 page document which dealt, in part, with mental health issues. This was first time the claimant had disclosed these issues to the respondent.

5 457. We concluded from this that rather than create the proscribed effect, the letter created an environment where the claimant had an opportunity to respond and disclose her mental health issues (although there were inconsistencies in what she said).

458. The tribunal next considered whether it was reasonable for the unwanted 10 conduct to have that effect on the claimant. The tribunal acknowledged the letter was honest and forthright in its terms. The respondent wanted the claimant to know the situation was serious, that her behaviour was not appropriate and needed to change, but also that they were there to support her if she needed it (and would accept it). We understood why the claimant 15 may not have liked hearing what Ms Freeman had to say, but we considered that objectively it was not reasonable for the respondent's efforts to understand and address their concerns, and to support the claimant, to be perceived as being degrading, derogatory and humiliating. Further, the focus by the claimant on one aspect of the letter (the "threat") was not reasonable 20 given all of the other issues raised in the letter, the claimant's response and the context in which the "threat" had been made. We concluded that it was not reasonable for the unwanted conduct to have the effect perceived by the claimant.

459. We decided, having had regard to the fact the claimant's perception was 25 undermined and our conclusion that it was not reasonable for the unwanted conduct to have the effect (now) perceived by the claimant, that the unwanted conduct did not have the proscribed effect.

460. We should state that if we are wrong in this and the unwanted conduct did have the proscribed effect, we would have had to determine whether the 30 unwanted conduct was related to the claimant's disability. The claimant's disability was HSP and, at the time of issuing the letter to the claimant, the

respondent had no knowledge of mental health issues. We acknowledge the claimant sought to argue the respondent had "constructive knowledge" of mental health issues, but we could not accept that argument. We say that because the claimant had continually told the respondent that she did not have mental health issues and that there were no mental health issues connected to her disability. Further, the claimant had had only one period of 4 weeks absence where the reason for the absence was anxiety and depression. The claimant had returned to full time work following a phased return to work.

461. The claimant's position is illustrated in the 21 page document she prepared. The claimant, having disclosed to the respondent in her 21 page document, that she had been on antidepressants since 2018 and was currently on a very high level of antidepressants, continued to assert (i) that she had taken 4 weeks off work to address her mental health issues, and whilst she did not believe she was fully recovered, she did believe she was capable of working as she had previously done and (ii) she did not have any mental health permanent conditions; she had no background of mental health issues; she had never been diagnosed with a mental issue and there were no mental health issues connected to her disability.

462. The claimant's position at this hearing was that her behaviour was connected to her anxiety and depression which was connected to her HSP. The difficulty with that argument was that there was no evidence before the tribunal, other than the assertion of the claimant, that her behaviour was connected to her anxiety and depression. The evidence tended to suggest that the claimant had demonstrated many of the behaviours prior to being diagnosed with anxiety and depression and in periods where she did not have anxiety and depression. For example, the volume of emails, difficult relationships, getting involved with things outwith her area of responsibility and adopting contradictory positions.

463. We accordingly concluded that even if the unwanted conduct had the proscribed effect, the unwanted conduct was not related to disability. The unwanted conduct was related to a whole range of conduct and behaviours

which the respondent considered were not appropriate. We decided to dismiss this complaint for all of these reasons.

Point 18

5 464. The claimant complained that on the 8 June 2020 she received a second warning letter about her behaviour.

465. There was no dispute regarding the fact the letter had been sent to the claimant. The tribunal accepted the letter was unwanted conduct.

466. The tribunal next asked whether the letter had the proscribed purpose or
10 effect. The claimant considered the second letter was unwanted because it used similar language to the first and exacerbated her mental health issues. The claimant described the letter as reconfirming the respondent's intent to frighten, shame and humiliate her because of her disability.

467. The tribunal had regard to all other circumstances and noted the letter of the
15 8 June 2020 (page 1028) was sent by Ms Freeman to the claimant in response to her 21 page document. Ms Freeman noted the claimant had interpreted the first letter as a warning and confirmed it was not meant to be one. Ms Freeman appreciated the content of the first letter may have been upsetting but considered it was better and fairer to be open with the claimant. Ms Freeman
20 suggested having a telephone discussion of the issues and hoped the claimant would share with her the advice she had received from her GP/counsellor regarding her fitness for work. Ms Freeman asked the claimant to prepare a 1 – 2 page bullet point summary of her document. Ms Freeman invited the claimant to accept the letter as a very strong instruction that she
25 must do all she could to avoid a repetition of the behaviours outlined in the last letter, and that included sending 21 pages of detailed notes. Ms Freeman also invited the claimant to concentrate on her mental health and her work, and to not involve herself in any activity outwith her current job responsibilities.

