



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Mr Sayed Yusuf

- v
1. The London Borough of Brent
 2. Mrs Yogini Patel
 3. Mr Sandor Fazekas
 4. Mr Tony Kennedy
 5. Mr John Dryden
 6. Mrs Padideh Asgari
 7. Ms Diane Walker

Heard at: Watford Hearing Centre

On: 5, 6, 7, 8, 9, 12, 13, 14, 15, 16
December 2022 and 16, 17, 18, 19, 20
January 2023 (i.e. 15 days in total)

Before: Employment Judge G Tobin
Members: Ms H D Edwards
Mr A Scott

Appearances

For Mr Yusuf: In person, supported by Mrs B Chamay (friend)
For the first respondent: Mr P Lockley (counsel)

RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

1. The claimant was not directly discriminated against, in breach of s13 Equality Act 2020.
2. The claimant was not subject to discrimination arising from his disability, in breach of s15 Equality Act 2010.
3. The claimant was not indirectly discriminated against, in breach of s19 Equality Act 2020.
4. The respondent did not fail in its duty to make reasonable adjustments, pursuant to ss 20 and 21 Equality Act 2010.

5. The claimant was not harassed, in breach of s26 Equality Act 2020.
6. The claimant was not victimised, in breach of s27 Equality Act 2020.
7. Various claims made by the claimant under the Equality Act 2010 are out of time, pursuant to s123 Equality Act 2010. If there were any merit in these claims (which there was not) then these claims would be statute-barred as the Employment Tribunal would not exercise its discretion to allow such complaints to proceed.
8. The claimant was not unfairly dismissed, in breach of s94 Employment Rights Act 1996.

REASONS

The case

1. This case has been subject to 3 preliminary hearings and the nature of proceedings was described by in the Preliminary hearing summaries.

The hearing

2. The hearing proceeded largely in-person. Day-4 was heard as a remote hearing under HM Courts & Tribunal Service Cloud Video Platform because the Employment Judge needed to attend a short medical appointment on Friday 9 December 2022 close to his home, which could be easily accommodated with a remote hearing but could not be accommodated if sitting in-person at Watford Hearing Centre. The respondents and their representative were content to proceed by video hearing this day; however, Mr Yusuf objected to the hearing proceeding remotely. His objection was based on his preferred attendance at the hearing centre. All of the preliminary hearings were heard as video hearings, and Mr Yusuf has access to an up-to-date laptop (which he used at the in-person hearing), an internet connection and somewhere quiet and secure to participate. Accordingly, day-4 proceeded remotely despite Mr Yusuf's objection. Days -6, -7 and -10 also proceeded remotely because of the national train strike and the disruption entailed by witnesses attending the hearing. There were no problems in the connection of format of in the remote hearings.

The evidence

3. We, i.e., the Tribunal, heard from the following witnesses:
 - 3.1 Mr Sayed Yusuf, the Claimant.
 - 3.2 Mr Saad Hassan, who worked with Mr Yusuf for the First Respondent, the London Borough of Brent.

- 3.3 Mr Sandor Fazekas, the Third Respondent, who was at the relevant time the Project Development Manager in the Highways and Infrastructure Service. He replaced Mr Hossein Amir-Hosseini as Mr Yusuf's line manager from April 2019.
 - 3.4 Mr Tony Kennedy, the Fourth Respondent, who at the relevant time was the Service Lead for Transportation and Highways and Infrastructure. Mr Kennedy took over line management responsibilities for Mr Yusuf from October 2019.
 - 3.5 Mr John Dryden, the Fifth Respondent, who was the Team Leader and Project Development Highways and Infrastructure. Mr Dryden reported to Mr Fazekas and he was Mr Yusuf's line manager from 1 April 2019 to 16 June 2019.
 - 3.6 Mrs Yogini Patel, the Second Respondent was the Senior Regulatory Service Manager until she left the First Respondent's employment in March 2020. She investigated Mrs Asgari's complaint against Mr Yusuf.
 - 3.7 Mrs Padideh Asgari, who was a Principal Engineer and worked in Mr Yusuf's team on an agency contract from March 2019 until she went on maternity leave on 31 August 2019. Mrs Asgari raised a complaint against Mr Yusuf of sex discrimination on the basis of her gender.
 - 3.8 Ms Diane Walker, the Seventh Respondent, who was the Senior Human Resources Advisor and was involved in various aspects of Mr Yusuf's case from July 2019.
 - 3.9 Mr Martin Williams, who was the First Respondent's Head of Human Resources and was involved in some aspects of Mr Yusuf's case from December 2019.
 - 3.10 Mr Gavin Moore, who was the Head of Parking and Lighting until he left the First Respondent in December 2021. Mr Moore chaired Mr Yusuf's Stage 3 sickness absence meeting and took the decision to dismiss Mr Yusuf on the grounds of capability.
 - 3.11 Christ White, who was the Operational Director in the Environmental Services Directorate, and he was involved in some aspects of Mr Yusuf's case from August 2019.
4. The first respondents' witnesses were clear and straightforward in their evidence. The first respondents' key witnesses were Mr Yusuf's line managers, Mr Dryden, Mr Kennedy and Mr Fazekas and the dismissing officer, Mr Moore. All of these key witnesses gave honest accounts that did not exaggerate. Their accounts were consistent with the contemporaneous documents and were also consistent with the evidence of each other and also of the HR Support Officers. It took far too long to deal with matters relating to Mr Yusuf and, on the face of it, there was an absence of robust management to resolve various grievances and disciplinary processes in a timely manner. However, we accept the evidence of the First Respondents' witnesses that Mr Yusuf was awkward, prone to circumvent difficult questions and bombarded his managers and HR with irrelevant accusations and

documents. The fact that both these proceedings and this hearing were so lengthy was largely a reflection of the First Respondents' officers attempts to pursue their tasks as fairly and as transparently as possible.

5. Mr Yusuf was disruptive at this final hearing. We note that Employment Tribunal hearings can be stressful for all concerned and we took this into account in our assessment of evidence. This was because it was important to the Tribunal that we came to our own independent conclusion about the facts under scrutiny and that we are not distracted by the conduct of Mr Yusuf at this hearing.
6. At the outset of the hearing the Employment Judge raised Mr Yusuf's disability. We note that on the various Claim Forms, and records of proceedings set out Mr Yusuf disability and indicated some need for reasonable adjustments at the hearing. The Employment Judge asked Mr Yusuf whether he needed any adjustments, and it was agreed that Mr Yusuf would be given breaks when requested. Mr Yusuf said that this arose from his post-traumatic stress disorder. Mr Yusuf was asked at various stages to refer the Tribunal to the relevant documentation in the bundle or to provide some documentation in respect of his short-term memory difficulties. Mr Yusuf eventually provided some documentation on Day-9 which was inserted into the hearing bundle at page number 4183 to 4198. The relevance to these documents is as follows:
 - 6.1 On 18 August 2017 [HB4183] Mr Mohammed Farouk who was a Senior Clinical Fellow in Orthopaedic Surgery recalls that Mr Yusuf talked of depression but there is no mention of any PTSD or short-term memory loss. The record on the South London and Maudsley NHS Foundation Trust referral form to the Southwark North Assessment and Liaison Team refers to depressive symptoms but does not report any short-term memory loss. There is a record on 29 March 2018 of Mr Yusuf having depression. Again, there is no reference to any short-term memory loss. Mr Yusuf was referred to what we understand to be the Memory Clinic on 2 August 2018 which suggests that on the basis of Mr Yusuf's MSE scores and his age that his purported symptoms of memory loss were within parameters so as to be unproblematic [see HB4190]. There is no record of short-term memory difficulties in correspondence from Ms/Dr Joanna Holroyd of the Talking Therapies Southwark on 14 January 2020. Indeed, on 11 February 2020 Ms Holroyd refers to PTSD (which the Tribunal accepted Mr Yusuf suffered from) on 11 February 2020 but there is no evidence of suffering from short-term memory loss [HB4193]. Dr Kenyon's letter from Talking Therapies of 13 December 2020 again confirms that Mr Yusuf suffered from PTSD but there is no reference to any short-term memory difficulties.
 - 6.2 Because Mr Yusuf claims to have short-term memory loss Mr Lockley explained the purpose of his questions before he actually put the questions to Mr Yusuf. He kept his questions short and focussed and we are grateful to Mr Lockley in this regard.
7. On Day-2 Mr Yusuf asked to sit on a large rubber ball (the size and colour of a space hopper minus the ears). The Judge expressed his concern that Mr

Yusuf might fall off and injure himself particularly as the space was tight (particularly given the number of hearing bundles) and there were some cables and power sockets underneath Mr Yusuf's desk. However, Mr Yusuf was insistent that he was able to cope in such apparent difficulties. Mr Yusuf said that the ball was intended to assist his difficulties with posture, although he was not able to refer to any medical evidence which it recommended such a device. However, because Mr Yusuf said that this had proved beneficial to him in the past, the Tribunal was willing to accommodate his request and allowed him to sit on the inflatable rubber ball.

8. Mr Yusuf gave his evidence in a reasonably fluid manner, other than the expected difficulties that a self-representing party might have in a long, multi-day case, Mr Yusuf did not exhibit any particular difficulties in answering questions when giving his evidence. It was immediately apparent and raised by the judge on a number of occasions that Mr Yusuf had not prepared cross examination for the respondents' witnesses. He did not have a list of prepared questions which the judge advised him to do so at various stages but in particular at the case management discussions on the morning of Day-1. The Employment Judge offered to assist Mr Yusuf in timetabling his cross-examination, but Mr Yusuf declined to take up this option. Mr Yusuf did not raise any problem associated with his difficulties in asking questions. Following the Employment Judge's various explanations, the Tribunal had no difficulty about Mr Yusuf's ability to follow events and present his version of events. This was in respect of Mr Yusuf's refusal to engage in the Employment Tribunal process fully and also in the reliability of Mr Yusuf's evidence.

The hearing bundles

9. At the outset of the hearing the first respondent presented a hearing bundle of 10 lever arch files. This amounted to around 4,180 pages of documents. The First Respondent had also presented 5 double-sided lever arch files full of documents from Mr Yusuf. This represented 4,833 pages. On Day-1 we started the hearing with a short case management discussion. Mr Yusuf immediately objected to the hearing bundle. He said that he would not be referring to any hearing bundle nor would he be referred to the hearing bundles, i.e. he would not answer any question about documents contained therein. He said that this was because the First Respondent had prepared the hearing bundles without his agreement. Mr Lockley informed us that this dispute related to the Tribunal's orders. Case preparation orders were provided relatively late in proceedings after the Respondents' representatives request. Prior to the case management orders being made the first respondent had prepared a draft hearing bundle, which was sent to Mr Yusuf before the order was made, i.e. before the respondents' were obliged to disclose their list of documents pursuant to the order of Employment Judge Maxwell. Mr Yusuf complied with the order of Judge Maxwell to disclose his documents, but he was aggrieved that the first respondent had not gone through this step (again). We understand the premise of Mr Yusuf's protest; but we can see no injury in the Respondent's disclosure in advance of the order to do this by list of documents. The draft hearing bundle was a form of disclosure of documents by list. The Respondents' representatives thereupon added Mr Yusuf's documents (such that they regarded as relevant to proceedings) to produce a finalised hearing bundle. This is the bundle that

was variously referred to by the parties as “the Hearing Bundle” or “the First Respondent’s Hearing Bundle” but we call in this document “the Hearing Bundle” or reference this “HB”.

10. We understand that there was considerable argument over the Hearing Bundle. Despite Mr Yusuf refusing to accept the Hearing Bundle as prepared by the Respondents’ representatives, he declined to prepare his own hearing bundle of additional documents or, indeed, his own version of the Hearing Bundle. In order to alleviate the ensuing dispute about documents, the Respondents’ representatives proceeded to prepare a separate hearing bundle comprising of all of Mr Yusuf’s disclosed documents, which was unfiltered. We refer to this bundle as the Claimant’s Bundle or reference this “CB” with the appropriate page number. In preparing this Claimant’s Bundle, although disowned by Mr Yusuf, the Respondents’ representatives adopted Mr Yusuf’s ordering and adhered to the same description (notwithstanding the Respondents disputed the description Mr Yusuf gave various documents in his disclosure). The only difference from the disclosure of this material was that that bundles were paginated for ease of the Tribunal reference. Again, this was not acceptable to Mr Yusuf and he said that he refused to accept this document because it had been prepared by the Respondent’s representative. Mr Yousef said that he had not had time to check these bundles, although so far as we see both the Hearing Bundle and the Claimant’s Bundle was produced and disclosed without undue delay. The Judge suggested that Mr Yusuf utilise some of the rest of the first day to check his Bundle, but Mr Yusuf refused. He said that he had all of his documents on a flash drive. So far as the Tribunal could ascertain Mr Yusuf’s documents were all contained in the Hearing Bundle or the Claimant’s Bundle (and usually both) so he was being unnecessarily disruptive in refusing to look at the hearing bundles provided. Surprisingly, Mr Yusuf was not able to open his flash drive containing his documents on day-1 nor was he able to open his flash drive containing his documents on day-2, day-3 and on day-4. We are not sure whether he was able to access his flash drive throughout the hearing. So, in addition to his own disclosure provided by the Respondents representatives (the Claimant’s Bundle), we think Mr Yusuf had access to his flash drive from, we think, Day 5 onwards. In any event, he was subsequently able to put documents to the first respondents’ witnesses which Mr Lockley and/or Ms Thompson, from the first respondent, helpfully identified from the Hearing Bundle or the Claimant’s Bundle.
11. On day-1 the Judge resolved the dispute about the hearing bundle as follows. He gave the direction that Mr Yusuf was to go thorough his own bundle of documents, which was prepared by the first respondent and called the Claimant’s Bundle, and if he can identify any documents that is not included in that bundle then he should prepare another bundle of documents and bring this to the tribunal the following day (i.e., for day-2) with appropriate copies and the Tribunal would consider (subject to the Respondents’ objection) any further hearing bundles. The Judge said that it was important that we had all of the relevant documents before the evidence commenced. He said that Mr Yusuf would commence giving his evidence on day-2 and that the Tribunal would not allow further documents to be admitted except for exceptional circumstances or if the tribunal requests further documents which have been omitted by the parties. It was clear to the Tribunal that Mr Yusuf had merely refused to look at the bundle containing his documents because the First

Respondent had prepared this (in order to break an impasse). This conduct was not acceptable for the hearing.

12. The Judge asked Mr Yusuf on the morning of day-2 whether he had any additional documents to include in the hearing bundle and he said that he did not. He directed that the Tribunal will now focus on the multi-volumed Hearing Bundle and Claimant's Bundle that have already been provided. At the end of day-2 Mr Yusuf held up his flash drive and said that all of his documents were contained in the flash drive. The Judge reminded him of the conversation that we had on day-1 and his request for any additional documents to be addressed on that morning (day-2). Mr Yusuf said that he misunderstood. The judge was crystal clear and there could be no misunderstanding. Mr Yusuf chose not to follow the Judge's very clear instructions, and, by that stage, we had started the evidence. The Judge said that he would not allow any additional documentation to be adduced save as for exceptional circumstances. Mr Yusuf queried whether this late production of his flash drive was an exceptional circumstance and the Judge said that not bothering to comply with his directions did not amount to exceptional circumstances.
13. On day-3 Mr Yusuf refused to answer any further questions in cross-examination. He had threatened this previously and the Judge strongly advised him against making such a decision, warning him of the likely consequences if he chose to pursue such a course. We broke early for Mr Yusuf to reconsider his position. On the morning of day-4 Mr Yusuf said that he would not answer any more questions because these were based on the Hearing Bundle (which he did not recognise) and the Claimant's Bundle which he objected to. He confirmed that he would not answer any cross-examination from Mr Lockley nor any questions from the Tribunal. The Judge reaffirmed that if he proceeded with this course then he would substantially damage his claim by refusing to adduce evidence in support of his allegations. In addition, he may undermine the evidence that he had already given by not offering a complete explanation to all aspect of his case, ie it is difficult to be credible when a party/witness is selective about which questions he might answer. Once the Judge confirmed again his advice against such a course, Mr Yusuf confirmed that he was not going to answer any further questions and we proceeded.
14. Mr Yusuf said that he was not going to ask questions in cross-examination of the respondent's witnesses. So, the Judge informed him that the first respondent witnesses would be called to confirm their statements. If Mr Yusuf did not wish to challenge their evidence, then that would be a matter for him, but each of the respondent witnesses would be called and Mr Yusuf was to be offered the opportunity to challenge their evidence. The Tribunal may have additional questions and The Judge indicated that he and the non-legal members might have questions arising from our reading of the statements. Mr Yusuf refused to ask question of Mr Fazekas so he confirmed his statement and his evidence was left unchallenged. On day-6 Mr Yusuf decided to ask Ms Patel a number of questions and he proceeded to challenge the evidence of all other witnesses.
15. Having now heard the totality of the evidence, upon reflection, the Tribunal did not find that Mr Yusuf was a reliable witness. A common theme in this

case was the hostility that Mr Yusuf displayed to his managers and some colleagues. Virtually every management instruction or HR request or any slip or omission was regarded by Mr Yusuf as a deliberate and co-ordinated response by his employers to muzzle him or to torment him. This is reflected in the large numbers and far-reaching claims brought against the first respondents and the number of people to whom allegations have been made. This, and Mr Yusuf's unwillingness to ascribe more legitimate motives to the actions of others, undermine the veracity of his evidence. In our view, our assessment about the veracity of Mr Yusuf's evidence was not affected by his claim to have a poor memory not by any indication of post-traumatic stress disorder. When assessing Mr Yusuf's version of events and analysing his claims, we place particular emphasis upon the contemporaneous document rather than Mr Yusuf's - or other witnesses - recollection of events some months or years later.

Application of recusal for bias

16. Just after lunch on day-4 Mr Yusuf made an application that the Judge recuses himself on the basis of bias. He sent an email to the Tribunal on the way back into the hearing at 2.04pm. The Tribunal was in the process of swearing in Mr Fazekas for his evidence when Mr Yusuf interrupted and raised his application which had been sent by email. The Tribunal immediately paused to hear Mr Yusuf's application.
17. Upon reconvening the Employment Judge made clear that Mr Yusuf was entitled to make any such application and he should not feel impeded in pursuing this application because of concerns that this Tribunal or any future Tribunal might take against him. It was his right to pursue such matter in the open where a party believed there was a clear basis for so doing. The Hearing Judge explained to Mr Yusuf the appropriate test in *Porter v Magill 2002 2AC 357 HL, i.e.* that the Tribunal must consider whether the circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased. The application of bias was mainly based on the Tribunal's unanimous decision to refuse Mr Yusuf application to adduce evidence in his flash drive. However, before we dealt with the application as Mr Yusuf did not correctly refer to some of the Judge's comments and took others out of context, it was important to correct him for the record.
 - a. The Hearing Judge did say that Judge Maxwell's allocation of 15 days was generous because of the volume of cases and the pressure on Employment Tribunal resources. He gave no indication that this estimated length of hearing would be shortened. Indeed, he said that the Tribunal would respect Judge Maxwell's hearing allocation and that we would adhere to Judge Maxwell's timetable. The allocation of hearing time and timetabling is a matter of judicial discretion. By way of analogy, the Judge did use the phrase "You don't often have these amount of days for a murder or rape case" as an indication of proportionality, the enormous pull on judicial resources and to emphasise to the parties to complete the case within the time given.
 - b. Mr Yusuf was asked on day-1 what reasonable adjustments he would require; he asked for the sitting-ball. The Judge went through the

section of the Claim Forms that gave Mr Yusuf the opportunity to identify his reasonable adjustment. The Judge identified that regular breaks would be taken, when these were likely and the duration. He said to Mr Yusuf and the respondents and their representatives present that if they needed more breaks or longer breaks then they should raise this with the Judge at any time. The Judge said he would allow Mr Yusuf to sit on his ball and make any other accommodation that would not delay or disrupt the hearing but that some further measures might require medical evidence, either by reference to material in the hearing bundles or by providing further medical evidence.

- c. Mr Yusuf objected to the list of issues. The Judge said that this had been prepared by Judge Maxwell. The list of issues was referred to at the commencement of the hearing and identified as the framework. The Judge explained that the list of issues was drawn from the Claim Forms and the Responses and any permitted amendment to the identified case. He explained, the list of issues formed a road map for managing the hearing, making findings and reaching conclusion that the Tribunal would need to decide the case. Judge Maxwell had spent a substantial amount of time drafting the list of issues and there was no dispute raised when these were reviewed at the outset of day-1. The Judge explained that it is common-practice to review the issues at the outset to see if these can be narrowed further. As this is often the case as parties finalise their preparations and see the other side's evidence. Mr Yusuf's position was that he contended the first respondents had drafted the list of issues and not Judge Maxwell, so he would place no reference to those. Mr Yusuf argued that his case should be viewed in its totality and that to concentrate on the list of issues would be to obfuscate the main thrust of his case which was that there was a conspiracy amongst the first respondents to penalise him. He said he was perceived as being disruptive so the first respondents' reaction was to manage him out of the business. The Judge told Mr Yusuf in very clear terms that we would look at each and every allegation of unfavourable or less favourable treatment and then give consideration to where this fits in with the overall picture.
- d. The Judge explained to Mr Yusuf that because he was self-representing, he would try to modify legal terms, making these as straightforward as possible. He said that he would use plain English throughout but that this should not make Mr Yusuf feel inhibited from referring to legal terms. The Judge made a hand gesture to emphasize that his role was to try to provide for a level playing field so far as possible.
- e. Mr Lockley's analysis in other matters entirely accords with the Tribunal position and does not accord with how Mr Yusuf has misrepresented various terms. The Judge never stated that Mr Yusuf was "lazy"; he said it was the first respondents' case that Mr Yusuf was "workshy and deliberately and unnecessarily disruptive". He said that Mr Yusuf should address those points, because that was a major contention of the respondents and Mr Yusuf's behaviour up to that point might reinforce such a contention.