468. The tribunal also noted the respondent, at this time, knew the claimant's
30 disability was HSP, and they had just learned the claimant had mental health

issues. The respondent did not know, and could not have known, that anxiety and depression were symptoms of HSP. We say that because the claimant did not understand the anxiety and depression to be a symptom of the HSP and she had repeatedly and clearly told the respondent that no mental health issues were connected to her HSP.

469. The tribunal also had regard to the fact that writing lengthy emails to management was one of the behaviours addressed in the previous letter of care and concern.

470. The tribunal also had regard to the fact that Ms Freeman's response to the claimant's 21 page document was not, in the circumstances, unreasonable and it was not inappropriate to ask for the lengthy document to be summarised into bullet points which could be discussed and addressed.

471. We have set out above the reasons for our conclusion that Ms Freeman's letter of the 27 May did not have the proscribed effect and, for the same reasons, we concluded it would not be reasonable for the second letter to be regarded as having the effect on the claimant as perceived by her. We say that because the second letter reiterated what had been said in the first letter in relation to behaviour and the need for change.

472. We decided the conduct did not have the proscribed effect and we dismissed this complaint for that reason.

Point 20

473. The claimant complained that at the informal, off the record, meeting with Ms Freeman, the following negative comments had been made: (i) she was told she had deep seated mental health issues; (ii) she was told her aspirations would never be achieved in the company because too much damage had been done and (iii) it was recommended she leave the company and she was given her notice period without asking.

474. We asked whether the conduct alleged by the claimant occurred. There was a conflict between the evidence of the claimant and Ms Freeman regarding what was said at this meeting. We preferred the evidence of Ms Freeman and

we found as a matter of fact Ms Freeman did not make the statements alleged to have been made. We preferred Ms Freeman's evidence that comments had either not been made or had been taken out of context. We have set out above (in the section regarding credibility) why we preferred Ms Freeman's evidence, and we do not repeat it here.

475. We concluded, having preferred Ms Freeman's evidence, that the alleged unwanted conduct did not occur. We decided to dismiss the complaint for that reason.

Point 22

476. The claimant complained that she had been referred for a mental health assessment and counselling by HR in July 2020, which she found offensive. The claimant asserted HR were not qualified to make medical diagnoses. The claimant also complained that during a meeting with Ms Freeman when she was explaining her strengths and the things she liked about her job, Ms Freeman did exaggerated eye-rolling to undermine her.

477. The tribunal noted that in an email from Ms Freeman to the claimant dated 16 June (page 1050) Ms Freeman stated *"I am investigating a mental health assessment for you …".* The tribunal accepted this was unwanted conduct in circumstances where the claimant did not want to be referred for a mental health assessment.

478. The tribunal next considered whether the unwanted conduct had the proscribed effect. The tribunal noted that in the claimant's submissions she *"highlighted"* that she found the referral for a mental health assessment offensive because Ms Freeman had said she had deep seated mental health issues, and Ms Freeman was not qualified to make a medical diagnosis. We found as a matter of fact, preferring Ms Freeman's evidence to that of the claimant, that Ms Freeman did not say the claimant had deep seated mental health issues. Accordingly, the reason why the claimant found the referral offensive was not supported.

479. The tribunal also had regard to the fact the claimant did not respond negatively at the time.

480. The tribunal next considered whether it would be reasonable for the conduct to have that effect on the claimant. We had regard to the fact the claimant had disclosed to the respondent that she had mental health issues and had been prescribed a very high level of antidepressants. We considered that in those circumstances, and in order to understand the condition and any adjustments which may be needed, the respondent reasonably and properly made the referral. We considered that objectively it was not reasonable for the claimant to feel it was offensive.

481. We concluded, for these reasons, that the unwanted conduct did not have the proscribed purpose or effect. We decided to dismiss this claim for this reason.

Point 23

482. The claimant alleged that at the return to work interview conducted by Ms Freeman, Ms Freeman had rolled her eyes in an exaggerated way and rubbished the claimant.

483. We preferred the evidence of Ms Freeman regarding this matter (see above) and we accordingly concluded this allegation did not happen. The claimant has not established there was unwanted conduct. We decided to dismiss this complaint for this reason.

Point 24

484. The claimant alleged that on the 18 October 2020 Ms Freeman had asked if the claimant wanted her to email other employees to tell them the claimant was disabled and that she needed to take breaks because she is disabled. The claimant considered this stereotyped her and was factually incorrect to say she needed breaks because she was disabled. The claimant did not want HR/the company speaking on her behalf on these matters.

485. The tribunal must first determine whether the conduct alleged occurred. The context for this claim was that Ms Freeman met with the claimant following

upon receipt of the reports from Unum and Medigold. The purpose of the meeting was to discuss the reports and agree actions to be taken. The meeting notes were sent to the claimant with an email from Ms Freeman (page 1341). We accepted Ms Freeman's evidence that during a discussion about working hours, and taking breaks, the claimant told her that her diary was *"constantly crashed"* by others and that people were putting appointments in her diary that she had no control over and this impacted on taking breaks. Ms Freeman advised the claimant to put breaks and lunch times in her diary and that she could decline meetings. Ms Freeman also said *"If you have a list of the most frequent people who diary crash then I will write to them asking them to consider your requirements and that they should consult with you before diarising appointments."*

486. Ms Freeman denied that she had offered to send an email in the terms alleged by the claimant.

487. We preferred Ms Freeman's evidence to that of the claimant (for the reasons set out above). We decided the claimant had not established unwanted conduct and this complaint is dismissed for that reason.

Point 25

488. The claimant alleged that when she presented Ms Knox with a sick note on the 11 August 2019, Ms Knox had responded *"It is your own fault you are sick, no-one made you do the hours".* The claimant asserted this comment was directly related to exhaustion and fatigue which is linked to her disability. The claimant felt she was being punished and humiliated for her disability.

489. The tribunal must first determine whether the alleged conduct occurred. The tribunal noted that the evidence regarding this allegation was confused. We say that because in the grievance the claimant raised regarding Ms Knox (page 767) this was said to have occurred on the 22 August 2019. Further, on the List of Issues, the allegation was said to have occurred on the 11 August, but this was amended to the 22 August 2019. We noted the sick note was not provided by the claimant to Ms Knox until the 23 August 2019, and so the alleged comment, said to have been made in response to the sick note being

provided, could not have pre-dated the sick note. This would apply equally if, as set out above, the claimant alleged the comment had been made on the 11 August.

490. The tribunal next noted the evidence regarding this alleged comment was wholly inadequate. The claimant did not address it during her evidence in chief. It was suggested to the claimant, in cross examination, that she had told Ms Knox that she would do extra hours to make up for the sickness absence and Ms Knox had responded to tell the claimant she did not need to do this. The claimant replied that she could not really recall, but that her reaction suggested there was more to it than that.

491. Ms Knox, in her evidence in chief, said she had no recollection of making this response.

492. The tribunal, in the circumstances, concluded there was insufficient evidence to make a finding that this comment had been made. We decided the claimant had not established unwanted conduct and the complaint is dismissed for that reason.

Point 26

493. The claimant complained about Ms Lock's email to her on the 8 July 2020, where it was stated *"In particular we are keen to obtain medical advice on whether you are disabled within the meaning of the Equality Act 2010".*

494. There was no dispute regarding the fact Ms Lock had written to the claimant in those terms. The tribunal accepted this was unwanted conduct because the claimant did not want to be referred for a medical report for advice regarding whether she was a disabled person in terms of the Equality Act.

495. The tribunal next considered whether the unwanted conduct had the proscribed effect. The claimant's perception was that the particular sentence (above) undermined and degraded her because it cast doubt on the authenticity of her condition and that it was highly offensive because it was obvious to any lay person that the claimant had a significant disability. The claimant felt it was insulting to have to prove she was disabled, when the

respondent had known about this for 18 months. The claimant felt there was a suggestion in the letter that if the claimant was not disabled she would not get support at work, and this created fear for the claimant. The claimant had also asked for no communication from Ms Freeman, and the pretence that the letter had been sent by Ms Lock was deceitful, disrespectful and dishonest.

496. The tribunal considered the claimant's evidence was undermined by the fact it was difficult to believe the claimant found the respondent's conduct offensive in circumstances where a theme throughout her evidence was that the respondent should have taken this action earlier.