- f. Mr Yusuf regularly complained about emails being “cropped”. We took “cropped” to mean that only a part of an email from a relevant chain was produced to present a misleading picture. The respondents’ representative denied presenting misleading evidence and from our scrutiny, there was no indication of this in the email chains.
 - g. When Mr Yusuf refused to cross examine the respondents and their witnesses the Judge explained to him in detail the implications of not challenging the respondents’ evidence. He mooted possibly striking out the claimant’s case but considered a fair hearing may still be possible and this was the priority. He said that Mr Yusuf was able at any stage to read through any bundle of documents; he was also able to put documents on his flash drive to the witnesses so long as these could be referenced from the Hearing Bundle and/or in the Claimant’s Bundle. Throughout the course of the 10-day hearing so far as we understand there was only 2 documents (and of no particular relevance) in which Mr Yusuf identified or wanted to ask questions about which could not be referenced in either bundle.
18. A fair hearing was the Tribunal’s priority. Mr Yusuf was treated with courtesy throughout the hearing. The Hearing Judge explained all issues in connection with the Tribunal decision-making. The Tribunal determined that there was no bias in the treatment of Mr Yusuf. The Employment Tribunal was not entitled to withdraw from a case simply because one of the parties alleged bias during the hearing — see *Automobile Proprietary Ltd v Healy 1979 ICR 809, EAT*. The Tribunal find that the Mr Yusuf had provided a lengthy witness statement for which he had been cross-examined on approximately half of. Proceedings had been hanging over the parties for some time and witnesses had made themselves available. Even if expedited, it would be a considerable time before reconvening a further hearing if the Tribunal was to accede to Mr Yusuf’s request to reconvene with a different Tribunal. So a fair hearing was possible because the Tribunal had made adjustments, Mr Yusuf had been given the opportunity to present his case and the Tribunal had listened carefully to his evidence. Consequently, it was important for the Tribunal that we proceeded to determine this case.

Mr Yusuf’s behaviour

- 19. We were reluctant to draw inferences from Mr Yusuf’s behaviour during this hearing. Employment Tribunal hearings are stressful and this may not have brought the best out of Mr Yusuf in terms of his behaviour.
- 20. Mr Yusuf’s questioning of the first respondents’ witnesses was repetitive and he asked irrelevant questions. There was a distinct lack of preparedness in his questions. He seemed to go to pages in his own flash drive and there were long pauses following which he would ask long questions. The Judge offered assistance in timetabling so long as Mr Yusuf was able to identify how many questions or topics, he wanted to ask the respondent witnesses. Mr Yusuf refused the Judge’s offer of assistance in his timetabling his cross-examination, although the judge raised it on a number of occasions. Mr Yusuf spoke over witnesses. He spoke over the Judge, and he spoke over respondents’ counsel. There was no structure in his cross examination and

much of the cross examination ran out of steam. So, it was difficult to understand his case.

21. The tribunal greeted Mr Yusuf with every courtesy and respect. Mr Yusuf's constant complaint was that during the course of his employment he was treated as an "insect" and as a "machine". There was no evidence that he was treated with anything other than courtesy and respect during the events in question. Seemingly, whenever Mr Yusuf was asked to do that he did not like, for example keep to relevant questions or not ask multiple questions, he complained of a lack of respect.
22. Throughout the course of the hearing a surprising amount of time was taken with Mr Yusuf complaining and arguing about the process rather than asking questions from witnesses. This was despite the Tribunal asking he claimant to move on with is questioning. Mr Yusuf ranted at witnesses. He was told on a number of occasions that this was not acceptable.
23. Of particular note was Mr Yusuf's treatment of the witness Mrs Asgari. Mrs Asgari was a married lady of Iranian decent. Mr Yusuf did raise an insinuation which Mrs Asgari took to be that she was being accused of having an extramarital affair with Mr Fazekas. Mr Yusuf denied any such inuendo but the inuendo was there and apparent. There is no evidence whatsoever that this witness was having an affair with Mr Fazekas. It is not the Tribunal's place to enquire into any relationships outside work but do not believe such an affair happened. We say this because, Mrs Asgari was greatly upset by the distress that this had caused to her and to her husband.

The law

Disability

24. Section 4 Equality Act 2010 ("EqA") identifies "disability" as a protected characteristic. So an employee should not be discriminated against on the basis of their disability. S4 also includes a prohibition against discrimination on the ground of someone's race.

Direct discrimination

25. S13(1) EqA precludes direct discrimination:

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

26. The examination of *less favourable treatment because of the protected characteristic* involves the search for a comparator and a causal link. When assessing an appropriate comparator, "there must be no material difference between the circumstances relating to each case": s23(1) EqA.
27. S136 EqA implements the European Union Burden of Proof Directive. This requires the claimant to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of unlawful discrimination, and it is then for the employer to prove otherwise.

28. The cases of *Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205 and *Igen Ltd v Wong* [2005] EWCA Civ 142, [2005] ICR 931 provide a 13-point form/checklist which outlines a two-stage approach to discharge the burden of proof. In essence:
- i. Has the claimant proved facts from which, in the absence of an adequate explanation, the Tribunal could conclude that the respondent had committed unlawful discrimination?
 - ii. If the claimant satisfies (i) above, but not otherwise, has the respondent proved that unlawful discrimination was not committed or was not to be treated as committed?
29. The Court of Appeal in *Igen* emphasised the importance of *could* in (i). The claimant is nevertheless required to produce evidence from which the Tribunal could conclude that discrimination has occurred. The Tribunal must establish that there is prima facie evidence of a link between less favourable treatment and, say, the disability and not merely arising from unrelated events: see *University of Huddersfield v Wolff* [2004] IRLR 534. It is usually essential to have concrete evidence of less favourable treatment. It is essential that the Employment Tribunal draws its inferences from findings of primary fact and not just from evidence that is not taken to a conclusion: see *Anya v University of Oxford* [2001] EWCA Civ 405, [2001] ICR 847.

Indirect discrimination

30. S19 EqA defines indirect discrimination:
- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
 - (2) For purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –
 - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
 - (b) it puts, or would put, that person with whom B shares characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - (c) it puts, or would put, B at that disadvantage, and
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
31. Some points stand out according to Baroness Hale in *Secretary of State for Trade and Industry v Rutherford and Another* (2006) IRLR 551HL:
- a. The concept is normally applied to a rule or requirement which *selects* people for a particular advantage or disadvantage;
 - b. the rule is applied to a group of people who *want* something. The disparate impact complained of is that they cannot have what they want because of the rule, whereas others can.
32. To bring a claim of indirect discrimination, a claimant must first show that she belongs to a particular protected group. She must also show that she is put to a disadvantage to which the protected group to which she belongs is put. A *provision, criterion or practice* (“PCP”) must then be identified which is applied to the claimant and has, or would have, an adverse impact on the claimant. The PCP must be apparently neutral; if it is premised on a rule that is itself discriminatory the claim is likely to be one of another form of discrimination: see *James v Eastleigh Borough Council* [1990] ICR 554.

33. The meaning of *provision, criterion or practice* is not defined in the legislation but, whilst neutral, will cover informal and formal working practices and is also intended to allow for an examination of working practices that do not operate as absolute requirements for the job in question. So, it is essential to determine a PCP in order to assess whether something the employer does to its employees gives rise to a difference in outcome, or has an adverse disparate impact, depending on the characteristics of its employees. In indirect discrimination claims, the adverse disparate impact must be shown to affect one group – to which the claimant belongs – more than it does to another group. Defining the PCP is essential to finding whether there has been indirect discrimination: see *Environment Agency v Rowan* [2008] IRLR 20, *Newham Sixth Form College v Sanders* [2014] EWCA Civ 734, *Brangwyn v South Warwickshire NHS Foundation Trust* [2018] EWCA Civ 2235 and *Unison v Lord Chancellor* [2017] UKSC 51.

Discrimination arising from disability

34. S15 EqA precludes discrimination arising from a disability:

- (1) A person (A) discriminates against a disabled person (B) if –
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had a disability.

35. S15 EqA is aimed at protecting against discrimination arising from or in consequence of the disability rather than the discrimination occurring *because of* the disability itself, which is covered under direct discrimination. The term *unfavourably* rather than the usual discrimination term of *less favourably* means that no comparator is required for this form of alleged discrimination. So, for example, where a disabled employee was viewed as a weak or unreliable employee because she had taken periods of disability-related absence and this had caused her dismissal, the person may not suffer a detriment because she was disabled as such, but because of the effect of that disability.
36. In *Hall v Chief Constable of West Yorkshire Police* UKEAT/0057/15 the Employment Appeal Tribunal (“EAT”) emphasised that it was not necessary for the disability to be the cause of the unfavourable treatment. The burden on a claimant to establish causation in a claim for discrimination arising from disability is relatively low. It will be sufficient to show that there is some causal link, and that the unfavourable treatment has been caused by an outcome or consequence of the disability. The employer’s motivation is irrelevant. The EAT in *Charlesworth v Dransfields Engineering Services Limited* UKEAT/0197/16 said that s15 EqA requires unfavourable treatment to be *because of something* arising in consequence of the disabled person’s disability. If the *something* is an effective cause – an influence or cause that operated on the mind of the alleged discriminator to a sufficient extent (whether consciously or unconsciously) – the causal test is satisfied. However, even if a claimant succeeds in establishing discrimination arising from disability, the employer can defend such a claim by showing either that the treatment was objectively justified, or that it did not know or could not reasonably have known that the employee was disabled.

Failure to make reasonable adjustment

37. Under ss20-22 and schedule 8 EqA an employer has a duty to make reasonable adjustments in 3 situations:
- i. where a PCP puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. This covers cases on *how* the job, process, etc is done;
 - ii. where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. This covers the situation of *where* the job is done;
 - iii. where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. This covers those cases where the provision of an *auxiliary aid* (e.g. special computer software for those with impaired sight) would prevent the employee being disadvantaged.
38. A failure to comply with any of these requirements renders that omission actionable as discrimination under s21 EqA. This claim is focused upon the first provision identified above.
39. It is important to note that the duty to make reasonable adjustments arises only where the disabled person in question is put at a "substantial disadvantage" in relation to a relevant matter in comparison with persons who are not disabled. In order to undertake the comparative exercise, the EAT held in *Environment Agency v Rowan 2008 ICR 218 EAT* that a Tribunal must identify the: (a) the PCP applied; (b) the identity of the non-disabled comparators (where appropriate); and (c) the nature and extent of the substantial disadvantage suffered by the claimant. We address the necessity for identifying properly the PCP both above and below.
40. Possibly counter-intuitively, s212(1) EqA states that "substantial" means more than minor or trivial. Although substantial disadvantage represents a relatively low threshold, the Tribunal will not assume that merely because an employee is disabled, the employer is obliged to make reasonable adjustments. The Tribunal is obliged to consider the nature and extent of the disadvantage in order to ascertain whether the duty applies and then what adjustments would be reasonable, see *Environment Agency v Rowan*. The Tribunal should avoid making generalised assumptions about the nature of the disadvantage and failing to correlate the alleged disadvantage with the claimant's particular circumstances.
41. The duty to make adjustments arises only in respect of those steps that it is reasonable for the employer to take to avoid the disadvantage experienced by the disabled person. The reasonableness of the adjustment is an objective test: see *Smith v Churchills Stairlifts plc 2006 ICR 524 CA*.
42. The duty to make reasonable adjustments arises where a disabled person is placed at a substantial disadvantage "in comparison with persons who are

not disabled": s20(3)-(5) EqA. There is a requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled persons: see *Fareham College Corporation v Walters 2009 IRLR 991, EAT*.

Harassment

43. The test for harassment is set out in s26 of EqA:

- (1) A person (A) harasses another (B) if –
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of –
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...
- (4) In deciding whether contact has the effect referred to in subsection (1)(b), each of the following must be taken into account –
 - (a) the perception of B;
 - (b) the other circumstances of the case; and
 - (c) whether it is reasonable for the conduct to have that effect.

44. For allegations of harassment, there is no necessity to look for a comparator. As described in *Rayment v MoD [2010] EWHC 218 (QB)*, [2010] IRLR the standard for harassment is conduct that is “oppressive and unacceptable”. The definition approaches the matter from the claimant’s perspective. Therefore, if a victim had made it clear that he found the conduct unwelcome, the continuation of such conduct will constitute harassment. Only if it would be unreasonable to regard the conduct as harassment at all will there be a defence here, but the test for connections between the conduct and the effect have been loosened so that unwanted conduct no longer has to be *on the ground of* the victims protected characteristic to fall within the definition, but only *related to* it.

Victimisation

45. Victimisation under s27(1) EqA is defined as follows:

- A person (A) victimises another person (B) if A subjects B to a detriment because –*
 - (a) *B does a protected act, or*
 - (b) *A believes that B has done, or may do, a protected act.*

46. A “protected act” includes bringing proceedings under the EqA, as well as giving evidence or making allegations that a person has contravened the EqA. There is no need to find a comparator for victimisation as it is only the treatment of the victim that matters in establishing causation; it is possible to *infer* from the employer’s conduct that there has been victimisation.

The burden of proof and the standard of proof

47. S136 EqA implements the European Union Burden of Proof Directive. This requires the claimant to prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of unlawful discrimination, and it is then for the employer to prove otherwise.

48. The cases of *Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205* and *Igen Ltd v Wong [2005] EWCA Civ 142, [2005] ICR 931* provide

- a 13-point form/checklist which outlines a two-stage approach to discharge the burden of proof. In essence, this can be distilled into a 2-stage approach:
- a. Has the claimant proved facts from which, in the absence of an adequate explanation, the tribunal could conclude that the respondent had committed unlawful discrimination?
 - b. If the claimant satisfies (a), but not otherwise, has the respondent proved that unlawful discrimination was not committed or was not to be treated as committed?
49. The Court of Appeal in *Igen* emphasised the importance of *could* in (a). The claimant is nevertheless required to produce evidence from which the tribunal could conclude that discrimination has occurred. The tribunal must establish that there is *prima facie* evidence of a link between less favourable treatment and, say, the difference of race and that these are not merely two unrelated factors: see *University of Huddersfield v Wolff* [2004] IRLR 534. It is usually essential to have concrete evidence of less favourable treatment. It is essential that the employment tribunal draws its inferences from findings of primary fact and not just from evidence that is not taken to a conclusion: see *Anya v University of Oxford* [2001] EWCA Civ 405, [2001] ICR 847.
50. So, the burden is on the claimant to prove, on a balance of probabilities, a *prima facie* case of discrimination. The Court of Appeal, in *Madarassy v Nomura International plc* [2007] EWCA Civ 33 at paragraph 56. The court in *Igen* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the Tribunal could conclude that the respondent *could have* committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal *could conclude* that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. It was confirmed that the claimant must establish more than a difference in status (e.g. race) and a difference in treatment before a Tribunal will be in a position where it *could conclude* that an act of discrimination had been committed.
51. Even if the Tribunal believes that the respondent's conduct requires explanation, before the burden of proof can shift there must be something to suggest that the treatment was due to the claimant's race. In *B and C v A* [2010] IRLR 400 EAT at paragraph 22:

The crucial question is on what evidence or primary findings the tribunal based its conclusion that C would not have feared further violence from a female alleged aggressor (and so would have accorded her due process). As we have already noted (paragraph 19), the tribunal does not spell out its thinking on that point. There was no direct evidence on which such a conclusion could be based; no such situation had ever occurred, and the tribunal refers to no admission by C, or other evidence of his attitudes, that might have supported a view as to how he would have behaved if it had. It is of course true that the tribunal was in principle entitled to draw appropriate inferences from the nature of the behaviour complained of. C's behaviour was certainly sufficiently surprising to call for some explanation: in the public sector in particular, it is second nature to executives to follow appropriate procedures, and the explanation offered by C for his failure to do so in the present case – namely that he was seeking to avoid repeat violence (see paragraph 16 above) – is irrational since he could have mitigated the risk to precisely the same extent by suspending the claimant. But the fact that his behaviour calls for explanation does not automatically get the claimant past 'Igen stage 1'. There still has to be reason to believe that the explanation could be that that behaviour was attributable (at least to a significant extent) to the

fact that the claimant was a man. On the face of it there is nothing in C's behaviour, all the surrounding circumstances, to give rise to that suspicion.

52. It is not sufficient to shift the burden onto the respondent, that the conduct is simply unfair or unreasonable if it is unconnected to a protected characteristic. In *St Christopher's Fellowship v Walters-Ellis* [2010] EWCA Civ 921 at paragraph 44:

The respondent's bad treatment of the claimant fully justified findings of constructive unfair dismissal, but it could not, in all the circumstances, lead to a finding, in the absence of an adequate explanation, of an act of discrimination. Non-racial considerations were accepted as the explanation for the respondent's similar treatment of the claimant in the other instances in which the claimant alleged race discrimination in relation to participation in recruitment. In the case of Ms Hayward, the respondent made a genuine mistake about the nature of the relationship, which they would not have made if they had properly investigated the nature of the relationship with the claimant and communicated with her, but their failure to do so was accepted to be the result of a genuine belief. The fact that it was mistaken could not, in the context of scrupulous attention to recruitment procedures, reasonably be held to have the effect of indicating the presence of racial grounds and so shifting the burden of proof to the respondent to prove that he had not committed an act of race discrimination.

53. In the case of *Nagarajan v London Regional Transport* [2000] 1 AC 501, Lord Nicholls stated at 512-513:

Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds, even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the aggravating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided. So far as possible. If racial grounds or protected acts has a significant influence on the outcome, discrimination is made out.

54. Employment Tribunal's adopt the civil standard of proof, which is on the balance of probabilities, i.e. more likely than not.

Time limits for discrimination proceedings

55. Claims of discrimination in the Employment Tribunal must be presented within 3 months of the act complained of, pursuant to s123 EqA. Acts of discrimination often extend over a period of time, so s123(3)(a) EqA goes on to say that "conduct extending over a period is to be treated as done at the end of the period". In addition, Employment Tribunals have a discretion to extend the 3-month period if they think it *just and equitable* to do so, under s123(1)(b) EqA.

Unfair Dismissal

56. The claimant also claims that he was unfairly dismissed in contravention of s94 ERA. S98 ERA sets out how the Tribunal should approach the question of whether a dismissal is fair. First, the employer must show the reason for the dismissal and that this reason was one of the potentially fair reasons set out in s98(1) and s98(2) ERA. If the employer is successful at that first stage, the Tribunal must then determine whether the dismissal was fair under s98(4):

Where the employer has fulfilled the requirements of subsection (1), the determination of the question of whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.
57. The s98(4) test can be broken down to two key questions:
- a. Did the employer utilise a fair procedure?
 - b. Did the employer's decision to dismiss fall within the range of reasonable responses open to a reasonable employer?
58. Accordingly, so far as the unfair dismissal issue was concerned, the emphasis of the case at the hearing was whether the Tribunal could be satisfied that, in all the circumstances, the respondent was justified in dismissing the claimant for the reasons given, i.e. in relation to the claimant's incapacity.
59. In *West Midlands Cooperative Society Limited v Tipton [1986] ICR 192* the House of Lords determined that the appeal procedure was an integral part of deciding the question of a fair process. Indeed, a properly conducted appeal can reinstate an unfairly dismissed employee or remedy some procedural deficiencies in the original hearing.
60. In judging the reasonableness of the employer's decision to dismiss, an Employment Tribunal must be careful to avoid substituting its decision as to what was the right course of action for the employer to adopt for that which the employer did in fact chose. Consequently, the question for the Tribunal to determine is whether the respondent's decision to dismiss the claimant fell within the band or range of reasonable responses open to a reasonable employer: see *Foley v Post Office; HSBC Bank plc v Madden 2000 ICR 1283*. The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure by which that decision is reached: *J Sainsbury plc v Hitt 2003 ICR 111 CA* and *Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 669 CA*.

The list of issues

61. Following the preliminary hearing of 21, 22 and 23 March 2022 Employment Judge Maxwell struck out 24, plus 1 partial of Mr Yusuf's allegations on the basis that these had little prospects of success and Judge Maxwell made five deposit orders on the basis that these claims had little reasonable prospect of success. Judge Maxwell then drafted a list of issues which we have incorporated into these proceedings as Annex A. Judge Maxwell's case management orders ran to 80 pages [HB254-HB318].
62. At the outset of proceedings, the Judge explained the importance of the list of issue. He explained that this was the framework to address the surviving complaints and the evidence. Mr Yusuf refused to engage with the issues. He said that this was devised by the respondents to frustrate his claim. When he was told that the list of issues was drafted by Judge Maxwell he said that Judge Maxwell was doing the respondent's work for them. He objected to a list of issues and said he would not follow this and argued that he should not be bound by it. The Judge refused that approach and sent considerable time explaining the list of issues and going through it with the claimant. Mr Yusuf still would not engage.

Findings of fact and our determination

63. We made the following findings of fact, which we determine were relevant to finding whether or not the claims and issues identified by Judge Maxwell have been established. We did not decide upon all the points of dispute between the parties, merely those that we regarded as relevant to determine the central issues of the case as exhaustively identified. When determining certain findings of fact, where we consider appropriate, we have set out why we have made these findings.
64. This determination follows the list of specific claims as set out by Judge Maxwell in the hearing bundle page 294 to 311 (see annex A).

Allegation 1: R4(2)

65. This relates to an email sent by Mr Kennedy to Mr Amir-Hosseini on 14 December 2018 and copied to Mr Yusuf, Katy Keith, Jonathan Westell, Mr Fazekas and Robert Barten [HB462-463]. Mr Kennedy criticised three team members for the slow progress in delivering a road marking for which a resident paid. Mr Kennedy made four points of criticism. His first three points are more forceful and are directed towards Mr Yusuf's colleagues. The criticism made against Mr Yusuf was for not dealing with the matter when it was raised by the resident. He deflected the resident's enquiry back to her and put the onus on her to chase his colleagues. Mr Kennedy said that this was not good enough and that Mr Yusuf should have brought it to Ms Keith's attention directly and, if not, then another colleague could have provided an update, or it could have been escalated to their line manager. This is mild criticism in comparison with the criticism towards Ms Keith and Mr Amir-Hosseini in particular. At this stage Mr Kennedy might possibly have got wind of Mr Yusuf's disability either in relation to his back problems or in relation to his PTSD, but there is no reason to believe that Mr Yusuf was criticised because of his disability. In fact, the contrary. Mr Yusuf figured in the overall picture and attracted a lesser degree of criticism. Overall, the criticism falls far short of creating a hostile, degrading, humiliating environment. Mr Kennedy was Head of Highways and Infrastructure and at times colleagues might need to be reprimanded and we detect no reason why Mr Yusuf's reprimand was unwarranted. There is no force in this claim.