497. The tribunal, in considering the other circumstances, noted the claimant had disclosed to the respondent, in early June 2020, that she had mental health issues and was currently taking a very high dose of antidepressant medication. This was the first time these matters had been disclosed to the respondent. The respondent wanted to obtain a medical report from the claimant's GP and it was in this context that Ms Lock wrote to the claimant (page 1136). The claimant has focussed, in the allegation, on part of a sentence. The tribunal considered it appropriate to have regard to the other terms of the letter which explained what the respondent wanted to do and why. The first paragraph of the letter stated:

"I have been asked to write to you in respect of the Company's desire to obtain a medical report on you. This follows discussions between you and Debbie Freeman and your referral to the provider of our Employee Assistance Programme, Health Assured. We understand that you continue to suffer from anxiety and depression that may require ongoing treatment. We appreciate that you also suffer from Hereditary Spastic Paraplegia. Although you have said that that condition has no effect on your work, it has been mentioned in the draft letter to your GP. This is because we believe it is important that the report is based on all relevant information. The Company has recently, as mentioned to you in the past, entered into a contract with a new third-party company offering a wide range of medical and counselling services to employees. At this stage, it is considered appropriate to obtain a GP's report first but I understand from Debbie Freeman that you have discussed the

Employee Assistance Programme services with her. If you have any concerns about the Company's proposed course of action please discuss them with me.

The reasons for seeking a report, even though you have recently returned to work, is to assist the Company in meeting its duties of care to you and your managers. In particular we are keen to obtain medical advice on whether you are disabled within the meaning of the Equality Act 2010 and, if you are, whether there are any reasonable adjustments that could be made. We are also concerned, naturally, about your indications that you suffer from mental health issues. We are considering whether it is appropriate to provide your GP with a copy of Part 1 of your 3-part June response to Debbie Freeman as I understand that that provides a detailed explanation of the background and your concerns. Please let me know what you think about the Company doing so. I am also attaching a copy of the draft letter that we will send to your GP subject to your consent.

The information provided by your GP may, following consultation with you and your senior managers, be helpful in assisting the company in managing your work with us in a way that does not negatively impact on your health in future. For these reasons we would like to obtain a full medical report on you from your GP or Consultant. …..."

498. The tribunal noted the claimant said she found the sentence offensive because she felt her disability was known about by the respondent and was clear for all to see. That was however difficult to reconcile with the claimant's submission that the actions of the respondent in seeking medical advice were *"2 years too late".* If the claimant believed the respondent ought to have taken this action sooner (and it was clear she did believe this because there were references to it throughout her evidence) then it was difficult to believe the claimant found the respondent's actions offensive.

499. We next considered whether it was reasonable for the conduct to be regarded as having that effect on the claimant. We, in considering this issue, had regard to the fact that the respondent knew the claimant had HSP, which is a progressive condition. The respondent had, in addition to this, recently

learned the claimant had mental health issues. The above letter from Ms Lock made very clear why the respondent wanted to obtain a medical report and why the HSP had been referred to. We also had regard to the fact it is reasonable and recommended practice for employers to seek medical and/or occupational health advice in relation to an employee with (or potentially with) a disability. It is also common practice for employers to ask GP's whether the employee's impairment/s would meet the definition of being a disabled person in terms of the Equality Act.

500. We could not accept the claimant's suggestion that doubt was being cast on the claimant's disability or that there was a suggestion in the letter that if she was not disabled she would not get support. We say that because Ms Lock carefully explained to the claimant why reference was being made to her HSP. We considered it appropriate for as much information to be provided in the respondent's letter as possible.

501. We concluded that, objectively, it was not reasonable for the claimant to feel the seeking of a medical opinion whether she was a disabled person within the meaning of the Equality Act, was degrading and offensive. We say that because the claimant had wanted the respondent to seek a report; it was appropriate for the respondent to seek a report; they carefully explained to the claimant why the referral was being made and why HSP was referred to and there was nothing to suggest in Ms Lock's letter that doubt was being cast on the claimant's disability (HSP). We considered the claimant was hypersensitive and reading into the letter things that were not there.

502. We concluded the conduct did not have the proscribed purpose or effect. We decided to dismiss the claim for this reason.

Point 27

503. The claimant alleged the respondent's refusal on the 13 August 2020 to postpone the Unum meetings by 2 weeks was harassment. The claimant explained she was moving house, had a huge customer project go-live and had a big end of year project presentation and that was why she had requested to wait two weeks until these events had completed before starting

the meetings. The claimant felt a two week wait was a fair and acceptable request, and the respondent's refusal was oppressive and heavy handed.