Allegation 5: R6(2)

66. This allegation is against Ms Asgari. It relates to an email dated 27 February 2019 [HB501] and the email is from Ms Asgari's email to Paulette Weekes and copied to Mr Amir-Hosseini. This identified that Mr Yusuf (according to Ms Weekes) put Ms Asgari's name on a consultation document in respect of the Rainford Road/Twyford Abbey Road consultation. Ms Asgari queried why he had done this, particularly as, in evidence she said she was due to go on maternity leave shortly thereafter. Mr Amir-Hosseini took this up with Mr Yusuf in forceful terms. We were puzzled why this allegation was levelled against Ms Asgari as she merely brought to her line manager's attention an apparent irregularity. She was not seeking to mislead Mr Amir-Hosseini particularly as she copied in Ms Weekes and Ms Weekes confirmed that Mr Yusuf did, in fact, say it was her scheme on 2 March 2019 [HB500].

67. So, if there is something to this complaint (which we do not think there is) it is directed towards the wrong individual. Mr Amir-Hosseini criticised Mr Yusuf for assigning work to his colleague when he should not have done so. Mr Yusuf levels this allegation against Ms Asgari which is unjustifiable and reflects his general hostility towards this female work colleague.
68. At paragraph 8.12 of Mr Yusuf's statement, he accuses Ms Asgari of race discrimination which does not form part of this complaint. This would appear to be little more than an office tiff. It reads to us like Mr Yusuf tried to get out of work by ascribing this to his female colleague. His female colleague took this up with his line manager and Mr Yusuf was caught out. His claim against reflects Mr Yusuf's unwarranted hostility towards his female colleague. We see no indication that Ms Asgari could possibly be motivated by Mr Yusuf's disability in raising these issues with her line manager. Ms Asgari's actions cannot be attributed towards victimisation because there was no protected act at this time.
69. The allegation is also nearly 11 months out of time, and The claimant gave no evidence upon which the Tribunal might exercise its discretion to allow this complaint to proceed, even if there was any merit to the complaint (which there is not).

Allegation 6: R6(3)

70. This is an allegation of harassment on 9 April 2019 in respect of allocating work to Mr Yusuf which Ms Asgari was already handling herself and had made a decision on which tended to reduce Mr Yusuf's role. This is the first of several instances relating to the issue of the Bridgwater Road speed survey. A speed survey was the first step in assessing whether additional traffic calming measures might be needed on a particular road. Commissioning a speed survey was a straightforward task for a traffic engineer according to various witnesses. Mr Yusuf accepted in evidence that it might take an hour or so to undertake this work. Mr Dryden contended that it was the type of request any engineer would be expected to carry out promptly regardless of their current workload [HB573].
71. A resident had raised the issue of a traffic survey [HB4172] and this request was passed to Ms Asgari who on 9 April 2019 requested Mr Yusuf to commission a speed survey [HB4170]. Ms Asgari had been given authority to assign cases on 25 March 2019 [HB508]. Mr Yusuf complained in evidence that he had never been assigned work by Ms Asgari before, which is consistent with Ms Asgari having recently received this delegated authority. In evidence Ms Asgari said that she assigned the role to Mr Yusuf to ensure continuity so that he could do work on the project while she was away on maternity leave. Mr Yusuf was to deal with any actions required arising from the survey [HB4170]. Therefore, Ms Asgari clearly envisaged Mr Yusuf using his engineering judgment on how to respond to the results of the traffic survey. Mr Yusuf complained that he had no line manager at that time and when Ms Lockley put to Mr Yusuf that Ms Asgari was a senior member of staff who asked him to do some work, Mr Yusuf was vociferous in his refusal to accept Ms Asgari's authority. He said that any work emanating from her had to be agreed with his team leader and because she was not his team leader he did not have to do it. Mr Yusuf refused to accept Ms Asgari's

authority, and this was unjustified in the circumstances. Mr Lockley contended that Mr Yusuf's sense of grievance about this matter is so inflated that it is hard to understand unless and arose from some pre-existing grudge that he has towards Ms Asgari. The first respondent's counsel contends that Mr Yusuf resented Ms Asgari's position as a more senior female colleague with authority over him and this issue and Mr Yusuf's behaviour does little to dispel that contention in the Tribunal's mind. We can see no explanation for Mr Yusuf's overall resentment towards Ms Asgari or to explain why he refused to undertake work she had allocated to him. Mr Yusuf was not busy. In fact, so far as we could ascertain, there was surprisingly very little work that he was doing at that particular time. This complaint comes nowhere near the threshold of harassment, he just did not want to do the work that was properly allocated and he resented being asked to do so by a more senior female colleague.

72. This allegation is 8 months out of time and there is no basis upon which we can exercise our discretion to allow this complaint to proceed if there was any merit in such complaint (which we do not think there is).

Allegations 7 and 9: R6 (4) and R6 (5)

73. We will take these allegations together because they arise from the same set of facts.
74. On Monday 8 April 2019 Mr Yusuf declined a meeting invitation for 9 April 2019 saying that he would be out of the office. He asked if this could proceed on Wednesday and Ms Asgari replied "Yes, No problem" [HB546].
75. On 10 April 2019 Ms Asgari approached Mr Yusuf at his desk but Mr Yusuf said he did not want to speak to her. Eventually they agreed to meet on the Friday, 12 April 2019 [CB568]. So, Ms Asgari sent an invitation for the 12 April 2019 on 10 April [HB524] which Mr Yusuf declined the next day without giving any explanation [HB526]. Ms Asgari took this up as follows [CBA924];

"Please let me know when is suitable for you to discuss the scheme, as this is the third time my meeting invite has been cancelled.

I appreciate you have just returned back to work from a long leave but I am keen to have actions for the scheme progress as the Ward Councillors have asked we prioritise this."

76. In her witness statement Ms Asgari said that there had been an accident at Olive Road during Mr Yusuf's leave and she had met with councillors to agree some urgent remedial action. Someone needed to implement those actions and Ms Asgari said, which we accept, that she did not have the capacity to do so herself. Mr Yusuf had previously worked on Olive Road and Ms Asgari was asked to support Mr Yusuf with this work. This was merely a senior engineer operating as usual and within her authority. Ms Asgari said in her statement that she assigned work to various engineers and senior engineers, and she acted the same way with other members of the team when she needed to discuss work with them. Mr Yusuf contended that Ms Asgari was somehow seeking to humiliate him by requiring him to carry out tasks that she had decided upon without accepting his engineering judgment. Mr Yusuf was junior to Ms Asgari so his reluctant to accept work former senior female

colleague was obvious but we cannot find any logical reason why he would refuse her work. There is no difference in the treatment that Ms Asgari gave him; there was no detriment and there was no conduct that we could see as unreasonable. Rather, Mr Yusuf was obstructive towards Ms Asgari for reasons we cannot discern other than, seemingly, her sex. There is certainly no logic to any protected characteristic such as race or disability.

77. This allegation is 8 months out of time, and we were presented with no evidence on why this complaint should be allowed to continue if there was any merit to this allegation (which we do not accept there was).

Allegation 8: R3(3)

78. This is a complaint of disability related harassment arising from Mr Fazekas' email of 10 April 2019 supporting the actions of Ms Asgari.
79. Mr Yusuf had told Ms Asgari that he is not dealing with the Olive Road scheme and when she replied that cases were not allocated only based on schemes, Mr Yusuf said that he usually got his cases through his team leader [HB4170].
80. It was clear to us that Mr Yusuf was refusing to do the work that had been assigned to him by Ms Asgari. Mr Yusuf's team leader at the time (Mr Dryden) was away. Mr Fazekas, who was next in line in the chain, stepped in to put Mr Yusuf right. He said, "Padi is a Principal Engineer supporting John Dryden who is on leave this week and has authority to allocate the cases". He proceeded to leave Mr Yusuf in no doubt, "Please deal" [HB4169]. We have no doubt that Mr Yusuf was refusing to do work that was reasonably, that was properly and reasonably allocated to him.
81. There was absolutely nothing harassing about a more senior manager telling a member of staff to do work which he should have been doing and which he refused to do. This is a normal management function.
82. This complaint also encompasses an allegation that Mr Fazekas failed to inform the claimant of a change in his line management but this is clearly not true because Mr Fazekas had sent Mr Yusuf an email explaining changes to Mr Yusuf on 20 March 2019 [HB506] and also the email of 25 March 2019 from Mr Dryden. Therefore, Mr Yusuf could be in no doubt at all that Ms Asgari could allocate work to him and this was also consistent with Ms Asgari's job description as a Principal Engineer.
83. This allegation is 8 out of time and Mr Yusuf put no evidence before the Tribunal as to why we should exercise our discretion to allow such a complaint to proceed (if it had any merit, which it does not).

Allegation 10: R5(2)

84. The 15 April 2019 was Mr Dryden's first day of managing Mr Yusuf in the office. Mr Yusuf had by this time demonstrated that he was refusing to undertake work [CB538] earlier that day and that he was generally difficult to manage. Mr Dryden explained in his witness statement that staff normally sat together in the Civic Centre but that it was his responsibility to know whether his direct reports were working in the office, working at home, on site or on

leave. This is a proper way to manage staff. So, Mr Dryden sent Mr Yusuf an email at 13.41 stating: "Are you in the office today? Your diary provides no info as to your whereabouts?". We determine there is nothing untoward with this email. Mr Dryden quoted two lines of the council's Flexible Working Policy which stated:

"Employees must maintain an open and honest dialogue with their line manager to ensure that the arrangements continue to work effectively for the whole team".

85. Mr Yusuf said that his calendar was not updated because of his mental health. We reject this. His explanation is spurious and reflects Mr Yusuf's constant reference to his mental health as a blanket excuse for evading his obligations.
86. Mr Dryden said in his statement that he found it necessary to effectively *mark the cards* of employees previously and we are in no doubt that this was a similar exercise. He provided examples of similar emails in the hearing bundle but even if he had not, the exchange was wholly appropriate in the circumstances.
87. Mr Yusuf said that he had responded to Mr Dryden's email but at paragraph 10.11 of his statement, he provides no reference to this and, despite looking, we were unable to locate any response in the voluminous documents provided. On balance we do not believe Mr Yusuf when he said he responded to this email and, on balance, we do not believe Mr Yusuf was in the building as he was supposed to be that day.
88. Again, this allegation is 8 months out of time and there was no basis for us to exercise our discretion on a just and equitable basis.

Allegation 11: R5(3)

89. Mr Yusuf deals with this allegation at paragraph's 9.39, 9.40 and 9.41 of his statement. Mr Yusuf is argumentative and vitriolic in his comments in respect of Ms Asgari. He remained adamant that he would not undertake work given to him by this female senior colleague.
90. By this stage both Ms Asgari and Mr Fazekas had instructed Mr Yusuf to commission a speed survey and Mr Yusuf was adamant that he would not do the work that was required of him. Mr Dryden sent Mr Yusuf an email which was very clear:

Please urgently carry out the instructions given by Padi in her email below. It would seem that you are refusing to carry out a reasonable management instruction?

91. Mr Dryden had earlier in the day asked Mr Yusuf to urgently carry out the instructions and Mr Yusuf, by email at 14.37, indicated he would not do so. There was room for doubt so Mr Dryden made the position quite clear (see emails HB549 and HB548 – claimant's email at 14.27 and Mr Dryden's email at 14.37).
92. The allegations are framed as direct discrimination and harassment.
93. There is no less favourable treatment in Mr Dryden's instructions as this was a perfectly reasonable and clear management instruction. It was within the

scope of Mr Yusuf's work to undertake and Mr Dryden was clear and robust because of Mr Yusuf's steadfast and continuous refusal to complete the work that he had been allocated. There is no link to Mr Yusuf's disability and this allegation is 8 months out of time. Again, Mr Yusuf gave no evidence to support any basis upon which we might have exercised our discretion to allow this complaint to proceed, had there been any merit to it (which there was not)

Allegation 12: R5(4)

94. This allegation deals with direct disability discrimination and discrimination arising from disability in the first respondent not accepting Mr Yusuf's grievance and accepting the grievance of Ms Asgari.

95. In respect of Mr Yusuf's grievance, Mr Yusuf had previously written to Ms Asgari in respect of a meeting saying that he would be out of the office the next day and could they rearrange the meeting for Wednesday. Ms Asgari replied immediately as follows:

Yes, no problem.
Are you working from home tomorrow or on leave?
Thanks
Padi.

96. Nine days later Mr Yusuf forwarded the email to Mr Dryden as follows:

Please see below. I really do not find this response to my email polite as I mentioned during our meeting last Monday.

97. Mr Yusuf did not ask for any action to be taken nor is there anything on the face of the email that would suggest it is a formal grievance. Mr Dryden said he formed the view that there was nothing impolite about Ms Asgari's email and Mr Dryden said he decided to discuss this with Mr Yusuf at his forthcoming one-to-one. At the one-to-one Mr Yusuf did not raise any outstanding grievance.

98. So far as a complaint of less favourable treatment, this has no merit at all [see HB546].

99. In contrast, on 23 April 2019 [HB568-570] Ms Asgari sent Mr Dryden an email entitled "Complaint- Sayed".

100. Mrs Asgari said:

I would like to make a formal complaint about Sayed Yusuf under the councils grievance policy May 2018...

101. The details that Ms Asgari thereafter supplied looked serious. Notwithstanding that Ms Asgari was not an employee of the council – and thereby did not have a contractual right to raise a grievance – it was wholly appropriate that Ms Dryden accepted Ms Asgari's complaint and provided for this to be investigated. Ms Asgari raised a complaint of sex discrimination against Mr Yusuf, and this in itself could have conferred a legal liability on the council. However, irrespective of this, it is good management practice to

investigate complaints and Ms Asgari made it explicit that she wished to pursue a formal complaint against Mr Yusuf.

102. There is absolutely no merit on contending that Mr Dryden should not have accepted Ms Asgari's grievance, whether or not she was employed by the council through an agency. The grievance was also copied into Mr Fazekas.
103. Once her grievance was referred to Human Resources it was determined that Ms Asgari's grievance would need to go through the agency before the first respondent could address this. This was understandable in the circumstances and there was no less favourable treatment or unfavourable treatment in this matter.
104. These complaints are also considerably out of time and there is no basis for us to exercise our discretion to allow such complaints to proceed (if they had any merit).

Allegation 13: R5(5)

105. This is an allegation of harassment in respect of Mr Dryden's email of 18 April 2019. This email read:

I note that you have not responded to my last email below [15 April 2019 14.47]. Can you confirm that, in accordance with my instruction, you have commissioned the required speed survey.

106. This email is not harassing in the circumstances or at all. Indeed, we regard it as measured and appropriate. Mr Dryden asked for an update to his email as he had asked for the work to be undertaken by the end of the preceding week. There is no link to Mr Yusuf's disability. This complaint is without merit.
107. The allegation is some 8 months out of time and Mr Yusuf proffered no evidence as to why the Tribunal should exercise its discretion on just an equitable basis.

Allegation 14: R1(13)

108. The first part of this complaint deals with Ms Asgari making a complaint about Mr Yusuf to the First Respondent.
109. As can be seen above Ms Asgari made a formal complaint to Mr Dryden so it is not surprising that Mr Dryden treated this as a formal complaint. Ms Asgari's complaint was of gender discrimination, i.e. sex discrimination. The complaint is at pages 568-570 of the hearing bundle. Ms Asgari contended that Mr Yusuf was obstructive towards her and that he had not behaved in that way towards senior male team members. There is clear foundation of Ms Asgari's complaint because in his spreadsheet Mr Yusuf complains that Ms Asgari was trying to "assert her authority over male colleagues" [HB234]. When he was asked about this in cross-examination, Mr Yusuf said that the accusation was put together by a friend, which we do not accept as an adequate explanation. In his witness statement, at paragraphs 1.6, Mr Yusuf said that Ms Asgari:

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Was an incompetent engineer and was promoted to Principal Engineer because she from the same race as my ex-team members and as Brent was attempting to promote women in the team but not going about it in the right way.

110. This is an extraordinary complaint, and it gets little beyond abusing Ms Asgari. There was no information Mr Yusuf provided to substantiate that Ms Asgari was not good at her job. Ms Asgari denied in evidence that she was promoted, she said that she was employed as a Principal Engineer because of her seniority. We have also viewed quite a lot of correspondence from Ms Asgari in the hearing bundles and these appeared courteous and professional and a type of correspondence that we would expect from an able and senior member of staff. We also note that Mr Yusuf was disproportionately hostile to another member of staff, Ms Walker, from HR. His criticism against her also reaches the level of vitriol.
111. In her evidence to the Tribunal Ms Asgari explained that she genuinely believed Mr Yusuf to have a negative attitude against her because she was a woman and particularly because she was a woman in a senior position.
112. Once the first respondent had accepted Ms Asgari's complaint (which it was really compelled to do) it provided for a formal investigation. It is a wholly unmeritorious complaint to suggest that this was less favourable treatment because it would follow that once a complaint is accepted then it warrants investigation.
113. In respect of the allegation of repurposing, i.e. changing Ms Asgari's complaint from a serious to a more minor one, this is an unmeritorious allegation. Ms Asgari's complaint was, on the face of it, very serious. The complaint was investigated, and Ms Patel determined that it was not as serious as this Tribunal views it. We are not bound by Ms Patel's findings, and we regard Ms Asgari's complaint as serious and although the complaint was not the subject to Tribunal proceedings, we heard sufficient about the complaint to view Ms Asgari's complaint as being meritorious. So, it would seem to the Tribunal that Mr Yusuf was very fortunate that his employers did not view Ms Asgari's complaints with the seriousness that we view them. That could not amount to any form of less favourable treatment or discrimination.
114. In respect of the First Respondent not seeking to resolve matters informally, it was obvious to the Tribunal that matters had escalated beyond a level in which it could be resolved informally. However, Ms Asgari made it clear in her complaint that she wanted a formal resolution particularly as Mr Yusuf was refusing talk to Ms Asgari about work. Although Mr Yusuf said that he would not speak to Ms Asgari because he did not want to get into an argument with a pregnant woman.
115. Again, there is nothing Mr Yusuf has said that might warrant extending time in respect of any of these allegations.

Allegation 15: R6(6)

116. **See answer to above.**

Allegation 16:

Allegation 15: R6(6)

Allegation 16: R5(6)

117. This is a completely misguided allegation. Mr Yusuf complains about the first respondent not allowing a trade union representative at a one-to-one meeting on 24 April 2019. Mr Yusuf had no right to have a trade union representative accompany him to an ordinary workplace meeting with his manager. But when Mr Yusuf's trade union representative attended, Mr Dryden explained that the meeting was only an informal one-to-one meeting and both Mr Yusuf and his representative agreed that the presence of a trade union representative was not required [HB1571, 4148]. Mr Yusuf is dishonest in saying that this exacerbated his mental health because this was not raised at the time and we accept that Mr Dryden's contemporaneous note was accurate and it records the extraordinary lengths that Mr Yusuf would go to not to engage with Ms Asgari nor to undertake the work that she had allocated to him.

118. This allegation is almost 8 months out of time. There is no basis upon which the Tribunal could, if the allegation had any merit (which it does not) have exercised its discretion to allow the allegation to proceed.

Allegation 17: R5(7)

119. On 25 April 2019 Mr Dryden wrote to Mr Yusuf as follows:

Are you working from home today? There is no information in your diary. You need to ensure that your diary shows when you are working from home, on site or in the office.

120. Mr Yusuf contends that it was discrimination arising from his disability and disability related harassment to write such an email. This is a manager asking an employee where he is on a workday and does not constitute unfavourable or less favourable treatment in any form. This allegation has no merit whatsoever.

Allegation 18

121. This complaint is about Mr Dryden's meeting with Mr Yusuf on 24 April 2019 at his one-to-one [HB4148-4151].

122. Mr Yusuf did not raise his complaint against Ms Asgari at this meeting and (as can be seen from above) we have concluded that he raised no discernible grievance or substantive complaint against his more senior female colleague at that time. Again Mr Yusuf has not established the factual foundation of this allegation.

Allegation 19: R1(11)

123. This allegation differs from allegation 14.1.3 because, so far as we understand, depends on whether the investigation was in a disciplinary framework. The substance of the complaint has been addressed above but, so far as the disciplinary investigation is concerned it did not present a false picture

124. On 1 May 2019 Ms Olabisi Olususi (Senior HR Advisor) wrote to Mr Yusuf to advise him of the complaint made by Ms Asgari. She summarised the complaint as follows:
- Harassment and intimidating behaviour resulting in feelings of humiliation.
 - Behaviour which undermines and inhibits working in partnership with colleagues and fostering a good working relationship.
 - Allegation of discrimination due to gender resulting in the failure on your part to carry out reasonable management instructions.
125. Mr Yusuf was advised that the grievance was being dealt with under the first respondent's grievance policy and he was given a copy. Subsequently, Ms Sunita Shariff discovered that Ms Asgari was not an employee of the council, so her grievance was redirected through her agency [CB592-593, HB650]. It is not clear who took the decision, but think it was Ms Shariff upon reviewing Mrs Asgari's grievance. .
126. In any event, on 29 May 2019, Ms Yogini Patel (Senior Regulatory Service Manager) wrote to Mr Yusuf to confirm that a disciplinary investigation would take place following Ms Asgari's complaint that Mr Yusuf refused to carry out tasks assigned to him as well as refusing to attend numerous meetings to discuss work matters. Mr Yusuf says that that it was discrimination arising from disability, harassment and victimisation to launch a disciplinary investigation. There is no merit in this allegation whatsoever. The matters that Ms Asgari had raised were serious and warranted investigation. It was wholly appropriate in the circumstances for the First Respondent to launch a disciplinary investigation following Ms Asgari's complaint.
127. This complaint is out of time and there is no basis upon which the Tribunal will determine it was just and equitable to allow this complaint to proceed if there was any merits – which there were none.