504. The tribunal accepted the respondent had refused to postpone the start of the Unum meetings by 2 weeks and we further accepted this was unwanted conduct.

505. The tribunal, in considering whether the conduct had the proscribed effect, noted the claimant perceived the conduct to be harassment because the refusal was described by her as being oppressive and heavy handed.

506. We had regard to the other circumstances and we noted that Unum had recommended the claimant and her manager Mr Sweeney have short weekly meetings to support the claimant's health and well-being. A half hour meeting was planned for the 30 September. This would have been the first of the weekly meetings.

507. The claimant emailed Ms Lock on the 23 September (page 1274) to say she had a customer go live and may need to postpone the meeting. Ms Lock asked to be kept updated and confirmed they would try to keep the calls as time efficient as possible so as not to impact on work.

508. Mr Sweeney indicated he was happy to move to another day. The claimant then suggested the meetings be put back until mid-October. Mr Sweeney did not have a difficulty with this, but needed to take advice from "Philip". The e-mail exchanges culminated in an email from Ms Lock (page 1269) on the 24 September confirming the weekly meetings had been recommended by Unum, for the claimant's benefit to support her mental and physical condition and to improve working relationships. Ms Lock referred to the fact the claimant had expressed a lack of trust in the company, and pointed out that if the claimant failed to engage in the process, or did not come to the meetings with an open mind, then the process would break down. Ms Lock confirmed the respondent was prepared to move the day of the meeting to accommodate business meetings or holidays, but the weekly meetings had to go ahead as planned.

509. The tribunal noted the claimant did not, as alleged, refer in her emails to moving house or having to give an end of year presentation.

510. The tribunal next considered whether it was reasonable for the conduct to have that effect on the claimant. The tribunal considered that in circumstances where the respondent was acting on advice from occupational health to put in place short weekly meetings between the claimant and her manager in order to provide support to the claimant, it was not, objectively, reasonable for the claimant to feel the refusal to postpone those meetings was oppressive and heavy handed. This was particularly so in circumstances where the claimant had not explained to the respondent the reasons she now sought to advance to explain her request for the postponement. We acknowledge the claimant felt the refusal to be unfair, but that falls far short of it being harassment. We concluded, for these reasons, that the conduct did not have the proscribed effect.

511. We should state that if the unwanted conduct did have the proscribed effect, we would have had to determine whether the unwanted conduct was related to disability. We would have answered that question in the negative. The unwanted conduct was related to the fact the respondent had acted as recommended by occupational health for the benefit of the claimant and did not want to postpone/delay the meetings because it feared it would be the start of a slippery slope in them not taking place. The unwanted conduct was not related to the claimant's disability.

512. We, in conclusion, decided the unwanted conduct did not have the proscribed effect, but even if it had, the conduct was not related to the claimant's disability. We dismissed the claim for these reasons.

Point 28

513. The claimant alleged that the respondent's response to the email trail on the Thursday before Easter weekend for running an employee art competition on 9 April 2020 was harassment. The claimant believed this was linked to the 12 March meeting. She described that she was *"walking on eggshells"* and that everything she did was wrong. She asserted the respondent knew she was

suffering from a mental health issue. The claimant, herself, did not understand what was happening as she was unaware she was unwell and struggling to understand these reactions. She was constantly criticised for behaviour related to her mental health disability and this increased her anxiety. The claimant was becoming more confused by the respondent's heavy handed feedback and she found the conduct intimidating, hostile and frightening.

514. There was no dispute regarding the fact the claimant did receive a response in relation to the easter art trail email. The tribunal accepted the respondent's response to the claimant's email about an Easter art competition was unwanted behaviour.

515. The tribunal, in considering whether the conduct had the proscribed effect, noted the claimant perceived the conduct as having the effect described above.

516. The tribunal considered the claimant's evidence regarding how she perceived the conduct was undermined by the fact that at the time, upon receipt of the emails from Ms McLaughlin and Ms Freeman, the claimant apologised for what she had done and for her *"poor judgment".* It appeared to the tribunal that having acknowledged she had been wrong in her actions, and having apologised for it, it was difficult to believe how the claimant now sought to describe her perception of those emails.

517. The tribunal had regard to the other circumstances. The tribunal, noted the claimant had taken it upon herself to send an email (page 926) to all employees of the company. The email stated the Employee Board was running an Easter Art Competition as a bit of fun. She invited entries from employees and anyone in their family, and announced there would be prizes (vouchers) to be won. This email went out a couple of weeks after the country had gone into national lockdown.