Allegation 20: R1(12)

128. It is not clear why Mr Yusuf has dated this allegation 24 May 2019 because that is the date that Ms Asgari reverted/referred to Ms Shariff to pursue her complaint. The complaint seems to centre on Ms Shariff's email to Ms Asgari on 15 May 2019 [HB592-593] where she said that as Ms Asgari was contracted to work for the council through Comensura, she would need to raise her grievance through them as her employer. Ms Shariff apologised as seemingly Ms Olususi had referred Ms Asgari through the council procedures in error. Ms Shariff wrote to Mr Yusuf on 24 May 2019 [HB650] apologising for the delay to him following the initial letter of 1 May 2019. So, Mr Yusuf was written to and apologise in respect of the delay in the first respondents asking that Ms Asgari's complaint be put through her employer. So far as we can ascertain, Mr Yusuf and the complainant were both dealt with similarly. There was a delay and Ms Shariff wrote to both parties explaining and apologising for the delay. So, there is no possible merit in this complaint. There is nothing related to Mr Yusuf's disability.

129. So far as the time limit, there is no basis for the Tribunal to exercise any discretion because Mr Yusuf has not provided any evidence or submissions in this regard.

Allegation 21

130. This allegation centres on Mr Fazekas' letter of 25 June 2019 inviting Mr Yusuf to a Stage 2 Sickness Absence Review Meeting [HB684-685].

131. The basis of this complaint was that Mr Fazekas invited Mr Yusuf to a meeting when he was unable to attend due to being overseas. The letter represented a very clear contemporaneous account. An original Stage 2 review meeting had been scheduled for 13 June 2019. Mr Yusuf told Mr Fazekas he was unable to attend that meeting on 30 May 2019 and that on the advice of his GP he would be spending time outside the UK with his family. He requested postponement to all meetings until Mr Yusuf returned to the UK which he subsequently advised would be on 30 June 2019. On that basis Mr Fazekas rescheduled the Stage 2 Sickness Review Meeting for Wednesday 3 July 2019 – which was a date Mr Yusuf should be in the UK and at work. There is no legitimate basis for objecting to the rescheduling of the meeting. Mr Yusuf was delayed in returning to the UK because of civil unrest in Sudan. Mr Fazekas did not know, nor could he be expected to know of this, at the time he wrote his letter. This is therefore not unfavourable conduct or unwanted treatment. The claims fails. There is no merit in this allegation. Mr Yusuf subsequently asked for the meeting to be deferred until 15 July 2019 [HB701-702] which Mr Fazekas accepted when this evidence was put to Mr Yusuf in evidence he accepted that there was no detriment at that point.

132. So far as the time limit, there is no basis for the Tribunal to exercise any discretion because Mr Yusuf has not provided any evidence or submissions in this regard.

Allegation 22: R1(8)

133. This is an allegation of direct disability discrimination and a failure to make reasonable adjustments in requiring Mr Yusuf to work full hours at a fixed standing desk.

134. Mr Yusuf agreed that the date of this allegation should be 2 July 2018 which was the date he returned to work after a 5-month absence.

135. Mr Fazekas gave evidence, which we have accepted, that adjustments were made to reserve an adjustable desk for Mr Yusuf when he was at the Civic Centre. Upon Mr Yusuf's return to work he was offered a meeting with Facilities Management.

136. On 13 July 2018 Mr Amir-Hosseini write to the Facilities Management to organise a meeting for Mr Yusuf to discuss his seating arrangements [CB622]. This was copied to Mr Yusuf. The facilities manager offered to meet with Mr Yusuf that day, on 16 July 2018 [CB621]. So, they met that day. On 16 August 2018 the facilities manager wrote to confirm the arrangements that had been made in that Mr Yusuf preferred the bench seating area which he felt worked well and facilities had reserved that area for Mr Yusuf and that when Mr Yusuf did not require this desk, he was to leave a note to show that

it was free for use by other potential users and that he was to remove his personal items and equipment. Mr Yusuf agreed with this on 17 August [CB620].

137. There was nothing said that suggested Mr Yusuf was unhappy with this arrangement, in fact, quite the contrary. We cannot discern any less favourable treatment nor any provision, criteria or practice that required Mr Yusuf to work full hours with a fixed standing desk. Under the circumstances this claim must fail. It has no merit. It is a common theme that Mr Yusuf often alleges something that just did not happen.
138. Notwithstanding that this allegation is 18 months out of time, our above comments in respect of limitations continue to apply.

Allegation 23: R3(5)

139. This allegation related to July 2019 and Mr Yusuf was still willing to answer questions at this point. However, he was unable to explain in his evidence which emails Mr Fazekas had purportedly cropped. We strained to understand the basis of this complaint and we could not find any evidence that might support it. It was a constant complaint throughout these proceedings that the first respondent had cropped, doctored or altered emails to cast Mr Yusuf in a bad light. He was never able to take us to any specific details of where emails had been altered or where the email chains were not complete. There were some email chains that differed but that was because the email chains were so long and individuals answered emails out of sequence, so there was nothing suspicious about that. As can be seen with our assessment of Mr Yusuf, Mr Yusuf sensed conspiracy everywhere. If he did not understand something related to his complaint or in respect of proceedings, then he regarded this as a conspiracy by other to do him down. Anything that did not support Mr Yusuf's case was regarded with distrust, which he said was false, either written or said with the express intention to discredit him. We could see no merit in this allegation nor in his approach to the case.
140. This allegation is also 5-months out of time and our above observations apply to exercising our discretion to allow the claim to proceed.

Allegation 24: R3(6)

141. The complaint was in respect of a meeting that had been rearranged and this was the third attempt. Mr Fazekas had booked a meeting room on the 6th Floor which was one floor above where the team worked. He proceeded to the meeting room for 1pm. Mr Yusuf did not arrive. Mr Fazekas proceeded with the meeting in Mr Yusuf's absence.
142. Mr Yusuf had been told in very clear terms that Mr Fazekas was likely to proceed with the meeting if he did not attend [HB713-714]. The invite gave the time and the location of the room – 6Q – 004. This was emailed to Mr Yusuf on 1 July 2019. Mr Yusuf came up with a story which we just do not believe: he said that he was in the building but he could not find the location of the meeting despite being previously advised. He did not re-read his invitation email. Mr Yusuf said that he went looking for Mr Fazekas but he could not ring him because he had not brought his mobile phone. Mr Yusuf

did have access to his emails so he could check his email for the location of the meeting but if he could not read the invite email then he should have sent Mr Fazekas an email asking for the location of the meeting. We understand that Mr Yusuf went looking for Mr Fazekas but according to Mr Kennedy, but he did not ask him (i.e. Mr Kennedy) to either ring Mr Fazekas or email him on his behalf for the location of the room. Furthermore, Mr Yusuf did not ask any of his work colleagues if they could contact Mr Fazekas either. Mr Yusuf gave a thoroughly unconvincing story. We determine that he made up this account to mislead about his avoidance of this meeting. He could have even asked HR the location of this meeting.

143. Yet, Mr Yusuf blamed Mr Fazekas for proceeding in his absence which is a familiar route that Mr Yusuf seems to take when he does not like to face anything that seems to have happened to him. We regard it as proportionate for Mr Fazekas to proceed with the meeting having warned Mr Yusuf that he would do so and having complied with the first respondent's appropriate policy. Indeed, it would have been unreasonable to expect this meeting to have been cancelled because the outcome of the meeting was a referral to Occupational Health for Mr Yusuf which was to benefit Mr Yusuf, and Mr Fazekas did not wish to delay this any further. To cancel this meeting for a third time would have been unreasonable in the circumstances. This complaint has no merit at all.
144. This complaint is 5 months out of time and we repeat our observations on the out of time and discretion discretion point.

Allegation 25: R24

145. Mr Yusuf was initially sent an invitation on 29 May 2019 for the disciplinary investigation meeting set for 7 June 2019 [HB660, HB3691]. Mr Yusuf responded the following day [CH1172] to Ms Shariff requesting that everything is postponed until his return from Sudan. Mr Yusuf was due to return from the Sudan on 30 June 2019 so when Ms Patel sent the further invitation on 16 July 2019 (to which this allegation relates) for a meeting to be held on 25 July 2019 [HB716-717] that was in line with Mr Yusuf's previous request for a postponement. Although Mr Yusuf remained off sick at that time, when he received the invitation he requested a further postponement on health grounds which was granted by Ms Shariff the same day [HB718].
146. So, Mr Yusuf's request for a postponement was granted twice so we do not understand what he is complaining about. There was absolutely nothing wrong with the first respondent dealing with these postponement requests. There could not possibly be any less favourable treatment or unwanted conduct in these complaints. These allegations have no merit.
147. The allegation is 5 months out of time and there is no basis for us to decide to exercise any discretion to allow that it proceed.

Allegation 26: R1(16)

148. This is an allegation of harassment because of the first respondent's delay in making an Occupational Health referral.

149. This allegation is puzzling because at allegation 24 Mr Yusuf said that the Stage 2 meeting should not have gone ahead, he now complains that the outcome of this meeting delayed his Occupational Health referral. It was not reasonable for Mr Fazekas to make the Occupational Health referral earlier because Mr Yusuf had been in Sudan with (Mr Yusuf said) limited internet access [CB1209] for much of the time since commencing that period of sickness absence. Furthermore, Mr Fazekas wanted to discuss the referral at the Stage 2 sickness meeting [HB665, 685] but that was twice postponed at Mr Yusuf's request. So, there was a delay, but Mr Yusuf had occasioned this delay. The referral was made on 23 July 2019 [HB729] which was 8 days after the Stage 2 sickness review, notwithstanding that Mr Yusuf contended that this meeting should have been postponed and he complained that the Occupational Health referral should not have been made without consulting him [CB310]. This is another incident of whatever the first respondent did Mr Yusuf was set to complain against and such complaints are illogical. An Occupational Health referral was made in a reasonably timely manner given the circumstances. There is no unwanted conduct related to Mr Yusuf's disability. This complaint has no merit.
150. The allegation is 4 months out of time and there is no basis for which we would have exercise any discretion to allow this complaint to proceed.

Allegation 27

151. We will deal with allegation briefly. Mr Yusuf contends that it was harassment and victimisation for Mr Fazekas not to respond to his email about his non-attendance at the Stage 2 meeting of 16 July 2019.
152. Mr Fazekas in fact replied to this on 23 July 2019 [HB698]. This allegation is again factually incorrect. There is no merit in this allegation.
153. Again, this allegation is considerably out of time, nearly 5 months in this case. There is no basis for the Tribunal to exercise any discretion to allow this complaint to proceed.

Allegation 28: R6(7)

154. This allegation is in respect to a meeting between Ms Asgari and Ms Patel on 24 July 2019. The minutes produced of this meeting [HB748] refer to Mr Yusuf's "Sick leave" and "Sickness" as a reference point for Mrs Asgari explaining the timeline. Mr Yusuf contended that this created a hostile and intimidating environment for him. There is no basis for us to see how this could have possibly created such an environment. Mr Lockley asked Mr Yusuf to withdraw such complaints. Mr Yusuf refused to withdraw such complaints. Ms Asgari made such statements in the course of a confidential investigation conducted by Ms Patel. There can be no possible detriment to Mr Yusuf by the use of this normal terminology. These applications are again unmeritorious.
155. In any event, the allegations are 4 months out of time and there is no basis for the Tribunal to exercise any discretion to allow such matters to proceed.

Allegation 29: R3(8)

156. This allegation refers to a Stage 2 sickness outcome letter sent by Mr Fazekas to Mr Yusuf on 23 July 2019 [HB770-771].
157. Mr Yusuf said that it was direct disability discrimination and disability related harassment for Mr Fazekas to refer to his sickness absence over 16 months and not 12 months (which Mr Yusuf alleged is the first respondent's policy) and, secondly, that the letter contains no timeline or targets.
158. The first respondent's Attendance Management Policy and Procedure [HB3597] refers to 4 potential triggers for a review of employee's absence. The second trigger refers to absence over a rolling 12-month period but the policy states:
- Where an employee has been managed under the formal Absence Management Policy and has further sickness absence, the trigger applied will take into account all previous sickness in the preceding 3 or 12 months rolling period as appropriate, even if the sickness absence previously formally been taken not account. [HB3596].
159. So, Mr Fazekas was required under paragraph 83 of the 3-stage Sickness Absence Management Procedure to confirm the employee's sickness absence dates. No time period was specified over which dates these should be recorded. The final requirement is to warn employees of the condition under which they will move to Stage 3.
160. Therefore, Mr Yusuf was wrong as there is no requirement to review only in the last 12 months of sickness absence (unless applying the second trigger only). Secondly, the timeline and targets following a Stage 2 meeting are provided by the attendance policy itself, i.e. no further triggers should be met over the next 12 months. It follows that there was no breach of the Attendance Policy, Mr Fazekas acted correctly and within the terms of the policy.
161. Mr Fazekas summary of Mr Yusuf's past absence as "A total of 155 days of sickness absence between 29 March 2018 and 23 July 2019 [HB771] was wholly appropriate in the circumstances. He did not fail to set timelines or targets in any event, as these were within the Attendance Policy to which he clearly referred to when stating that it might be necessary to move to Stage 3 should Mr Yusuf's absence hit a further trigger.
162. Therefore, there is no detriment nor is there any intimidating, etc conduct. The information he recorded was accurate, relevant and appropriate within the terms of the policy. Again, this allegation has no merit at all.
163. The allegation is 4 months out of time and there is no basis for any just and equitable extension, even if the claim had merit, which it has not.

Allegation 30: R3(10)

164. We have made some reference to this allegation above. However, by pressing on with the Occupational Health referral Mr Fazekas was allegedly treating Mr Yusuf less favourably on grounds of his disability. The referral was made on 25 July 2019 (HB752-755]. Mr Yusuf' complaint is that the referral was made without consulting him, for a meeting which he did not attend unreasonably, and without referring to his disability. Mr Yusuf also

complained that the referral included a reference to the pressure on other staff caused by Mr Yusuf's absence.

165. It is correct that the referral does not refer explicitly to Mr Yusuf's disability but this is inherent in the questions asked and, in particular, in relation to questions involving reasonable adjustments. However, Mr Yusuf was familiar with the Occupational Health Service, and it was reasonable for Mr Fazekas to anticipate a degree of familiarity from the Occupational Health Service with Mr Yusuf's case. When Mr Yusuf raised the issue, Mr Fazekas expressly asked Occupational Health to "enquire as to the nature of Mr Yusuf's disability [HB828]. We accept the respondents' submission that Mr Yusuf was not subjected to any conceivable detriment. So far as we see, the referral was appropriately made. This included in the referral a reference to pressure on staff caused by Mr Yusuf's absence, which was a perfectly reasonable reference to the service requirements and this is something that, we determine, would not have served to Mr Yusuf's detriment in any way. The Occupational Health advisors offer a detailed assessment of Mr Yusuf's condition, and this is done with reference to his work and the working environment so we cannot see how Mr Yusuf's unhappiness with how Mr Fazekas had made the referral could have any merit at all.
166. Consequently, there is no less favourable treatment in this matter. This allegation is unmeritorious. The allegations are at least 4 months out of time and there is no basis for any exercise of discretion, if we felt such fell appropriate, which we do not.

Allegation 31: R3(11)

167. This is an allegation of harassment on the basis that Mr Yusuf was not welcomed back to work following Mr Fazekas return to work. Mr Yusuf was signed off work with stress on 25 April 2019 and continued to be absent until he returned to work on 1 August 2019. Mr Fazekas was off on annual leave over the period when Mr Yusuf returned to work. In his evidence Mr Fazekas said that he was very busy on the first morning back following his leave and that he saw Mr Yusuf at lunchtime and greeted him in a friendly way. We accept this evidence; not merely because it was not challenged by Mr Yusuf but primarily because, as stated above, where there is a direct dispute between Mr Yusuf and that of Mr Fazekas, we prefer the evidence of Mr Fazekas. In any event, we found Mr Yusuf not to be an honest and reliable witness.
168. Mr Fazekas made an appointment to see Mr Yusuf at 4pm which Mr Yusuf accepted, and he discussed it with him but later refused a meeting with an overly aggressive response. So, Mr Yusuf's complaint of no resulting stress risk assessment following Mr Fazekas' return to work is entirely without merit.
169. This allegation is over 4 months out of time and there is no basis for us to exercise any discretion in respect of time limits.

Allegation 33: R1(9)

170. This allegation is dated 8 August 2019 because that is the date of the Occupational Health Report [HB454-455]. The Occupational Health Report did not make any recommendations in respect of this specific alleged

reasonable adjustment. The report merely recorded that Mr Yusuf would like to move teams and he would welcome a discussion about this. The first respondent accepts that it required Mr Yusuf to work in his existing team (the identified PCP) but denied that this PCP caused a substantial disadvantage to Mr Yusuf in relation to his employment. Mr Yusuf adduced no evidence on how working in his existing team at that time exacerbated his PTSD nor did he explain any particular negative effects on his employment so we cannot discern any particular disadvantage in working within this team. The claimant's evidence was that he "just got on with it" saying the team move was refused and this indicates there was no substantial disadvantage in relation to his employment because there was no discernible adverse effects thereafter.

171. Mr Fazekas says that this was not a reasonable adjustment in any event because Mr Yusuf's skills were required by the Design Team and there were no suitable vacancies elsewhere in the service. Mr Yusuf did not challenge Mr Fazekas' evidence in this regard. Notwithstanding that Judge Bedeau said that Mr Yusuf was a disabled person at this time, the first respondent denies that they had actual or constructive knowledge of Mr Yusuf's PTSD because the Occupational Health report did not give any indication of this diagnosis. The Occupational Health report dealt more with Mr Yusuf's physical impairment.
172. This allegation is considerably out of time and Mr Yusuf adduced no evidence in order to assess whether we exercise our discretion to allow this to proceed in any event.

Allegation 34: R3(13)

173. The allegation is made against Mr Fazekas and the date of the allegation is 8 August 2019. We could not find what this allegation related to and Mr Yusuf did not assist. It seems that this relates to an email of 2 September 2019 from Grace Nelson who was a town centre manager [HB4161]. Seemingly, Ms Nelson criticised the claimant for a delayed response to incorrect signage at a specified junction. Mr Yusuf did not like the fact that Ms Nelson copied in Mr Yusuf's team and sent him this email when he was absent from work. We do not know if Ms Nelson's criticism has any validity. From reading Mr Yusuf's statement at paragraph 12.41 Mr Yusuf says that the task had nothing to do with him. From the email chain we can see that he was involved in this sign matter from August 2018 [HB4167]. In any event, the allegation made against Mr Fazekas has no force because he did not write the email. So, this claim is also without merit.
174. In respect of appropriate time limits, the claim is 4 months out of time and Mr Yusuf provided no evidence or submissions on why the tribunal should exercise its discretion to allow the complaint to be pursued if there was merit to such a claim (which find there is not).

Allegation 35: R3(14)

175. We have largely dealt with this complaint under Allegation 30. However, this allegation refers to casting doubt upon Mr Yusuf's disability as opposed to not referring to Mr Yusuf's disability.

176. This relates to an email from Mr Fazekas to Occupational Health on 9 August 2019 [HB828]. In that email Mr Fazekas instructs:

At the assessment, please enquire as to the nature of Sayed's disability and advise me of any reasonable adjustments that can be made, and support that can be provided.

177. So, Mr Fazekas expressly asked Occupational Health to enquire into Mr Yusuf's disability. It is not logical how this could be conceived as any possible detriment. Mr Fazekas clearly assumes that Mr Yusuf has a disability and asks Occupational Health to enquire as to the nature of this.

178. In evidence Mr Yusuf admitted that there was no detriment, but he refused to withdraw this complaint. As this complaint has gone forward for a determination, we find that there is no merit in this allegation.

179. This allegation is out of time and there is no basis for us to determine that it is just and equitable to proceed (even if there was the requisite merit).

Allegation 36: R1(17)

180. The allegation relates to an email by Mr Whyte dated 12 August 2019 [HB848]. Mr Yusuf said that the PCP was Mr Whyte requiring Mr Yusuf to address his concerns with Mr Fazekas. This is wrong, there were no such requirement emanating from Mr Whyte in respect of Mr Yusuf's various complaints. By this time Mr Yusuf had refused to speak to Mr Fazekas [HB817-818]. Mr Whyte spent some time trying to resolve the situation and he indicated to Mr Yusuf that he was required to undertake work allocated by his manager, i.e. Mr Fazekas. In evidence Mr Whyte said it was wholly untenable to allocate another manager because Mr Yusuf had made complaints against everyone who had managed him so far and that the management of Mr Yusuf had become increasingly remote. Mr Fazekas was the last possible manager with some knowledge of Mr Yusuf's work who could undertake this overseeing function. We regard Mr Whyte's response as perfectly logical and appropriate in the circumstances. At no point did Mr Whyte correct Mr Yusuf to address his concerns with Mr Fazekas he merely specified that Mr Fazekas will send some work to Mr Yusuf which he expected Mr Yusuf to undertake. Therefore, this complaint cannot logically stand. So, consequently, this allegation is also dismissed.

181. In any event, the allegation is 4 months out of time and our above determination in respect of time limits apply.

Allegation 37: R3(15)

182. On 13 August 2019 Mr Fazekas assigned Mr Yusuf a small number of tasks which he said in his witness statement was not particularly arduous [HB995]. Mr Yusuf complained that this was direct discrimination and harassment on the basis that he was assigned work he could not do because he lacked the tools and Mr Fazekas asked Mr Yusuf to liaise with Ms Asgari.

183. Mr Yusuf said that he got a new laptop on 7 August 2019. He contended that the laptop was not compatible with the AutoCAD. If Mr Yusuf did have a problem with the compatibility of the laptop, which we do not believe he had,

then Mr Yusuf caused significant problems for himself by attempting to liaise direct with the IT Department for a replacement computer. The established system, according to Mr Fazekas which we accept, was that Mr Yusuf should have gone through his line manager. In any event, Mr Yusuf raised various complaints about his laptop not working or not being compatible. We spent some time at the Tribunal hearing, hearing about the purported deficiencies with this equipment and Mr Yusuf's liaison with IT. It is significant that Mr Yusuf would not go through his line managers who had some experience with the appropriate software and the work to be undertaken. We determine that this fits in to our overall impression of Mr Yusuf, in that he would go to considerable lengths to avoid work. We believe that this was merely a smokescreen so that Mr Yusuf could avoid undertaking his tasks and thereby mask his lack of productivity. In any event, when he became aware Mr Fazekas made efforts to help with the software issue [HB817-818, 994, 832]

184. In respect of the second part of the allegation that Mr Yusuf was asked to liaise with Ms Asgari, Mr Fazekas was reasonable to expect Mr Yusuf to maintain a professional working relationship with his senior female colleague. So far as we can see, Ms Asgari had the most cause to feel aggrieved by Mr Yusuf's behaviour, yet she was prepared to work with Mr Yusuf. In any event, Mr Yusuf was told that he could liaise with Ms Asgari or Mr Fazekas in respect of the work schemes and Ms Asgari or Saba Nathan in respect of the waiting restrictions. So, there was no requirement that Mr Yusuf liaise with Ms Asgari as alternatives were proffered. There is no detriment as alleged. So, this claim fails at the first point of analysis. The allegation has no merit.

185. Again, the allegation is 4 months out of time and for the reasons set out above the Tribunal is in no position to exercise its just and equitable discretion.

Allegation 38: R1(19)

186. Mr Yusuf sent Mr Whyte an email on 19 August 2019 in which he raised a number of matters [HB687-688]. He marked a concluding section with the title "Requirements" and then specified the following:

- Phased return
- Return to work meeting.
- Meeting to discuss workload
- Being moved to another team
- I would like to put a grievance against all of Sandor Fazekas, John Dryden, Padideah Asgri [sic]
- I would like to get a HR Advisor to help with this as per policy

187. The respondents contend that Mr Yusuf merely indicated his future intention to raise a grievance. We are not easily persuaded by this argument but as Mr Yusuf specified that he wanted HR advice to assist with this task and because it was copied to Ms Walker, we accept that this was a future intention to provide a grievance and was not a grievance in itself.

188. If there was any doubt about that analysis, such doubt was dispelled when Mr Whyte wrote to Mr Yusuf on 21 November 2019 [HB686-687] stating that Mr Yusuf had made it known that he wished to instigate a grievance but he had yet to do so. Mr Whyte asked Mr Yusuf if he wanted that matter to be dropped. Mr Yusuf replied a few days later on 25 November to say:

Thank you for your email, I am still working on the grievance and getting the relevant advice and will hand it in, in due course” [HB686]

189. So, Mr Yusuf’s claim that the first respondent directly discriminated against him by not acting upon a grievance on 9 August 2019, when, by his own admission he had not provided the grievance over 3 months later is wholly unmeritorious. Again, this claim is dismissed on its facts.
190. The claim is also out of time and our above analysis in respect of just and equitable discretion is repeated.

Allegation 39: R3(18)

191. Despite considerable effort, it was not clear to us what this allegation related to although Mr Yusuf raises this at page 227 of the hearing bundle. There is no relevant email or action by Mr Fazekas on 28 August 2019 and Mr Yusuf does not directly refer to this date or any such conduct specifically in his statement. Paragraphs 13.2 refers to a later date when Mr Yusuf said his laptop kept crashing. Mr Yusuf refused to finish his oral evidence and we could not discern any evidence that might address this complaint either in Mr Yusuf’s favour or otherwise. So we dismiss this complaint as having no factual basis. As such, the complaint is, again, without merit.
192. The complaint is also over 3 months out of time and our above observations in respect of time limits and discretion applies.

Allegation 40

193. This allegation relates to a one-to-one meeting between Mr Amir-Hosseini and Mr Yusuf on 29 August 2018 and not 30 August 2018 as contended. Mr Yusuf wrote to Mr Amir-Hosseini [CBA625] on 30 August 2018 where he said:

You have also mentioned that I am entitled to only to one third of my annual leave as I was absent for five months, but you will need to check this with HR.

194. Mr Amir-Hosseini did check this with Human Resources as requested by Mr Yusuf [HB4182] and was informed that Mr Yusuf was entitled to carry 5 days over leave that he was claiming. Therefore, Mr Yusuf was not subjected to the unfavourable treatment upon which he relies because Mr Amir-Hosseini did as was requested and sought HR guidance on this matter.
195. In fact, Mr Amir-Hosseini had already sent the request to check Mr Yusuf’s annual leave to HR on the day of the one-to-one [HB4181]. So it is clear to us that Mr Amir-Hosseini was unsure and sought HR guidance.
196. We did not hear evidence from Mr Amir-Hosseini. However, our construction of the contemporaneous documents [HB4181-4182], Mr Amir-Hosseini did not ever say that Mr Yusuf could not take the annual leave he was claiming. Mr Amir-Hosseini’s position was that he did not know how Mr Yusuf’s sickness absence affected his annual leave so he said that he would seek guidance from HR, which he did prior to Mr Yusuf which raised this. Mr Yusuf’s evidence on this matter was unsatisfactory. Mr Yusuf’s email on this is the day after on – 30 August 2019. Mr Yusuf’s statement deals with this at paragraph 7.30 and 7.31 in which he does little more than repeat the

allegation and provided no factual underpinning. At paragraph 7.32 Mr Yusuf concocts a story that he attributes to Mr Amir-Hosseini by saying that he was told by Mr Amir-Hosseini that senior management was not happy that Mr Yusuf used all of his annual leave which is just not consistent with Mr Amir-Hosseini's contemporaneous emails. This is one of the matters that led us to the conclusion that Mr Yusuf did not give truthful evidence. Mr Amir-Hosseini never said Mr Yusuf could not have this additional leave. He merely queried Mr Yusuf's entitlement to it and he said he would need to check it.

197. Mr Amir-Hosseini was not available to give evidence to the Tribunal and given that we do not accept that there was unfavourable treatment, even if there was unfavourable treatment, this cannot be ascribed to Mr Yusuf's disability because it emanates from uncertainty in respect of Mr Yusuf's annual leave entitlement. There is no logical basis to uphold that Mr Amir-Hosseini's uncertainty arose because of Mr Yusuf's disability. Particularly, when he did not reduce Mr Yusuf's annual leave.
198. Furthermore, given that this allegation occurred over a year before the date recorded by Judge Maxwell, it is hugely out of time, and there is no basis for any possible just and equitable discretion to be exercised.

Allegation 41: R1(22)

199. This is in respect of a harassment complaint. On 21 October 2019 Mr Solomon Nere circulated a spreadsheet listing work programmes. This identified one piece of work which Mr Yusuf claimed he had not been briefed and he asked for more information. He also asked, "When it was assigned to me and by whom" [HB4159].
200. Mr Kennedy responded within an hour of the email having been sent to him by Mr Yusuf [HB4158-4159]. He provided details in respect of the scheme and proceeded to say, "When it was assigned to you and by whom is irrelevant and provides no value moving forward". Mr Kennedy proceeded to say:

This is work you have been given to take forward now you are back in the office full time. I would expect you to focus on gathering and assessing the information and designing a scheme appropriate to addressing the identified issues in line with the funding allocated for the project. For an officer of your experience and ability this should not be an onerous task, although I would be happy to discuss further if required. This should be seen as an opportunity to ease yourself back into the role and duties of your post.

201. Mr Kennedy clearly perceived a problem in that Mr Yusuf wanted to argue about each piece of work he had been allocated and Mr Kennedy did not wish to become embroiled in such arguments. He gave Mr Yusuf work to do and he asked him to get on with it. Mr Yusuf may not have liked being spoken to in such a firm manner, but we determine that was entirely appropriate having observed Mr Yusuf's demeanour and approach both at the hearing and with the tone of his correspondence during the contemporaneous exchanges. He required firm management and clear instructions and that is what Mr Kennedy gave on this occasion.

202. In any event, the allegation falls well below the threshold for harassment but, in the circumstances of this case, the comment complained of by Mr Yusuf is appropriate as there were diminishing strategies left for Mr Kennedy to try to get this recalcitrant employee to actually do some work.
203. There is no link to Mr Yusuf's disability in respect of this comment and this comment is considerably out of time there being no basis upon which the tribunal could exercise any discretion.
204. We could not locate an email from Mr Fazekas to the entire team about an update on the scheme allocated to Mr Yusuf. Mr Yusuf was asked in respect of this and was not able to identify any document for us, so that part of the allegation must fail.

Allegation 42: R3(20)

205. This is an allegation of harassment that is made against Mr Fazekas in respect of an email on 21 October 2019. However, according to Mr Yusuf this was dealt with in paragraph 13.5 and that relates to Allegation 41 above. Consequently, this allegation is also dismissed. It is similarly unmeritorious.

Allegation 43: R4(4)

206. The specific allegation is that following the one-to-one meeting between Mr Kennedy and Mr Yusuf on 23 October 2019, Mr Kennedy failed to conduct a stress risk assessment or to mediate with Mr Yusuf. Mr Yusuf contends this to be direct discrimination, harassment and victimisation, the reasonable adjustments complaint being struck out.
207. Mr Kennedy took a note of this meeting and Mr Yusuf made additions [HB3672]. Mr Yusuf's annotations are just in respect of pursuing and expanding upon arguments and there is, seemingly, nothing in Mr Yusuf's notes that correct what did or did not happen at the meeting. Notwithstanding that this was a return-to-work meeting at which Mr Kennedy would implicitly conduct a stress assessment, there is no request from Mr Yusuf to undertake a separate stress risk assessment nor is there any request for Mr Yusuf to refer this matter to mediation. This allegation must fail on its facts because we cannot discern any less favourable treatment, harassing conduct or detriment other than Mr Yusuf's hindsight argument that a formal stress risk assessment ought to have been undertaken and a formal reference to mediation ought to have been made. We suspect that this was another attempt to look for something to criticise the respondents; and somewhat late. There is not any degree of merit in this allegation.
208. The allegations were out of time, and we repeat our observation in respect of time limit escape clauses.

Allegation 44: R4(5)

209. This is an allegation made against Mr Kennedy in respect of a purported requirement for Mr Yusuf to use unsuitable IT. Mr Yusuf said that this was direct discrimination, discrimination arising from his disability and a failure to make reasonable adjustments. Again, this allegation fails at the factual level.

210. On 28 October 2019 Mr Kennedy informed Mr Yusuf that he needed to pursue appropriate channels, i.e., go through his line manager, to ensure that he received a new laptop with the same specifications as other officers because if he contacted IT direct he may well get a laptop without the appropriate software and with a different specification [HB1068-1069].
211. Mr Yusuf responded to this email, in a rather confrontational manner saying that what Mr Kennedy was saying was not true. Mr Kennedy then wrote another email [HB1067] in which he clarified the position again and responded to Mr Yusuf in a very measured manner. There was no less favourable treatment, unfavourable treatment or failure to provide suitable IT equipment in this respect. Mr Yusuf contended that his laptop did not work. He said that he had tried to sort this out with IT. Mr Yusuf's managers accepted at face value, Mr Yusuf's protestations that his laptop did not work and therefore he could not get on with his allocated tasks. Mr Kennedy noted that what Mr Yusuf complained about was "not an isolated issue" which means that Mr Yusuf was complaining of computer issues consistent with other colleagues. There is no discernible connection to Mr Yusuf's disability.
212. This allegation is out of time as well as being unmeritorious. Therefore, there is no basis for us to exercise a just and equitable discretion.

Allegation 45: R1(24)

213. This allegation is dated 30 October 2019 because Mr Yusuf made a request to Mr Whyte in respect of his existing laptop and chair [CB1669].
214. The adjustments claim that relates to Mr Yusuf's laptop is dealt with under Allegation 44 above. In so far as this allegation relates to the chair, Mr Yusuf had been given a chair. Mr Yusuf had chosen an Adapt 680 chair which the first respondent purchased but Mr Yusuf did not like this chair. Mr Yusuf said he did not find the chair comfortable so he stopped using it in September 2017 and the chair could not be returned because of the adaptations [HB401]. So, just over a year later, Mr Yusuf raised further issues about the chair. Mr Kennedy's response was that the first respondent had purchased ergonomic chairs that were as good (if not better) than anything available on the market although the ergonomic chairs were designed to work with standard height desks. He claimant required an adjustable desk. Notwithstanding Mr Yusuf's demands for an ergonomic chair, this was not raised with Occupational Health and there is no recommendation from Occupational Health in respect of seating [HB883]. So, this was not an adjustment recommended at the time.
215. In any event, Mr Yusuf was working 3 days a week from home [HB886] and when he was asked whether he had an ergonomic chair at home, he said he had not. We cannot discern any disadvantage afforded to Mr Yusuf. He may well have wanted the first respondent to provide him with another ergonomic chair to his liking, but we are not satisfied that this was required. We cannot see any merit in this allegation. If Mr Yusuf suffered from chronic pain back because of the chair, then he would have raised this at the Occupational Health review of 23 August 2019.
216. This allegation is out of time. There is no basis upon which the Tribunal could exercise any discretion on any just and equitable basis.

Allegation 46

217. This allegation is one of direct discrimination, harassment and victimisation in Mr Kennedy's inaccurate recap of a return-to-work meeting on 23 October 2019. Mr Kennedy summarised the meeting in an email dated 4 November 2019 [HB3672-3675]. Mr Yusuf did not correct any supposed inaccuracies, so far as we can tell, he merely perpetuated an argument in respect of issues identified by Mr Kennedy. Mr Yusuf's response was 6 November 2019. So, the first part of that allegation fails as it has no merit.
218. In respect that there were no proposals to address Mr Yusuf's issues, Mr Kennedy informed Mr Yusuf that he would review his comments in an email dated that day [HB3670-3671]. Mr Kennedy then formally responded to outstanding issues on 4 December 2019 [HB3666-3669]. So, Mr Yusuf was incorrect. These matters were dealt with under five headings by Mr Kennedy on 4 December 2019.
219. This allegation does not constitute less favourable treatment, intimidating, etc conduct or detriment so the allegation fails on the first analysis. The allegation is unmeritorious, so it is dismissed.
220. Again, the allegation is out of time and the above determination in respect of time limits applies.

Allegation 47: R4(7)

221. As stated above Mr Yusuf made various complaints about emails being cropped which arose from Mr Yusuf's misunderstanding of how emails are recorded. If an individual answered an email in a chain out of sequence, then it may give the impression that such an email chain is incomplete, which, so far as we could tell, was Mr Yusuf's complaint.
222. So far as this allegation is concerned, this relates to the emails at page 3670 to 3671 of the hearing bundle. Mr Yusuf had sent two emails to Mr Kennedy. Mr Kennedy replied to both emails by effectively attaching the other email to explain what he was doing, i.e. he replied to one and attached the other. Therefore, this allegation has no factual basis and is accordingly dismissed as having no merit.
223. We make a similar finding in respect to the allegations being out of time.

Allegation 48: R4(8)

224. We deal with this allegation briefly because it is very straightforward.
225. Mr Yusuf requested training in 3D AutoCAD but Mr Kennedy refused to approve such training because that was not an application that was used by the respondent. Mr Kennedy said in evidence, unsurprisingly, training was only funded where it could benefit both the employee and the council, and 3D AutoCAD training conferred no benefit on the council. We accept that evidence.
226. This allegation has no merit. The allegation is similarly out of time. There is no basis for the Tribunal to allow such an unmerited application to proceed.

Allegation 49: R3(21)

227. This is an allegation that Mr Fazekas changed Mr Yusuf's sickness record resulting in Mr Yusuf's monthly pay being halved. The reality was that the claimant was overpaid in respect of his sickness absence and the first respondent sought to recoup such an overpayment.
228. Ms Walker said in evidence that she discovered that Mr Yusuf's fit notes did not correspond with the dates inputted into the first respondent's Oracle system for monitoring sickness absence. The matter came before Mr Fazekas, who was Mr Yusuf's manager, and he asked for Mr Yusuf's sick leave absence to be corrected although Mr Fazekas said in evidence that he did not know whether this would mean that Mr Yusuf had been overpaid or underpaid, he was merely asked to make corrections to the first respondent's Oracle records, which he did. The fact that the first respondents made an error is obviously regrettable. The first respondent effectively paid Mr Yusuf two months full pay when he should have been paid two months sick pay. This resulted in an overpayment, i.e. Mr Yusuf was paid money for which he was not entitled to and the first respondent sought recovery of this money.
229. The changing of Mr Yusuf's sickness record could not properly be described as harassing conduct because this was merely the correction of an inaccuracy. There could be no possible harassment in the first respondent seeking recovery for money Mr Yusuf was not entitled to. This allegation has absolutely no merit and such allegations as this may bring anti-discrimination protection into disrepute. The allegation is dismissed. Mr Yusuf was offered a welfare loan because the first respondent's system could not seek recoupment by instalments, but Mr Yusuf did not take up that offer.

Allegation 50: R3(22)

230. This is an allegation against Mr Fazekas but because there does not seem to be any relevant activity on 21 November 2019, we think Mr Yusuf means the email of 20 November 2019 [HB1123].
231. At paragraph 14.1 of Mr Yusuf's statement, he complains about illegal deductions from his wages which are in respect of Allegation 49. There is nothing illegal about the first respondent seeking to recover an overpayment in wages. Mr Fazekas wrote to Mr Yusuf in respect of a possible welfare loan so he was mindful of the effect that this recovery might have on Mr Yusuf's finances and sought to assist..
232. The allegation of intimidating and hostile conduct is wholly unsustainable and is without merit. Consequently, the allegation is dismissed.

Allegation 51: R4(9)

233. This is an allegation directed at Mr Kennedy dated 27 November 2019. The allegation is in respect less favourable treatment in not providing Mr Yusuf with a suitable chair and failure to provide a reasonable adjustment. The allegation repeats allegation 45 above. However, in his email Mr Kennedy offers Mr Yusuf assurance that his previous workstation would be available.

We cannot see that there is any refusal to provide Mr Yusuf with a suitable chair, so this allegation is dismissed as wholly without foundation.

234. In any event the allegation is out of time and there is no basis upon we should exercise our discretion.

Allegation 52: R7(4)

235. The deduction from Mr Yusuf's pay and the allegation made against Mrs Walker this time; the allegation relates an email of 26 November 2019 [CB1609] and not 27 November 2019 as contended. We cannot really understand the basis of this allegation because Ms Walker provided a comprehensive explanation about why Mr Yusuf should pay back the money that was advanced to him in error and she made reference to the Green Book (NJC Agreement for Local Government Employees). There is no unwanted conduct or unfavourable treatment in an email that seeks to assert the first respondent's contractual right to reclaim money paid to Mr Yusuf made in error. The allegation is wholly without merit.

236. The allegation is also considerably out of time and we heard no evidence or submissions in respect of the possibility of exercising our authority on just and equitable principals.

Allegation 53

237. This allegation relates to Mrs Walker's email of 03 December 2019 [HB1161] in which she allegedly further explained the deduction and she used jargon that Mr Yusuf alleged was confusing. We could not detect any confusing jargon. We would have asked Mr Yusuf about this but by this stage in proceedings Mr Yusuf had refused to answer any more questions. In any event, any argument about detriment is negated as the email was to Mr Yusuf's benefit in that Mrs Walker told Mr Yusuf she reinstated 3 days in respect of his sickness allowance. So again, this allegation has no merit and again is considerably out of time with no basis for us to exercise any discretion in allowing the complaint to possibly proceed.

238. From reading Mr Yusuf's witness statement we think that the confusing jargon relates to comment made by Mrs Walker "the onus at the time should have been on you to notify that you had not gone onto half pay and was receiving your full pay". Mr Yusuf objected to this comment which he saw as accusing him of knowingly taking money from the first respondent. Because he refused to give evidence on this point, we could not bottom out was he was trying to say but he did not put this comment to Mrs Walker so she was not given the opportunity to proffer any explanation. Nevertheless, our reading of the situation was that she was not accusing Mr Yusuf of any misconduct she was merely saying that he should have kept an eye on his sick pay entitlements, and he should have known or, at least, it should not have come as a surprise that he was overpaid the amount in question.

Allegation 54: R4(10)

239. This is an allegation against Mr Kennedy in respect of an email dated 4 December 2019 where the less favourable treatment is contended that he sent an email providing no answers to Mr Yusuf and asking more questions. Mr Kennedy's email is at HB3668. He deals with Mr Yusuf in a professional manner, his language is courteous, and he deals with the issues in a systematic way. He attempted to resolve an issue and where more information was needed, he asked for it. We are not clear what answers he was supposed to provide, and Mr Yusuf did not clarify this point. The allegation is unmerited and is also out of time with the relevant provision of the Employment Tribunal to extend its jurisdiction.

Allegation 55: R2 (11)

240. This is an allegation of failure to make reasonable adjustments in that the first respondent required Mr Yusuf to attend an investigatory interview which Mr Yusuf said would find difficult to participate and/or and exacerbate his mental impairment.

241. The allegation does not match the reality because the most recent occupational health report of 21 August 2021 [HB982] explained explicitly that Mr Yusuf was fit to attend any formal or informal meetings without it being detrimental to his health. The report appeared to be reasonably thorough, and we have no medical evidence to contradict it. Indeed, it proceeded to say Mr Yusuf had the capacity to understand questions and suggested that he may want to be supported by a colleague or a Trade Union representative.

242. So, no duty to make reasonable adjustments arose in respect to this complaint. The complaint is without merit and is accordingly dismissed.