518. Ms Freeman emailed the claimant regarding this matter (page 925) to say that the company could not have communications coming out of too many parts of the business because it distracted from the focus on achieving day to day work. She also stated communications needed to be agreed in advance so

they did not create uncertainty over what is formal and official and what is not. Ms Freeman concluded by saying *"Please, you must clear any comms to the wider business via me first …"*

519. The claimant replied *"Ahh so sorry Debbie. I thought because we had discussed it at the EB meeting it would be an ok employee competition. ….. Apologies again. Anything else will send to you first for approval. Hope you get some time off this weekend. Happy Easter."*

520. We acknowledge the claimant now seeks to argue that the email from Ms Freeman was oppressive and heavy handed, but that does not sit comfortably with her acceptance and recognition at the time that she had overstepped the mark in sending the email. The claimant, as can be seen from the emails, apologised for what she had done and confirmed anything in the future would be sent to Ms Freeman first for approval. The claimant also subsequently described her actions as *"poor judgment".*

521. The tribunal also noted this was not part of the claimant's remit; the art competition had not been authorised and because the email had been sent the respondent had to follow through and proceed with the competition, judging entries and presenting prizes.

522. The tribunal next had regard to whether it was reasonable for the conduct to be regarded as having that effect on the claimant. We were entirely satisfied that, objectively, it was not reasonable for the claimant to feel the matter had been dealt with in an oppressive and heavy handed manner. We say that because we considered this was a further example of the claimant unreasonably taking offence in circumstances where she had clearly been in the wrong and understood/acknowledged, at the time, that she had been in the wrong.

523. We concluded the conduct did not have the proscribed effect

524. We should state that if we had decided the unwanted conduct had the proscribed effect, we would have had to consider whether the unwanted conduct was related to the claimant's disability. We noted the claimant

asserted the respondent was aware the claimant was suffering a mental health issue. This was not an assertion we could accept. The claimant had not yet disclosed to the respondent that she had a mental health issue, and as set out above, the respondent could not have had constructive knowledge of this in circumstances where they had been continually and consistently told by the claimant that she did not have any mental health issues connected to her disability. We considered we were supported in this conclusion by the fact the claimant stated (above) that she was not aware she was unwell.

525. We concluded, having had regard to all of the above points, that the unwanted conduct related to the fact the claimant had sent an unauthorised email to all employees regarding an unauthorised art competition. The claimant's action in sending the email was not related to her disability of HSP.

526. We decided the unwanted conduct did not have the proscribed effect. Further, even if it had had the proscribed effect, the unwanted conduct was not related to the claimant's disability. We decided to dismiss the claim for these reasons.

Point 29

527. The claimant alleged that emails between Ms Freeman and Ms Lock on the 24 June 2020 amounted to harassment. The email from Ms Freeman stated *"she told Karen McLaughlin she is resigning tomorrow – this is at least the 6th time".* Ms Lock replied *"Bloody get on with it then, lol"* and Ms Freeman replied *"it is going to turn into a boxing match".*

528. There was no dispute regarding the fact emails had been sent in those terms. We accepted there had been unwanted conduct.

529. We next considered whether the unwanted conduct had the proscribed effect. The claimant perceived the emails (which she did not see at the time, and only learned of through a subsequent SAR request) spoke of her in a disparaging way, with hostility, contempt and disdain.

530. The tribunal had regard to the circumstances, and noted the emails had been sent in the context of the claimant having threatened to resign on several occasions. We also noted, and accepted, Ms Freeman's evidence that the

reference to a boxing match was to constant emails going back and forth, which was in fact what happened. The respondent had been here before with the claimant: Ms Freeman was familiar with the cycle of threatened resignation followed by the claimant changing her mind, contradictory messages and continual emails.

531. The tribunal considered whether it was reasonable for the conduct to be regarded as having that effect on the claimant. The tribunal considered the comment in Ms Lock's email to be insensitive but concluded that objectively, it was not reasonable for the claimant to feel the emails were hostile. We considered this was another example of the claimant being over-sensitive to any comment or criticism of her.