243. The allegation is also out of time and the Tribunal does not allow this to proceed.

Allegation 56

244. This is an allegation against Mrs Walker of direct discrimination and harassment in respect of her email of 5 December 2019 [HB1175]. Mr Yusuf objected to Mrs Walker saying that the deduction from his pay to recoup his overpaid wages was not Mr Fazekas' fault. This is a factual statement in respect to Mr Fazekas there is simply no basis for which we can conclude that this was less favourable treatment or intimidating or offensive conduct. The second part of the allegation is dealt with at allegation 53 above.

245. Again, these allegations are out of time and there is no basis upon which the Tribunal would be prepared to exercise our discretion to allow such complaints to proceed, even if they were meritorious, which they are not.

Allegation 57: R(411)

246. This is a complaint of direct discrimination and victimisation against Mr Kennedy for his email of 06 December 2019 [HB3662]. The allegation has been dealt with in respect of allegations 45 and allegations 51. Mr Kennedy does not appear to be making any further decision, he was merely restating the position. Mr Kennedy said as follows: “thank you for sending me your latest Fitness to Work statement.”
247. I note the statement recommends you “must avoid prolonged standing and heal stress. Each workstation within the office has a chair you can utilise to avoid need for prolonged standing, including the station you currently sit at. I have previously encouraged you to sit wherever you feel or the need to do so and also offered an interim arrangement to use an adjustable height desk and ergonomic chair that has multiple adjustment options, whilst we wait for an up-to-date access to work assessment to confirm your current needs...”
248. Mr Kennedy disputed that the office chair was unsuitable, and we find that notwithstanding Mr Yusuf wanted his own chair, and then declined to use that chair, the first respondent’s furniture was suitable for his back condition. We said this is because the facilities’ manager directly told Mr Yusuf that the first respondent’s standard chair exceeds the requirements of the ergonomic chair he requested. This was not disputed contemporaneously or at the hearing.
249. By this stage, Mr Yusuf had stopped answering questions and his statement is not particularly helpful. We reject Mr Yusuf’s contention that Mr Kennedy knew the chair to be unsuitable as this contention does not correspond with what, in fact, happened.
250. Mr Kennedy’s email went on to make enquiries about Mr Yusuf’s home working arrangements, he said

...with regards to your home working arrangements, please can you confirm what arrangements you have in place to assist your various physical conditions whilst working from home? It could be that a risk assessment is required to ensure your health is not being put at risk as a result of working from home.

This is a reply request for Mr Yusuf to explain how he was working from home and cannot be considered (by any reasonable person) to be a detriment. Consequently this part of the allegation is also dismissed because again it is unmeritorious.

251. The allegation is out of time and our determination in respect of the time limit point set out above applies.

Allegation 59: R1(29) and Allegation 60: R1(30)

252. We deal with these two allegations together. Allegations 59 and allegations 60 are in effect two sides of the same coin. It was contended to be discrimination arising from Mr Yusuf’s disability, harassment and victimisation

that Mr Williams asked claimant to raise his concerns about the disciplinary investigation process direct with Ms Patel as part of that process as opposed to treating it as a separate grievance [HB1201].

253. Having read the appropriate correspondence, it was a reasonable position for Mr Williams to take and he quoted paragraph 4 of the grievance policy to justify his decision. So, it is quite clear to us that he believed he had contractual authority as well as common sense to make the decision he did. In evidence Mr Williams explained his why he felt it made sense and that was to deal with issues emanating from the disciplinary process, within the disciplinary process. This was because, if necessary, any mistakes that might have been made could be addressed and corrected early. That is a clearly logical response but it nowhere near reaches the threshold of the various discrimination criteria. These allegations are unmerited and are accordingly dismissed. They are also out of time.

254. There is no basis to allow such complaints even if it was merited, to proceed.

Allegation 61: R1(11)

255. This is an unusual allegation because Mr Yusuf contends that it was a failure to make a reasonable adjustment, i.e. an act of disability discrimination, to limit his Trade Union representative from someone within the terms of the Trade Unions facility agreement. This is yet again another example of Mr Yusuf manipulating any possible grievance that might conceivably be raised against the first respondent into an allegation of disability discrimination.

256. The first respondent had a facility agreement with Unison and the GMB as recognised Trade Unions. This facility agreement provided that Trade Union representation at relevant meetings was limited to Brent employees or regional offices of either Union. The agreement provided for no other representative to attend the meeting. We accept the respondents' representation that the employees' representatives had pressed for this agreement because it gives them exclusive rights. It would seem that this exclusivity goes beyond what the statutory position which provides for an employee to choose his own recognised Trade Union representative irrespective of what the facility agreement said. However, the rightness or wrongness of the agreement is merely incidental. Mr Yusuf was a member of a recognised trade union, so his rights were not adversely affected by the facilities agreement. According to Mr Williams (who we believe), Mr Yusuf had fallen out with his Unison representative. Mr Williams spoke to the branch secretary directly in order to facilitate Mr Yusuf's Trade Union representation and he was informed that Unison would not be providing Mr Yusuf's support because of his abuse towards the female representative who was representing him previously. Irrespective of the correctness or not of the facilities agreement, the factual basis of this complaint and the PCP is wrong, Mr Yusuf seems to be projecting his problem onto the first respondent. The PCP does not apply because Mr Williams did not object to a regional officer

from Unison representing the claimant. Mr Yusuf could have someone who was a non-Brent employee providing they were a regional officer.

257. In any event, it is difficult to see how Mr Yusuf's antagonism with his own Union caused the disadvantage contended *because of Mr Yusuf's disability*. If there is an issue here, it is an issue between Mr Yusuf's behaviour and his Trade Union's response thereto. Mr Williams merely sought to provide for representation in line a facilities agreement, but Mr Yusuf did not seem to require representation outside the facilities agreement.
258. We were not able to clarify this with Mr Yusuf because at this stage Mr Yusuf had refused to answer any questions so we dismiss this point. If there was something more to this point that we did not understand, then Mr Yusuf should have explained his position to us.
259. As far as we can see, this claim is without any foundation and is accordingly dismissed as being unmeritorious. The allegation is out of time and there is no basis to allow the allegation to proceed.

Allegation 62: R1(31)

260. This is an allegation of direct discrimination and victimisation and harassment in Mr Williams' email of 11 December 2019 [HB1243-1244]. Mr Williams' email grants Mr Yusuf a further postponement but proceeds to make a rather self-evidenced statement "the Council has a responsibility to everyone involved in the investigation (not just yourself) to ensure it is brought to a conclusion as swiftly as possible". It is difficult to see how anyone would be offended by such a statement but seemingly Mr Yusuf contends that this was discriminatory because it supported Ms Asgari, to whom Mr Yusuf displayed an obvious deep-felt antipathy.
261. On page 1243 of the hearing bundle Mr Yusuf agrees with the statement in which he says that he agrees with Mr Williams that the Council does have responsibility to everyone and not only him. So, it is difficult for us to understand why this allegation as brought. As Mr Yusuf had refused to answer questions at this time it was difficult to see how he thought it could be pursued.
262. The allegation is unmeritorious and is dismissed.

Allegation 63: [R4(13)] direct discrimination and harassment.

263. This allegation is in respect of Mr Kennedy's occupational health referral of Mr Yusuf on 24 January 2020 and is contended to be direct disability discrimination and harassment on the grounds of disability that Mr Kennedy referred Mr Yusuf without seeking his consent or informing and that the referral was inaccurate.

264. Mr Yusuf had been signed off sick from 1 January 2020 to 31 January 2020 [HB1250]. The last occupational health report had been in August the previous year and Mr Yusuf had raised his dissatisfaction with the adjustments made since then. Mr Kennedy sent Mr Yusuf the referral form telling him that it had been sent to occupational health, but he added “let me know if there are any parts of the form you are not in agreement with or would like to amend” [HB1320]. If Mr Yusuf had wanted to challenge or amend this then he had the opportunity to clarify matters notwithstanding the referral had already been sent. Again he had a further opportunity to attend the OH assessment and correct any inaccuracies that the referral made. Mr Yusuf had also the opportunity to speak directly with the occupational health assessor to correct anything that he did not like.
265. Mr Kennedy’s referral was made in line with the attendance policy which did not require managers to consult with employees, as the policy obligation was that the employee merely should be informed of the referral and the reasons for it [HB3604]. Mr Yusuf’s witness statement does not identify any inaccuracy (other than repeating the assertion that the referral was inaccurate) and Mr Yusuf had refused to answer questions by this stage in proceedings. Consequently, the aspect of this allegation must fail and the allegation is without merit.

Allegation 64: R2(12)

266. This is an allegation of discrimination arising, failing to make reasonable adjustments, and harassment made against Ms Patel. The allegations of unfavourable treatment or unwanted conduct were two-fold: not sending the interview with Mr Dryden and one-to-one recap to Mr Yusuf; and not allowing Mr Yusuf to provide comments in writing.
267. This allegation cannot withstand scrutiny at any level because on the 17 January 2020 Ms Patel did Mr Yusuf the opportunity to respond in writing to those matter [HB1282]. So, there cannot be any possible fail to make reasonable adjustments because he was sent them.
268. We could not what Mr Yusuf was complaining of in this complaint. We were not able to properly scrutinise this allegation because by this stage Mr Yusuf had refused to answer questions but the following is gleaned from the witness statement of Ms Patel and Mr Yusuf. Ms Patel’s evidence was that she interviewed Mr Dryden (amongst others) and then she extracted a relevant part from the allegations and sent this through to Mr Yusuf. Mr Yusuf at paragraph 15.23 of his statement confirmed that he was sent the relevant extracts from Mr Dryden’s statement. Ms Patel made seven attempts to interview Mr Yusuf over a protracted period but she was not available to interview Mr Yusuf and in the end accepted his written answers to questions. She sent him written questions although we do not think Mr Yusuf answered these. So, Mr Yusuf was afforded the opportunity to see the interview with Mr Dryden and the one-to-one recap to Mr Yusuf was not made. Mr Yusuf was allowed to make comments in writing for his disciplinary hearing but as far as

we can see he did not reply. In any event he was provided with all of the material before the disciplinary hearing. We don't understand the reasonable adjustment PCP in any event according to paragraph 15.26 of Mr Yusuf's statement, he got solicitors to write on his behalf on 31 January 2020 to say he was too sick to respond to these allegations.

269. The PCP is confusing and does not make sense because Mr Yusuf was sent all of the relevant materials for the disciplinary hearing albeit that this was somewhat late because of Mr Yusuf's own unavailability, the protracted investigations and his sickness absence. We could find no point where the first respondent precluded Mr Yusuf from providing written comments, indeed Ms Patel explicitly said in evidence that she would have welcomed Mr Yusuf's written comments.
270. This allegation is unsustainable, and we dismiss it.

Allegation is 66: R2 (14)

271. Ms Patel completed her investigation report and sent this to Mr Yusuf on 17 March 2020 [HB1340, 1922]
272. The report made it clear that she determined that Ms Asgari's complaint of sex (or gender) discrimination was not going forward [HB1352, 1353]. We note that the covering letter still mentioned gender discrimination and Ms Patel accepts that this was a mistake if Mr Yusuf wanted this clarified he could easily have written to Ms Patel for a correction which he did not.
273. There is no harassment in this error and in any event it was not related to Mr Yusuf's disability. The reasonable adjustments complaint appears not to make sense because it was quite obvious that the gender (or sex) discrimination complaint cannot be in pursuit. So, this fails on its factual basis also.
274. This could not be said to be unfavourable treatment by a typographical error.

Allegation 67: R3(24)

275. This is attributed to 23 November 2020 although Judge Maxwell noted that the date was incorrect. The allegation is one of direct discrimination, harassment and victimisation in the appointment of Mrs Patel as the investigator. The allegation is made against Mr Fazekas
276. Mr Fazekas accepted that he had a hand in appointing Ms Patel but the appointment was made by Ms Shariff of Human Resources. In any event, Ms Patel gave evidence which was unchallenged, that she had no direct dealings with Mr Yusuf and that prior to her investigation, she had only come across Mr Yusuf once when she forwarded a complaint about the transport team to him to deal with. Apparently, Mr Yusuf approached Ms Patel to say that he did not normally deal with this complaint which Ms Patel accepted. Ms Patel

did not recall whether the complaint was about Mr Yusuf, she suspected it was not because she had asked Mr Yusuf to deal with it. However, we could detect no less favourable treatment in appointing her as an investigator and Mr Yusuf did not seem to take issue with this when he asked Ms Patel questions.

277. Consequently, we determined that this complaint had no merit and accordingly is dismissed.

The second claim

Allegation 70: P4 (5)

278. This allegation is against Mr Kennedy essentially for occupying his role as Mr Yusuf's designated line manager. Mr Yusuf objected to Mr Kennedy handling Mr Yusuf's return to work because he contended that this exacerbated his mental impairment.

279. It is difficult to fathom Mr Yusuf's objection. Mr Yusuf had objected to his two previous line managers (Mr Amir-Hosseini and Mr Fazekas) and Mr Dryden. Mr Yusuf had declined to give oral evidence in respect of this allegation but when he was asked Mr Kennedy questions about this, the Tribunal asked him to put before Mr Kennedy any document that evidenced that Mr Kennedy's line management of him or alternatively, Mr Kennedy's handling of Mr Yusuf's return to work could have exacerbated Mr Yusuf's mental health condition. Mr Yusuf was not able to produce any such corroborative evidence. We are satisfied that there is a pattern that anything Mr Yusuf does not want to do he ascribes to aggravate his mental health condition and this is another example of this tendency. We have examined contemporaneous correspondence surrounding Mr Kennedy's management and we cannot see how Mr Kennedy did anything other than manage a difficult employee in a calm, courteous and professional manner. This allegation is without any merit as Mr Yusuf was not, in any way placed at a significant disadvantage by being managed by Mr Kennedy.

280. Indeed, we accept the evidence of Mr Whyte where he commented that Mr Kennedy was the last line of effective management for Mr Yusuf because any other managers appointed would not have the operational knowledge of Mr Yusuf's role, which would compound problem managing him for the future.

281. This claim is 9 months out of time and there is no basis for the Tribunal to exercise any discretion that we might have had.

Allegation 71: P4(6)

282. This allegation dealt with in the response to allegation 70. This allegation is against Mr Kennedy for keeping Mr Yusuf off work in June 2020 pending a further assessment by occupational health. Mr Yusuf alleges discrimination arising from his disability, disability related harassment and victimisation.

283. Mr Yusuf's GP stated that he was fit to return to work on condition that his stresses were addressed [HB1990]. Mr Yusuf's GP did not identify what those stresses were.
284. Mr Kennedy sought to expedite an occupational health appointment for Mr Yusuf and in response on 4 June 2020 he wrote to Mr Yusuf stating that until he was able to undertake a return-to-work meeting or until occupational health could assess Mr Yusuf further, he could not consider Mr Yusuf fit for work. Consequently, Mr Yusuf was required to remain on sick leave until further clarification about *avoiding stressful situations at work* could be avoided. Mr Yusuf refused Mr Kennedy's attempt to organise a meeting with him [see HB2139] and Mr Kennedy wrote to Mr Yusuf in full on 12 June 2020 [HB2137].
285. There is no detriment or unwanted conduct by Mr Kennedy's action, he was seeking to safeguard Mr Yusuf's health by seeking further professional guidance and maintaining Mr Yusuf's sick leave position. This was wholly appropriate in the circumstances. If Mr Yusuf was allowed to return to work without such enquiries, then we determine that Mr Yusuf would have made a similar but different allegation based on Mr Kennedy allowing him to return to work without addressing his stressors.
286. This allegation has no merit they are also 9 months out of time and there is no basis to extend the time limit in such circumstances as the extension could apply.

Allegation 72

287. This allegation is aimed at both Mr Kennedy and Mr Whyte and is purported to be direct disability discrimination and harassment. Mr Kennedy advised Mr Yusuf by email on 16 June 2020 that "as you remain on sick leave you should not be working or logging into work emails" [HB2118].
288. Mr Whyte reiterated this position on 18 June 2020 [HB2156]. Both stated an obvious and logical position that the first respondent ought to have adopted. Employees who were ill should not be drawn into working and it was aimed at Mr Yusuf at work-related material. Neither precluded Mr Yusuf looking at disciplinary or grievance material, so we think Mr Yusuf's complaint was manufactured to show the above two managers in a bad light. There is no less favourable treatment and unfavourable treatment because the same instructions would have been issued to anyone off sick.
289. These allegations have no merit. These claims are nearly nine months out of time and our above determination in respect to the time limit applies.

Allegation 73: P4(12)

290. This allegation concerns an email on 19 June 2020 which Mr Kennedy sought to call later that day [HB2158, 2160].
291. Mr Kennedy had been corresponding with Mr Yusuf's private email because, as can be seen above, he did not want to write to Mr Yusuf on a work email. We accept Mr Kennedy's evidence that he made a genuine error in sending a covid-19 staff risk assessment to the work group and to Mr Yusuf on his staff email address.
292. Anyone receiving this email would not be aware that Mr Yusuf was sent the material at his private email address because only his name appears. So, it would have taken some research to find out this information. Nevertheless, Mr Yusuf complained about this and referred this as a data breach, which was not accepted by the first respondent's data protection team. In any event, we do not regard this as a detriment. If it could possibly be conceived as a detriment, then it is notable minor.
293. Not all detriment (if it is a detriment) should warrant an apology. Mr Yusuf complains to the Tribunal that it is a detriment that Mr Kennedy did not apologise to him. Mr Yusuf had a history of bad behaviour for which he made little or no apology. So, notwithstanding Mr Yusuf did not ask Mr Kennedy for an apology, we do see it as a detriment Mr Kennedy failing to apologise for what we perceive an understandable error.
294. We find no connection to the protected acts complained of because it was an understandable error. We reject this allegation. The allegation is nine months out of time so consequently even if we had accepted it, we would not have allowed Mr Yusuf a remedy in this regard. The allegation is nine months out of time, and, under the circumstances, there is no just and equitable reason why we would permit Mr Yusuf to have a remedy even if it was meritorious.

Allegation 75: P5 (13)

295. This allegation is very similar to allegation 72 only here it applies to Mr Whyte and Ms Walker. At paragraph 16.8 of Mr Yusuf's statement that paragraph dealt with Mr Kennedy's dealings. Mr Yusuf subsequently copied Mr Whyte into correspondence and on 18 June 2020 [HB2156] Mr Whyte endorsed why Mr Kennedy was dealing with the matter. We do understand why such a complaint was made against Ms Walker; Mr Yusuf merely alleges she was in the background gatekeeping and delaying any issues. So other than Mr Yusuf's general hostility to this female Human Resources advisor there is little that we can detect that she did anything wrong. Mr Yusuf refused to answer questions on this allegation and the allegations were not put to the respective respondents' witnesses so in line with our analysis under allegation 72, we do not think the identified alleged perpetrators did anything wrong. This complaint has no merit and is out of time.

296. Allegation not put to Mr Whyte and Ms Walker; Mr Yusuf had refused to answer questions by this stage therefore we cannot find any merit at all in this allegation.

297. Allegation is around nine months out of time and there is no basis on which we could allow this to proceed even if there were any merit to the allegation.

Allegation 76: P5(15)

298. This is the same as allegation 63 but concerning a different report on a different date, Mr Kennedy's occupational health referral of 24 June 2020.

299. Again, Mr Kennedy acted in accordance with the attendance policy [HB3604] and Mr Yusuf had an opportunity to correspond with occupational health in advance, which he did in his email at page 2192 of the hearing bundle. He also had the opportunity to correct any inaccuracies. For the same reasons given previously we reject this allegation. The allegations are unmeritorious. There is no less favourable treatment or detriment. Mr Kennedy was keen to move the process on and to get occupational health involved. There was no detriment towards Mr Yusuf.

300. There is no merit in this allegation. The allegation is also nine months out of time. Our above analyses in respect of time still applies.

Allegation 77: P5(16)

301. Mr Whyte's email of 26 June 2020 [HB3641]. This email is consistent with Mr Whyte's treatment that we have seen above. Mr Yusuf was not fit to return to work until he has had an occupational health assessment on 6 July 2021. Mr Whyte was not ignoring Mr Yusuf's fit note but was acting entirely consistent with a situation in which Mr Yusuf contended occupational health input was required. So that aspect of the allegation fails. In respect of telling Mr Yusuf that he should correspond from his private email only, again as we state above, that was a proper instruction was to avoid Mr Yusuf being drawn into work related matters.

302. This allegation is unmerited. There is no unfavourable treatment. The claim is almost nine months out of time and if there was merit in the allegations, we would not allow it to proceed because there is no basis to exercise our discretion.

Allegation 78: P5(19)

303. This allegation is made against Colin Wilderspin (Interim Head of Community Protection) who chaired the disciplinary hearing against Mr Yusuf in respect of his email of 1 July 2020 in which he sent a disciplinary hearing invite [CB2946-2948]. In the letter Mr Wilderspin advised Mr Yusuf

...we are keen to resolve all matters as swiftly as possible and in line to our duty of care we need to ensure that employees are not subject to unnecessary delays during the disciplinary process.

Mr Yusuf objected saying he was unfit to attend both work and the hearing. However, Mr Wilderspin had the benefit of occupational health advice which in August 2019 said that Mr Yusuf was fit to attend a formal or informal hearing without any adverse impact on his health. Furthermore, the occupational health report further warned the first respondent to proceed with the process citing the Faculty of Occupational Medicine:

it will often be the case that the worker will find the proceedings stressing, but that delaying the process for a prolonged period will be likely to be more damage to his health, especially his mental health, than continuing with it. [HB939 – 9340].

304. We are not sure why Mr Yusuf raised part of this as a victimisation complaint against Ms Walker, other than his general hostility to this senior female Human Resources colleague. However, these allegations against Mr Wilderspin and Ms Walker are without merit.
305. Again, they are nine months out of time, and we have heard no evidence to justify any possible discretion in respect in an extension of time.

Allegation 79

306. This was struck out because the deposit order was not paid.

Allegation 80: P6(21)

307. This is an allegation of failing to provide a reasonable adjustment in not providing the grievance meetings which Mr Yusuf said had the disadvantage of exacerbating his mental impairment. The first investigatory meeting for Mr Yusuf's grievance was heard by Mr Hakeem Osinake (Operational Director of Housing) on 02 July 2020. This did not cover all matters and the meeting was adjourned at the time and booked to reconvene. On 3 July 2020, Mr Yusuf requested minutes for the first part of the meeting so he could review them before the reconvened meeting [HB2222]. Mr Osinake refused and said that the minutes would be provided once the meeting was completed. A long exchange followed [HB2222-2224] in which Mr Yusuf accepted that providing the minutes at conclusion was the usual procedure [HB2218] but he stated he was seeking a reasonable adjustment. There are a number of reasons why he felt such an adjustment was warranted on 8 July 2020 [HB2215].
308. Mr Yusuf does not explain why he was put to such a substantial disadvantage in relation to his employment, compared to a non-disabled person, by the first respondent's PCP of only providing minutes after the meeting had concluded. He contended that he needed the minutes in light of his disability but did not explain why and notwithstanding he stated that he needed to ensure all points were covered, as Mr Osinake pointed out [HB2218] Mr Yusuf had already set

out his grievance in writing. The onus was Mr Osinake to ensure all the relevant points were covered.

In his witness statement to the Tribunal, Mr Yusuf said that his PTSD encompassed short-term memory loss and that this was the disadvantage he complained of, paragraph 16.39. But this is a hindsight argument, and it was not raised with Mr Osinake who the first respondent contended did not have knowledge of any disadvantage and there was no medical evidence supporting such an assertion. There was very limited reference to a short-term memory loss in August 2018 [see HB4190] but this did not establish that it was caused by the PTSD. In any event, the occupational health report of 27 July 2020 stated that Mr Yusuf's mental health, including his memory, was "much improved" [HB2259] and although Mr Yusuf tried to make extensive alterations to this report, he did not dispute that aspect of it [HB2263]. So even if there was a relevant disadvantage, neither Mr Osinake nor Mr Williams who supported his approach [HB2225] had either actual or constructive knowledge of it.

309. Mr Yusuf did not ask to bring a colleague or Trade Union's representative to make notes on his behalf as an alternative reasonable adjustment.
310. In any event the requested adjustment was not a reasonable adjustment. It would have duplicated the administrative work and, we conclude, given the nature of the way Mr Yusuf went about things, he would have disputed the contents of the minutes. This would have perpetuated ongoing disputes without assisting the process.
311. The allegation is eight months out of time, it is a discreet allegation and there is no basis for us to exercise any discretion on extending the time limit to favour Mr Yusuf.
312. This is an indirect race discrimination complaint in respect of a PCP of appointing a senior black manager as a grievance investigator. Which Mr Yusuf said would invalidate his possible race discrimination claim.
313. We heard no evidence in respect of this complaint as Mr Yusuf would not answer the questions at this stage. He did not question any of the first respondents' witnesses (that he agreed to question) in respect of the appointment of a black manager to investigate the grievance. This is a surprisingly cynical complaint because, seemingly, Mr Yusuf assumes the grievance would not find in his favour and that he could then elevate this to a complaint of race discrimination. The grievance manager in question was Mr Hakeem Osinake who was the Operation Director for Housing. Mr Yusuf says that this person was only appointed because of his ethnic origin as the only senior black manager in the Council.
314. We have read the correspondence arising from the grievance and we determined that there is more to Mr Osinake and the colour of his skin. We reject the disadvantages Mr Yusuf contends, that this was some kind of cynical ploy by the first respondent to invalidate Mr Yusuf's possible race discrimination complaint. Mr Yusuf made no objections to Mr Osinake's

conduct or output other than his ethnic background. This complaint is without merit and is subsequently dismissed.

315. The complaint is out of time and there is no basis for us to exercise our just and equitable discretion.

Allegation 81: P6(22)

316. This is an allegation of Ms Walker preventing Mr Yusuf's grievance from being heard fairly. Mr Yusuf did not say what was unfair in relation to his grievance and how Ms Walker supposedly intervened in the grievance preventing it being held fairly by the grievance managers.

317. Nothing was put to Ms Walker other than she acted unfairly so we dismissed this allegation as wholly unmerited.

Allegation 82: P6(23)

318. Mr Yusuf took offence and contends that it is both direct disability discrimination and direct disability harassment for Mr Wilderspin to warn him that a disciplinary hearing may go ahead in his absence.

319. This related to an email on 9 July 2020. On 1 July 2020 Mr Wilderspin wrote to reschedule the meeting that was postponed on 27 March 2020. Mr Yusuf did not acknowledge this rescheduled meeting so over a week later, Mr Wilderspin wrote to remind Mr Yusuf that the meeting would proceed on 13 July 2020 and said,

...if you do not attend without good reason the hearing may proceed in your absence and a decision will be taken on the facts and information made available to the hearing manager.

This a standard way that employers deal with such matters particularly for a reconvened meeting. Mr Yusuf was warned of the consequences of his non-attendance. There is no less favourable treatment or unwanted conduct in this approach.

320. The allegation is without merit. The allegation is also eight months out of time and there is no basis on which we would have allowed it to have proceeded because we had no evidence or submissions while we should do so.

Allegation 83: P6(23)

321. This is the same as allegation above although the email was dated 9 July 2020, not 8 July 2020.

Allegation 84: P6(25)

322. We are confused on how Mr Yusuf contended Ms Walker delayed the occupational health report in question, because Ms Walker's unchallenged evidence was that she did not, nor could she have done so, even if she had

wanted to. So, as well as being many months out of time, the allegation must fail as wholly without foundation.

323. There is no basis for which we could exercise our discretion to allow the allegation to continue in any event.

Allegation 85: P6(27)

324. This is an allegation in which Mr Yusuf contends direct disability discrimination in respect of the occupational health report. The original report was from Dr Christoph Giagounidis (Accredited Specialist in Occupational Medicine and Consultant Occupational Physician) [HB2258-2261]. Mr Yusuf received his report on 27 July 2020 [HB2283] and he returned it the next day with his proposed amendments in blue. He was told by Ms Sarah Stevens (OH Business Support Officer) that he could not amend the doctor's report [HB2282]. Mr Yusuf protested that he had not changed any medical opinion just the information he had [HB2281] – which was wrong – and Ms Stevens replied that both the content and the opinion could not be changed [HB2282-2280].

325. Mr Yusuf clearly attempted to change medical opinion, e.g. at page 2263 he amended the doctor's opinion so as to the cause of inflammation in his foot (which he himself labelled plantar fasciitis). This was to blame the first respondent stating that this was caused by prolonged standing in the office due to the lack of suitable seating arrangements. Furthermore, Mr Yusuf deleted the sentence beginning "in my opinion..." by stating that "this has improved lately" at page 2264.

326. So, Mr Yusuf was clearly seeking to make impermissible amendments to an experienced practitioner's medical opinion. There was no less favourable treatment in occupational health refusing to allow this, particularly when Mr Yusuf consented the original report being sent in full [HB2273].

327. The hypothetical comparator of a non-disabled person who sought to amend such an OH report would not, in such circumstances be permitted to alter the OH assessment. So therefore, there is no less favourable treatment. This allegation is wholly without merit.

328. This allegation is seven months out of time and we also conclude that there is no basis to allow this complaint to proceed any further, even if there had been merit.

Allegation 86: P6(29)

329. Occupational health department refused to accept Mr Yusuf's amendment therefore Mr Yusuf altered his approach to change the report in a different direction. This aspect was not dealt with by Ms Stevens but by Ms Lucy Tsoka, Occupational Health Adviser. Ms Tsoka was unsure how to proceed, as Mr Yusuf had amended even the recommendation [HB2278, 2277]. Mr Yusuf

asked Ms Tsoka to send the unamended recommendations and set these out in an email copied to the Chief Executive of the first respondent [HB2275]. Ms Tsoka wrote “maybe it is best to wait on Dr Chris’ input first” but said that since Mr Yusuf had the report, he was free to share it himself with his line managers [HB2274]. Mr Yusuf contended that this is harassment and victimisation but there was no detriment here because Mr Yusuf was free to share the information himself. In any event, Mr Yusuf subsequently consented to send the original report to his line manager [HB2273]. Mr Yusuf then proceeded to object the report being passed to Mr Kennedy and Ms Walker but Ms Tsoka explained “all reports are reported to the line manager and your department area HR Officer, that our protocol and all reports from HR are sent that way” [HB2268]. On 4 August 2020 [HB2273] Mr Yusuf consented to the report being sent to his line manager.

330. Ms Tsoka had no way of knowing that Mr Yusuf objected to Ms Walker’s involvement particularly as she told Mr Yusuf she would be sending it to the relevant HR Official [see HB2273].
331. This clearly is not harassment or victimisation. We cannot see that any detriment is made out. Ms Tsoka was clearly following the protocol. The allegations have no merit.
332. The allegations are also seven months out of time and if there was any merit to them, we would not have allowed the allegations to proceed because there is no basis on which we could exercise our just and equitable discretion.

Allegation 87: P7(30)

333. Mr Yusuf contend that Mr Whyte harassed him by keeping him off work in August 2020. Mr Whyte received the occupational health report on 4 August 2020. He did not immediately arrange for Mr Yusuf to return to work but instead he consulted with human resources [HB1598]. A return-to-work interview was scheduled for 11 August 2020. Mr Yusuf does not deal with when he actually returned to work in his statement so we cannot work out how long he was off work because Mr Yusuf refused to give evidence at this point, and he did not question Mr Whyte about it.
334. So, as Mr Yusuf did not pursue the actual time of work, we looked at the only other possible detriment which was in respect of pay. Mr Yusuf requested to be paid as if he had returned to work in August 2020. However, Mr Kennedy wrote to him on 11 August 2020 to say that he had back dated his pay to 1 June 2020 and updated his oracle record as if that was his return to work. So therefore, in respect of pay and in respect of accrued sick leave, Mr Yusuf suffered no detriment. This could not possibly be perceived as unwarranted conduct. We do assess that Mr Yusuf returned to work on 11 August 2020 [HB2320], with a phased return to work.

335. Consequently, there is no merit in the allegation and this allegation is seven months out of time. There was no basis for which to exercise any discretion in respect of the out of time points.

Allegation 88: P7(32)

336. Mr Yusuf contended that it was unwanted conduct and a detriment to put his mobile number in his calendar which would be open to, he said, the entire organisation.

337. Three months before this allegation, a problem had arisen that Mr Yusuf had missed an occupational health assessment because the OH doctor did not have Mr Yusuf's correct contact telephone number. Ms Tsoka put Mr Yusuf's mobile number on her invitation to the July 2020 assessment with the title "Mr Sayed Yusuf – please Dr Chris use this number" consequently, the text appeared in Mr Yusuf's calendar [CB3107]. Mr Yusuf complained about this as a data breach and when investigated it transpired that Mr Yusuf had not complied with Ms Tsoka's instructions to set the appointment as private "to ensure that confidentiality is maintained" [CB3115]. So, it was Mr Yusuf's failure to follow that specific instructions which meant his mobile number was widely visible but in any event it was only visible to people who had access to his calendar. There was no detriment, Mr Yusuf felt that there was then this was caused by his own inaction. This does not meet the threshold for harassment and this complaint is without merit.

338. The allegation is seven months out of time and there is no basis on which we would exercise our discretion for this to proceed.

Allegation 89 and 111 P7 (34).

339. In evidence, both Mr Kennedy and Mr Whyte explained at length the operational reasons why Mr Kennedy remained as Mr Yusuf's effective line manager. We are in no doubt that these were genuine reasons not tainted by Mr Yusuf's race or disability. We describe those reasons above.

340. In contrast Mr Yusuf did not explain in oral evidence or in his statement why he labelled managers as "stressors". He never explained how he was put to a disadvantage by reporting to a particular individual irrespective of whether that disadvantage stemmed from his disability and/or his race. Mr Yusuf was clearly disruptive and intentionally so. His managers made genuine and assiduous attempts to manage him so as to attempt to draw some productive work so as to meet operational expectations and their obligations towards council taxpayers. Mr Kennedy explains this in detail in a letter dated 13 August 2020 to Mr Yusuf [HB2320]. Indeed, it would be to the advantage of any reasonable employee with PTSD and Mr Yusuf's physical impairment managed by such an experienced and patient manager, so Mr Yusuf was far from experienced in a detriment.

341. The occupational health report of 27 July 2020 did act upon Mr Yusuf's desire for a change in line management [see HB2261] but Mr Kennedy was an experienced and competent manager, and it was only Mr Yusuf's hostility towards him that led him to argue that Mr Kennedy was one of his stressors so as to avoid reporting to him. A duty to make reasonable adjustments does not arise merely because Mr Yusuf wanted to get away with doing no work and that he wished to avoid his line manager. The key question is whether reporting to Mr Kennedy caused Mr Yusuf substantial disadvantage in relation to his employment compared to employees without PTSD and Mr Yusuf has not then been able to demonstrate that at all. Consequently, no substantial disadvantage was demonstrated and subsequently no duty arose. Our very firm conclusion was that any manager attempting to solicit work from Mr Yusuf would experience difficulties and anyone who asked Mr Yusuf to do what Mr Yusuf did not want to do would be cited as an appropriate stressor. The allegations are wholly without merit.

342. These allegations are seven months out of time and there is no basis upon which we would exercise our discretion to allow such complaints to proceed.

Allegation 90: P7(39)

343. On 12 August 2020 Mr Yusuf emailed to Mr Kennedy to request "an official letter from Brent" confirming that his return to work was from 1 June 2020 and that Mr Yusuf wanted it in the same manner as Mr Kennedy's letter dated 12 June 2020, which considered him unfit for work. The next day, Mr Kennedy wrote as follows [HB2321]

your request for a letter confirming your return to work is not agreed. As I stated at our meeting, the attached letter was to inform you of the decision to keep you on continued sick leave until further information had been obtained about the triggers that would cause your stress. Your return to work does not warrant a letter to confirm you have returned.

Ms Walker was not responsible for Mr Kennedy's reply as Mr Kennedy said that the letter was his responsibility. Ms Walker did not stop Mr Yusuf receiving the confirmation he sought. We think there were valid reasons for Mr Kennedy to refuse to give Mr Yusuf his letter but in any event Mr Kennedy had set out the position in writing anyway so it was not warranted even if the allegation had been directed corrected towards Mr Kennedy. The fact Mr Yusuf directs it towards Ms Walker is puzzling and without foundation. So, therefore, the application fails and had no merit. Ms Walker was involved in addressing Mr Yusuf's additional payslip query contained in his letter 12 August 2020. Mr Yusuf sought to have a changed and backdated payslips to show that he had been in work. Ms Walker said she could accommodate this but checked with payroll. Her email is in the hearing bundle at page 2371 and is perfectly polite and reasonable. The reply from payroll (HB2371) confirms that Ms Walker was correct. This was met by a rude email by Mr Yusuf [HB2370]. In essence, Mr Yusuf was wrong, the first respondents could not amend a payslip in respect of money paid and they correctly dealt with this by making pay adjustments and sending Mr Yusuf further payslip showing additional monies paid. The payslip needed to match the money paid.

344. This allegation had no merit. And is seven months out of time. There is no basis to extend time even if such an extension was warranted.

Allegation 91: P7(40)

345. On 5 December 2019 Mr Yusuf had raised a grievance against Ms Walker. On 6 January 2020 Mr Williams wrote to Mr Yusuf stating that, on the face of his grievance Ms Walker, it was unclear how Ms Walker was bullying and discriminating against him. He said that he reviewed her dealing with the sick pay matters and that she had seemingly dealt with this appropriately. However, Mr Williams invited Mr Yusuf to clarify his complaint and explained how he considered he had been discriminated against. Mr Yusuf did not respond to the email, and he did not pursue the grievance against Ms Walker.

346. The first respondent regarded Mr Yusuf as having a completely unfounded grievance against Ms Walker. Mr Yusuf requested that Ms Walker not be involved in his case which he contended was effectively ignored. Mr Yusuf contended that this exacerbated his mental impairment. The first respondent was not obliged to rearrange HR support to accommodate Mr Yusuf's personal animosity against senior female HR advisor, particularly in such a complex case. This conduct does not relate to Mr Yusuf's disability particularly as Mr Yusuf refused to say how this exacerbated his mental impairment. The Tribunal does not regard it as a detriment for Mr Yusuf not to be given what he asked for because of his own personal prejudices against Ms Walker. There is no correlation to Mr Yusuf issuing Tribunal proceedings as a reason for Ms Walker to step aside because she was the HR link to Mr Yusuf's area of employment. Mr Yusuf has not been able to provide evidence that he was at a substantial disadvantage because Ms Walker was the HR advisor offering support to Mr Kennedy. She was merely doing what any professional HR advisor would have done in such circumstances so, we determined, Mr Yusuf would have objected to anyone in such a situation. And there was value to Ms Walker (and other managers) maintaining continuity.

Allegation 92: P8(41)

347. Mr Yusuf contended that it was a failure to make reasonable adjustments not to allow him to record the meeting on 11 August 2020 and that this exacerbated his mental impairment. This was the return-to-work meeting. Mr Yusuf's statement does not explain how a substantial disadvantage arose and Mr Yusuf's reason for wanting to record the meeting appeared to be that he contended Mr Kennedy's previous minutes were materially inaccurate. There was no occupational health recommendation that Mr Yusuf should be able to record the meeting, and, in any event, Mr Yusuf was provided with minutes after all relevant meetings. We do not accept that the first respondent was under any duty to make such an adjustment as Mr Yusuf was not under any significant disadvantage.

348. We suspect he wanted this was merely a device to apply pressure upon his perceived opponents. Mr Kennedy did not know of such disadvantage

emanating from Mr Yusuf's disability. Mr Yusuf sought to extend disputes with the first respondent in every direction. We have little doubt that this was another attempt to extend a dispute with the first respondent. Even if the first respondent had proceeded with Mr Yusuf's request to provide minutes that would have been another source of conflict and disagreement. The allegation had no merit and is accordingly dismissed.

349. This allegation is seven months out of time and there is no basis on which we could exercise any discretion in respect of the appropriate time limit.

Allegation 93: P8 (47).

350. This is a complaint against Mr Williams for harassment and Ms Walker's involvement in Mr Yusuf's claim in threatening Mr Yusuf with disciplinary proceedings and in refusing reasonable adjustments for Mr Yusuf not to report to Mr Kennedy. It is unclear why this allegation is dated 2 September 2020 as we could only locate this in respect of the emails to Mr Williams of 18 August 2020 [HB2387] an/or 04 September 2020 [HB3709].

351. Mr Williams reiterated the arrangements for managing Mr Yusuf and he expressed concerns about the discourteous tone of Mr Yusuf in his emails to Ms Walker. He asked him to moderate his language. He also asked Mr Yusuf to refrain from copying in the Chief Executive to correspondent [HB2386-2387]. Mr Yusuf's reply of 25 August 2020 copied the Chief Executive back was in disregard of Mr Williams' instructions. He also copied in Ms Walker (who he had said he wanted nothing to do with) as well as copying in the first respondent's solicitor [HB2386]. Mr Yusuf again accused Mr Williams of bias and misusing his position and contending that he was the victim of Mr Williams' patronising and threatening tone. Mr Williams' reply of 4 September 2020 is measured and restrained [HB3709] and he explained why Mr Kennedy would remain his line manager and dealt with all the other issues raised by Mr Yusuf. Mr Williams' emails do nowhere near approach the threshold for harassment. Mr Yusuf has not made out any causal link to his disability. There was no fresh decision about Mr Kennedy remaining as Mr Yusuf's line manager as this was decided in August 2020. Mr Williams was merely dealing with yet another complaint about that. The allegations are at least six months out of time and there is no basis to extend allegations for these unmeritorious complaints.

Allegation 94

352. Mr Yusuf accused Mr Whyte of harassing conduct in his letter of 14 September 2020 [HB2430] by allegedly accusing Mr Yusuf of hampering his return to work by not engaging with Mr Kennedy. The first respondent's case was that Mr Yusuf did hamper his return to work by not engaging with Mr Kennedy and it was not harassment to point that out. We accept that view. Mr Yusuf had refused to meet with Mr Kennedy and again demanded to be managed by someone else [HB2419]. Mr Whyte's comment that "Tony is currently attempting to have a constructive conversation with you so

reasonable adjustments can be made” is fair and accurate and encouraging Mr Yusuf to engage. He then stated, “your refusal to engage with Tony is hampering the process which has been ongoing for some time.” This is a fair assessment of the situation and again does not come anywhere near close to the threshold of harassing conduct; it is not related to Mr Yusuf’s disability the comments are aimed at trying to get a dysfunctional employee to address their own behavioural problems.

353. The allegation has no merit at all and is six months out of time. There is no basis for us to exercise any discretion in allowing such a complaint to proceed even if it was meritorious, which it is not.

Allegation 95: P9(54)

354. The allegations are of direct discrimination arising from Mr Yusuf’s disability, harassment and victimisation. These relate to Mr Kennedy’s occupational health referral of 17 September 2020.

355. We have dealt with these complaints previously in a slightly different context but we note that there was no requirement in the relevant policy to seek Mr Yusuf’s consent and that Mr Yusuf had ample opportunity to supplement or correct any information sent to occupational health that he regarded as wrong. In this context we can see no detriment. Mr Yusuf alleged that Mr Kennedy “questioned his disability” but that is plainly wrong because at page 2444 Mr Kennedy said,

SY has indicated on numerous occasions that has a disability. The nature of this disability is yet to be confirmed other than on his fit notes (PTSD). I understand he attended the Maudsley Hospital. However, I am unsure the reason for this. Are you able to confirm details of this disability, and what, if any, treatment he is receiving.

Asking occupational health to confirm the details of his disability is not questioning whether such a disability exists. In evidence Mr Kennedy said he needed to know the precise nature of Mr Yusuf’s disability so he could consider reasonable adjustments.