532. The tribunal decided, for these reasons, that the conduct did not have the proscribed effect.

533. We should state that if we are wrong in this, and the unwanted conduct did have the proscribed effect, we would have decided the unwanted conduct was not related to disability. We say that because the conduct was related to the claimant's repeated threat to resign. We acknowledge the claimant would seek to argue that she felt like resigning because of the way she had been treated which was related to her disability but we could not accept that argument because, as stated above, there was no evidence to support the assertion the claimant's behaviour was linked to anxiety and depression and, at the time of these events, the respondent (and indeed the claimant) had no knowledge that anxiety and depression were symptoms of HSP. We decided for these reasons to dismiss this claim.

Point 30

534. The claimant alleged that in January 2021 there had been a failure to understand her mental health issues. The claimant asserted the respondent had gone through the motions, but had not shown genuine support or understanding of her mental health issues. This had been humiliating, hostile, degrading, inauthentic, unsupportive, untruthful and dishonest. The claimant could not trust her employer as the situation *"felt off and disingenuous".*

535. The tribunal considered this allegation was very widely and generally drafted and appeared to simply encompass all other allegations made. The claimant, for example, in her submissions, referred to the threats to manage her out of the business, the lack of a return to work plan without support, the lack of an investigation into alleged discriminatory comments, the behaviour of Ms Freeman, Ms Lock refusing to move meetings. All of these matters have been dealt with above in the various claims.

536. We did not accept there had been a failure to understand the claimant's mental health issues. The claimant did not disclose to the respondent, until June 2020, that she had mental health issues. Once the respondent had been informed of this, they took reasonable and appropriate action to obtain a medical report, seek occupational health advice and agree adjustments. Ms McLaughlin produced a table of the agreed adjustments.

537. The claimant's argument appeared to be that notwithstanding the fact she did not know she had mental health issues, and notwithstanding the fact she had consistently told the employer that no mental health issues were connected to HSP and had rebuffed the respondent's enquiries whether she needed emotional support, the respondent ought to have known, from the claimant's behaviour, that she had mental health issues. This was not an argument we could accept. Ms Freeman, Ms McLaughlin, Mr Sweeney and Ms Lock are not medically trained. It is not for them to identify and diagnose ill health/mental health issues. Ms Freeman and Ms McLaughlin both encouraged the claimant to discuss her health and enquired/suggested that she may need emotional support, but, as stated above, the claimant fiercely rejected their suggestion and indeed now claims that such suggestions were discriminatory.

538. We could not accept the assertions made in this allegation because we considered the employer acted reasonably and appropriately based on the information they obtained from the claimant.

539. We concluded, having had regarding to these points and all of the points set out in relation to the various claims concerning these matters, that the

claimant had not established there was unwanted conduct and the claim is dismissed for that reason.

Point 31

540. The claimant alleged that going to her home to collect company equipment with 24 hours' notice was harassment. The claimant asserted this followed a campaign of harassment and intimidation for over a year. This happened during lockdown and was a violation of her right to privacy and dignity. The claimant's request to keep equipment was refused.

541. There was no dispute regarding the fact the respondent did arrange to have equipment collected from the claimant's home. We accepted this was unwanted conduct.

542. We next considered whether this conduct had the proscribed effect. We noted the claimant perceived the conduct to be heavy handed; she questioned why a courier had not been arranged and described the emails as aggressive, threatening and intimidating. The claimant felt the respondent was trying to impose their authority by coming to her home.

543. We had regard to the other circumstances and noted the emails sent to the claimant regarding this matter. Ms Elizabeth Bamford, Receptionist, wrote to the claimant on the 2 March (at 12.24) to say it was company policy for all equipment to be returned. Ms Bamford noted the claimant had agreed to return her equipment but this had been delayed because of lack of packing material. Ms Bamford confirmed the company would deliver her personal belongings that evening on or about 6pm and would expect the company equipment to be ready for collection on the doorstep.

544. We noted there was no suggestion anyone would seek to enter the claimant's home (there was a national lockdown in place at the time). The arrangement was for the claimant's personal belongings to be left on the doorstep and the company equipment collected from the doorstep. We also noted the claimant had previously used the doorstep delivery/collection method for other items.

545. Ms McLaughlin had collected the claimant's personal items and boxed them for delivery. Ms McLaughlin did not think it appropriate for her to deliver them and so she asked her husband to make the drop off and collection. Ms McLaughlin emailed the claimant to advise her of this (page 1717) and also sent a text message (page 1716).

546. The tribunal noted the claimant accepted she had received the emails and text message. She knew what was happening and she knew no-one would be coming into her house.

547. The tribunal next considered whether it was reasonable for the conduct to be regarded as having that effect on the claimant. We concluded, having had regard to the fact the claimant had been advised of the method of collection and delivery, knew that no-one would be coming into her house, knew who would be making the delivery and collection that objectively it was not reasonable for the claimant to feel intimidated.

548. The tribunal concluded for these reasons that the conduct did not have the proscribed effect.

549. We should state that if we had had to determine whether the unwanted conduct was related to the claimant's disability, we would have decided it was not. We say that because the reason for doing what the respondent did was because personal items had to be delivered to the claimant and company equipment had to be returned. Ms McLaughlin considered that doorstep collection and delivery (which had been used on other occasions) was the most appropriate way to achieve this. This had nothing whatsoever to do with the claimant's disability.

550. We decided, for these reasons, to dismiss this claim.

551. (This allegation post-dated the termination of the claimant's employment. The claimant did not seek to address the tribunal regarding the terms of section 108 Equality Act. This did not, in any event, make any difference to the conclusion of the tribunal).

Point 32

552. The claimant alleged that the comment by Mr Sweeney in his email of the 9 July 2020 that the claimant was "attention seeking" amounted to harassment. The claimant asserted this was a direct reference to her mental health and inferred the claimant was after attention rather than unwell. The claimant found this insulting, degrading, hugely offensive and undermining and also considered it demonstrated a lack of understanding and compassion with a person with a physical disability and a mental health disability.

553. There was no dispute regarding the fact Mr Sweeney did, in an email to Ms Freeman (page 1143) say *"…I agree in what you are saying… attention seeking".* We accepted this was unwanted conduct.

554. We considered whether the unwanted conduct had the proscribed effect. The claimant (as noted above) perceived this comment to be about her mental health and she found it insulting, degrading, offensive and undermining.

555. The tribunal had regard to the other circumstances and noted that Mr Sweeney had emailed Ms Freeman on the 7 July (page 1146) to inform her that the claimant had phoned him to apologise for her behaviour earlier in the year. The claimant had also apologised for wanting to leave. Mr Sweeney described that he had been a bit shocked to receive the phone call, but also happy the claimant was in a better place and wanting to stay in managed services.

556. The following day Mr Sweeney emailed Ms Freeman again (page 1145) to let her know the claimant had asked for a call with him the following day to *"discuss an important issue".* Mr Sweeney later informed Ms Freeman the claimant had cancelled the meeting.

557. Ms Freeman responded on the 9 July (page 1144) to ask *"did she say why?"* and she observed *"She is looking for you to react".* Mr Sweeney replied to that email to say *"she said she had a personal matter that may have required some time off to cover but someone else is now covering. I agree in what you are*

saying …. attention seeking." Mr Sweeney notified Ms Freeman the following day that the claimant had gone off sick that afternoon.

558. We noted that at the same time as these emails were being exchanged, the claimant had received the letter from Ms Lock dated 8 July (page 1136) seeking her consent to contact the GP for a medical report. The claimant had also emailed Ms McLaughlin on the 8 July at 9pm (page 1140) to say she had written her letter of resignation which she planned to send tomorrow, but she wanted to have the opportunity to catch up with Ms McLaughlin first to tell her the reasons for the resignation.

559. Mr Sweeney, in his evidence in chief, stated he felt he had offered the claimant lots of support, but he had other people to manage and a big department with lots of pressures, to run. Mr Sweeney had already reached out to Ms McLaughlin and Ms Freeman for support in dealing with the claimant. Mr Sweeney found the claimant difficult to manage because she took up so much management time and constantly changed what she wanted. He described the comment as an "emotional" comment reflecting what he felt at the time.

560. The tribunal next considered whether it was reasonable for the conduct to be regarded as having that effect on the claimant. We concluded this was a further example of the claimant being hyper-sensitive to any comment made about her and, objectively, it was not reasonable for the claimant to feel the comment was insulting, degrading and hugely offensive.

561. The tribunal concluded for all of these reasons that the conduct did not have the proscribed effect.

562. We should say that if we had concluded the conduct had the proscribed effect, we would have decided the conduct was not related to the claimant's disability. We say that because the comment was related to Mr Sweeney's concern that the cycle of behaviour with which he had become familiar was about to repeat itself again.

563. We decided to dismiss this claim for these reasons.

564. We, in conclusion, decided to dismiss the claim brought by the claimant in its entirety.

Employment Judge: Lucy Wiseman
5 Date of Judgment: 22 February 2023
Entered in register: 23 February 2023
and copied to parties