356. This does not form any possible discrimination alleged and the allegation is unmeritorious. The allegation is almost five months out of time and there is no basis to exercise our just and equitable discretion.

357. Mr Yusuf had previously been told that he did not require consent for an OH referral by Mr Kennedy in his letter of 13 August 2020 following Mr Yusuf’s return to work interview [HB2320-2321].

Allegation 96: P(51)

358. Mr Yusuf contended that he was blamed for missing an occupational health appointment when it was Mr Kennedy who had provided the wrong telephone number.

359. Mr Yusuf had missed an OH appointment over some confusion as to his correct contact number. Mr Kennedy said that if anyone was at fault then it was probably the occupational health practitioner. However, at the time, Mr Kennedy wrote to Mr Yusuf to ask what had happened [HB2515] he said “I am unclear what happened on Friday to prevent this appointment from taking place. I would appreciate your response by return.”
360. Mr Kennedy merely asked for an explanation. We do not detect any criticism or blame against Mr Yusuf. So, this is not a detriment. This had nothing to do with Mr Yusuf’s disability. It was plain that Mr Kennedy sought an explanation from Mr Yusuf. He said that would be normal practice. In other words, he would do the same with anyone else whether or not they had a disability should an occupational health appointment be missed. We accept Mr Kennedy’s evidence in this respect.
361. This allegation is without merit.
362. Throughout Mr Yusuf’s evidence he constantly sought to frame himself as the victim. He leapt to conclusions that colleagues, for example Mr Kennedy “placed judgements” or blamed him for instances such as missing OH appointments when Mr Kennedy only sought an explanation. Mr Yusuf sought to rehearse his entire grievance on every occasion in response to a simple query about a missed occupational health appointment.
363. Mr Yusuf was unable to accept the decision he did not like even after it had been made. This is illustrated by his repeated demands to be managed by someone other than Mr Kennedy though had been told on numerous occasions that his requests had been declined.
364. Mr Yusuf was obstinate in his refusal to follow simple management instructions. Mr Yusuf had been asked by Mr Williams to refrain from copying the Chief Executive [see for example HB2386–2387], he disregarded the instructions on various occasions where he put the Chief Executive back in the chain three times each time after Mr Kennedy had removed her in his response.

Allegation 97: P10 (65).

365. The allegation was one of direct disability discrimination in that Mr Kennedy denied questioning Mr Yusuf’s fitness to work on 5 October 2020. Mr Kennedy stated “I am not questioning your fitness to work I am seeking clarity on some of the points and recommendations put forward” [HB2511]. We could not really see how this allegation made sense. Mr Kennedy’s denial that he was not questioning Mr Yusuf’s fitness to work appeared to be reasonable and consistent with his position in the occupational health referral. We could not detect any detriment to Mr Yusuf, but we could not see any correlation to his disability in this particular allegation.

366. Consequently, the allegation has no merit. the allegation is in any event five months out of time and there is no just and equitable basis to consider further.

Allegation 98: P10(67)

367. This is another allegation against Ms Walker although this time the allegation is about her sending the disciplinary invitation letter to Mr Yusuf. So far as we could understand this allegation, Mr Yusuf objected to Ms Walker invited him to a disciplinary meeting [HB2616]. He took this up with Mr Wilderspin as Mr Yusuf contended that Ms Walker had organised a meeting on his behalf as she coordinated this with Ms Patel and forward the meeting request on to Mr Yusuf. It was reasonable for Ms Walker to take this role in coordinating a meeting, so the allegation of unwanted conduct has no merit at all.

368. This allegation is four months out of time and there is no basis upon which we can exercise our discretion to allow it to proceed.

Allegation 99

369. This is an allegation of direct disability discrimination in not investigating Mr Yusuf's grievance on 5 December 2019. The allegation was only raised in the second claim and was not brought as part of the first claim. Mr Yusuf sent an email to Mr Williams on 6 December 2019 headed 'a formal grievance' complaining of the absence of Ms Walker [HB1253]. We have addressed this at allegation 91 above. The grievance was not investigated and was nothing to do with Mr Yusuf's disability it was because Mr Yusuf did not respond to Mr William's invitation to explain how Ms Walker's actions were alleged to be discriminatory. The reason for not investigating originally was because there was a lack of substance in the original email. Mr Yusuf failed to supply further detail when asked. So this had nothing to do with his disability or the first respondent's perception of his disability. Accordingly, this claim must fail because it is without merit.

370. The allegation is considerably out of time there is no basis for us to exercise our discretion in respect to time limits.

Allegation 100: P10(70)

371. Mr Yusuf had refused to answer questions at this point of his evidence, so we were confused in respect of why he needed a parking permit and a measuring wheel but, so far as we can work out, this was in respect of requirement to undertake site visits. In any event, shortly after receiving this email, Mr Kennedy forwarded Mr Yusuf the link which Mr Yusuf had already got [HB3681].

372. This link was forwarded [HB2592]. Mr Kennedy promptly sent Mr Yusuf a share point link to the relevant page although Mr Yusuf already had this. The next day, Mr Kennedy wrote to Mr Yusuf saying “

Prior to issuing you with a measuring wheel and permit I need to meet with you and discuss progress against tasks that were allocated to you in early August. I also require OH to conduct an assessment of your disability (chronic pain) so I can be sure carrying out site visits will not place you under undue stress...”

Mr Kennedy referred to a meeting the following week, a meeting on the following Tuesday. So, there was no refusal to supply these items, Mr Kennedy needed to ensure that Mr Yusuf was making adequate progress with other work and that he was fit to conduct site visits. This could not be regarded as a detriment or less favourable treatment in any way as Mr Kennedy wanted to ensure that Mr Yusuf was not over-allocated with work. The allegation has no merit at all.

373. The allegation is four months out of time and the Tribunal has no basis on which to exercise a discretion to allow Mr Yusuf’s claim to continue.

Allegation 101: P10(71).

374. Mr Yusuf referred to colleagues being given additional monitors and autocades to work from home (see paragraph 17, 34). He did not identify who these colleagues were nor did he identify any possible reason why they may have well been issued with the additional office equipment. Mr Yusuf did not say what the time frame was. Mr Yusuf refused to answer questions at this time so we could not identify whether he needed such additional office equipment or what purpose such additional office equipment would be put to. His statement does not identify this, and this was not raised by Mr Yusuf in his questions to Mr Kennedy or anyone else. So far as we could see from the hearing bundles, Mr Yusuf had not applied for any equipment so therefore there was no refusal to provide it. As a matter of fact, on 29 October 2020 Mr Kennedy sent the appropriate link to Mr Yusuf and said “you have received information about the home working equipment offer and how to apply through the Brent email sent out to all staff.” So Mr Yusuf was free to apply. He did not. So, again the allegation against the first respondent is wholly without merit.

375. Again, this claim is out of time (four months at least) and there is no basis for us to consider any just and equitable extension.

Allegation 102: P10(72).

376. On 03 November 2020 Mr Yusuf asked for his disciplinary hearing to be postponed “until the pandemic situation is eased” because, among other reasons, he wanted it to be conducted face-to-face and because he was awaiting a response to his subject access request [HB2615]. The first respondents refused and went ahead remotely on 23 November 2020 [HB2911]. Mr Yusuf contended that this was a failure to make a reasonable adjustment and it exacerbated his mental impairment.

377. There is no evidence that proceeding, as the first respondent did eventually, disadvantaged Mr Yusuf in comparison to a non-disabled person. None of the medical documents suggest that his condition meant that he found it harder to cope with remote meetings. There is a clear need for proceeding with matters promptly when someone is exhibiting a degree of mental impairment because matters do not hang over individuals thereby compounding any feelings of anxiety. Mr Yusuf has not been able to produce any evidence that his mental health was adversely affected. We are reluctant to believe uncorroborated evidence from Mr Yusuf because we do not regard him as a reliable and truthful witness.
378. The subject access request was not part of the disciplinary process that was an entirely distinct process where Mr Yusuf sought the documentations and information held by the first respondent which referenced him. So far as we could tell, the first respondents had supplied Mr Yusuf with all documentation relevant to disciplinary proceedings, so we regard this as entirely spurious argument.
379. The meeting had already been postponed a number of times [HB2911] and as the allegations against Mr Yusuf dated back to April 2019, the first respondents contended a further postponement was not reasonable, which we accept. Furthermore, it was not clear when the pandemic situation would be eased so we think Mr Yusuf was in effect asking for a substantial and open-ended postponement.
380. This allegation is without any merit. the allegation is four months out of time and there is no basis for us to exercise any discretion to allow such an allegation to continue.

Allegation 103: P11(75)

381. This is yet another tranche of accusations in respect of Mr Kennedy's occupational health referrals. Mr Yusuf objected to the occupational health referral itself, that he was not consulted, and that Mr Kennedy and Mr Whyte provided supposedly inaccurate information. This complaint also encompasses Mr Yusuf's contention that his complaint was ignored both by occupational health and Mr Kennedy forced to deal with these five tranches as one.
382. As stated above, the first respondents had the contractual right to refer Mr Yusuf to occupational health, but in respect in whether they had the authority to do so or not, this is one of the (near universal) circumstances in which we do not criticise the first respondent for trying to obtain further information about an employee's impairment and medical condition.
383. Mr Yusuf had no right to be consulted about the OH referral, but Mr Kennedy thought to consult with Mr Yusuf, yet Mr Yusuf declined the meeting of 10 November 2020. Mr Kennedy clearly informed Mr Yusuf of the occupational health referral [HB3684 – 3685].

384. At paragraph 17.43 Mr Yusuf statement there is no information about what the supposed inaccurate information was and Mr Yusuf refused to give oral evidence in this regard. Therefore, this allegation is wholly without foundation. It is difficult to understand why Mr Yusuf has directed the allegation towards Ms Walker other than reinforcing our belief that this was a claimant that had difficulties dealing with female employees in positions of authority.

Allegation 103

385. Occupational Health did not ignore Mr Yusuf's complaints. After Mr Yusuf raised with Occupational Health that he disagreed with the referral [HB2837]. Occupational Health responded from Catriona Hughes and Sarah Stevens [see HB2831-2837]. This complaint is wholly without merit.

386. Mr Kennedy did not ignore Mr Yusuf's complaint either as he responded twice to explain his actions on 10 November 2020 [HB3684-3683]. This allegation is also without merit.

387. This tranche of allegations are four months out of time and there is no basis for us to exercise our discretion to allow such complaints to proceed even if there were merits in any such complaint.

Allegation 104: P11(77).

388. Mr Osinake's grievance outcome runs to 15 pages [HB2725 onwards]. All of Mr Yusuf's allegations were investigated and each allegation was addressed in the summary of findings [HB2737-2739]. Mr Yusuf was clearly aggrieved at the outcome of his grievance, and he contended that the result was both unfair and discriminatory. However, his statement does not give any evidence how the outcome amounted to harassment or victimisation. Mr Yusuf had refused to give evidence by this point in proceedings so he could not be asked how he regarded such findings as harassment because of his disability or victimisation.

389. We cannot see any merit in this allegation. The allegation is four months out of time and there is no basis which we would consider it just and equitable for a remedy.

Allegation 105: P11 (78).

390. This is an allegation on respect of the "disciplinary" minutes as opposed to the grievance minutes accepted by both parties.

391. Mr Yusuf asked for the minutes for the first part for the disciplinary hearing [HB2929] which similarly to his grievance hearing was adjourned part heard. The adjournment was to allow Mr Yusuf to submit further documents. Around this time Mr Yusuf had been fit to work (June to July 2020) although he had

been kept off work by the first respondent, so he had plenty of time to prepare. It is clear from the minutes [HB2923] that Mr Yusuf had submitted his documents.

392. In any event, Mr Yusuf provided no explanation as to how the PCP of providing minutes only at the end of the meeting put him at a substantial disadvantage. There is no evidence to suggest that this was related to his PTSD. The allegation is similar to the allegation made in the grievance in respect of the grievance minutes and the response is the same. We suspect the first respondent wanted to deal with the disciplinary matter as clearly as possible and if they had provided Mr Yusuf with minutes part-way through the disciplinary process then he would have raised substantially more issues – which we have some sympathy with. Mr Yusuf was confrontational and would dispute virtually everything, which can be seen by the number and nature of the unmeritorious allegations above. It was justifiable in such circumstances for the first respondent not to provide any minutes for part for the part-heard meetings.
393. This allegation has no merit. the allegation is over three months out of time and there is no foundation upon which to exercise our just and equitable discretion.

Allegation 106

394. Mr Yusuf contended that it was discrimination arising from his disability and disability related harassment that Mr Kennedy sent him an email on 23 November 2020 telling him to use work time to get on with work rather than complain about his grievances, disciplinary matters and sickness issues.
395. We detected that all of Mr Yusuf's managers in relevant contemporaneous correspondence and in particular, Mr Kennedy, Mr Whyte and Mr Moore were significantly concerned that Mr Yusuf was not doing any work and using work time to further his disputes about various aspects of his work arrangements. In that context it was reasonable and appropriate for Mr Kennedy to send Mr Yusuf an email that politely told him to focus on his work [HB2909]. Mr Kennedy copied in Mr Nerey and Mr Fazekas because they dealt with the work that Mr Yusuf should be doing and was not doing. Mr Kennedy said that on reflection he should have raised this with Mr Yusuf privately, so he apologised [HB4156]. Mr Kennedy was keen that the team completed the work so we understand why these two individuals were copied in. If Mr Yusuf was offended by this email, then such an offence is conceived because the problem was entirely of Mr Yusuf's making and Mr Kennedy's response was mild and measured.
396. This allegation is without merit and is dismissed. Again, the allegation is three months out of time and there is no basis to exercise just and equitable discretion.

Allegation 107: P11(82).

397. During November 2019 Mr Yusuf raised a formal grievance about Mr Kennedy's occupational health referrals and he sought to have his own occupational health referral postponed until his matter was investigated [CB3900]. Mr Whyte responded on 24 November 2019 [CB3896-3899] saying that he did not consider Mr Yusuf's complaint met the criteria for a formal grievance because it was about the process rather than Mr Kennedy's role within this. Mr Whyte then addressed each of the point Mr Yusuf had raised [CB3896-3899]. So, Mr Yusuf's complaint appears to be that the matter was not referred through the formal grievance process or structure. Mr Whyte did not dismiss Mr Yusuf's grievance. He addressed Mr Yusuf's grievance. Mr Yusuf's complaint was that he did not like the way that Mr Whyte addressed his grievance which he contended to amount to direct disability related discrimination and harassment on the grounds of his disability.
398. There is no conceivable link of how Mr Yusuf's disability affected Mr Whyte's decision to address this matter. Mr Yusuf sought to hamstring the first respondent's dealing with all relevant processes until he got what he wanted. He attempted to use every effort to circumvent the proper management of him. The fact that Mr Whyte dealt with this in a concise and straight forward manner aggravated Mr Yusuf further. We can see no link to Mr Yusuf's disability, nor can we see any discrimination in the above. If this complaint was raised as a possible breach of contract (and the Tribunal had authority to deal with it as such) then we might see a possible argument that Mr Whyte should have followed the contractual process, however, there is no breach of contract argument and Mr Whyte's behaviour was pragmatic, reasonable, appropriate, and justified in the circumstances.
399. There is no merit in this allegation of discrimination on any count.
400. The allegation is three months out of time and there is no basis for us to exercise our just and equitable discretion.

Allegation 108: P12(83)

401. This allegation in this respect seems to be misconceived because he contends that the refusal to consider his complaint about Mr Kennedy under the fairness at work procedure of 28 November 2020 amounts to harassment on the ground of his disability. The date of this allegation appears to be wrong.
402. On 14 September 2020, Mr Whyte agreed that someone other than Mr Kennedy would conduct Mr Yusuf's risk assessment. In order to break an impasse [HB2430] this had taken place, but Mr Kennedy needed to address most of the issues raised at the assessment because he was Mr Yusuf's line manager and he indicated why he was the best person to have conducted the stress risk assessment in any event. Mr Yusuf complained about Mr Kennedy's attempt to do this. And he requested that this be dealt with through the fairness at work procedure [CB3909]. So, that complaint was a further complaint about Mr Kennedy to Mr Whyte and was dated 30 November 2020. Mr Whyte did not refuse to consider this because on 3 December 2020 [CB3907-3908] he queried which aspect of the fairness at work policy applied and what outcome Mr Yusuf sought. He referred to Mr

Kennedy offering Mr Yusuf mediation which he said would appear to be a reasonable path. Mr Whyte did not refuse to consider the fairness at work policy; he raised mediation with Mr Yusuf, which Mr Yusuf accepted [CBA3907]. In the circumstances there is no valid complaint here the allegation is without merit.

403. In any event, the allegation is three months out of time and there is no basis to exercise any just and equitable discretion.

Allegation 109: P12(84)

404. On 30 November 2020, Mr Yusuf was required to attend the stage three sickness review meeting. He said that it was a failure to make reasonable adjustments, which exacerbated his mental health impairment, to require his attendance. Mr Yusuf asked for the meeting to be postponed on 30 November 2020 [HB2932]. Mr Yusuf complained about the number of formal meetings he was attending. However, the disciplinary process was still ongoing because Mr Yusuf had repeatedly requested postponements. The grievance procedure related was in respect of Mr Yusuf's own complaints. At this stage, Mr Yusuf said he had been prescribed with anti-depressants and painkillers, but he attributed to this to the first respondent's unfair treatment – which the first respondent denied. So, the anti-depressants in particular were not prescribed because of the number of meetings, merely, allegedly, because of the way the first respondents dealt with them.
405. In any event, Mr Yusuf's request was accepted and a new date for the meeting was sent to him on 2 December 2020 [HB2959]. So, there is no merit to this allegation. The stage three sickness meeting was adjourned irrespective of whether this exacerbated his mental impairment – which there is no evidence of and which is not consistent with Mr Yusuf's contemporaneous argument. The stage three sickness meeting eventually started on 14 December 2020 and adjourned, and then reconvened on 23 February 2021 and adjourned and reconvened on 08 March 2021 and adjourned and concluded on 11 March 2021.

Allegation 110: P12(85)

406. Mr Yusuf does not deal with the specifics of the allegation in this statement. By this stage of the chronology Mr Yusuf had long since refused to give evidence, so we were not given the details of this allegation.
407. Mr Dryden was Mr Yusuf's line manager from 1 April 2019 to 17 June 2019, a total of 11 weeks. So, we could not see the relevance of the request for mediation on 1 December 2020. The allegation was not put to Mr Dryden.
408. On 1 December 2020, Mr Yusuf wrote to Mr Dryden apologising for his interrogation during the disciplinary meeting the day before. Mr Yusuf said that he had reflected on his exchange and proposed having a mediation with him. We can detect no response from Mr Dryden, although he did refer to this in his statement. It is clear that Mr Dryden did not think it was appropriate to engage in mediation with Mr Yusuf. Mediation is a voluntary process. We cannot see any possible detriment for someone not willing to engage in some form of voluntary process following his evidence to the disciplinary hearing. Mr Dryden sought HR advice and it was suggested that he take no

action, which he agreed with. This was not a disability related cause of harassment, Mr Dryden though it was best not to have anything to do with Mr Yusuf further and we do not see anything wrong with that response. Indeed, it was probably a wise call in order to protect himself from further allegations. The allegation is without merit.

Allegation 111: P12(86)

409. We have dealt with that allegation under allegation 89.

Allegation 112: P12(88)

410. This is an allegation in respect of requirement to attend the rescheduled stage three review with Mr Yusuf contended amounted to harassment. Our response in respect of Allegation 109 applies but so far as harassment is concerned (as opposed to failing to make reasonable adjustments) there appears to be nothing in the first respondent's conduct that could possibly amount to disability-related harassment. Mr Yusuf had reached the trigger points for a stage three review meeting; this had previously been postponed. The Employment Tribunals are generally critical to respondents when they do not follow their own internal procedures promptly so we make no criticism here. It was appropriate that the first respondent proceed with this process. In any event, that meeting was postponed due to Mr Yusuf's bereavement.

411. Again, this allegation has no merit. the allegation is out of time and has no basis on which to exercise our discretion.

Allegation 113: P12(91)

412. Mr Yusuf complains that it was direct discrimination on grounds of his disability to commence the stage three sickness review process. This decision had been made by Mr Kennedy and conveyed to Mr Yusuf on 26 October 2020 [HB4030]. The decision was made under the Attendance Policy, because Mr Yusuf had a sickness absence trigger within 12 months of his stage 2 absence outcome on 23 July 2019 [HB720-721]. Mr Yusuf had also been off sick for 148 days from 06 January to 31 May 2020 which effectively amounted to a five-month absence. So that also exceeded the continuous absence needed to trigger the stage 3 process. Mr Kennedy had delayed progression to the stage 3 meeting until he had obtained occupational health advice [HB4060] and, he said, he wanted to give Mr Yusuf a chance to recover his fitness to work and make a productive return to work. When Mr Yusuf had been back at work for some ten weeks, Mr Kennedy wrote to him on 26 October 2020 saying "I have no evidence you have carried out any work-related tasks" since his return to work. Mr Yusuf responded "my health and safety comes before work" [HB2543] which is surprising since he was supposedly fit to resume his work.

413. Mr Kennedy was clearly entitled to conclude that Mr Yusuf was not making any productive return to work which is why he had invoked stage three of the absence policy. It is clear to us, and we accept Mr Kennedy's evidence, that he did not do so because Mr Yusuf was disabled but because there was an operational need for employees to do work when they are paid to make a contribution and, according to Mr Kennedy, Mr Yusuf was not doing any work. This allegation has no merit.

414. So far as the allegation in respect of refusing Mr Yusuf's appeal, the first respondents appointed Alice Leicester (Operational Director, Regeneration Growth and Employment) to hear the appeal [HB3558-3559]. An appeal meeting was scheduled for 21 May 2021, but Mr Yusuf did not attend, because of reasons we wholly reject. That allegation of direct discrimination is wholly without merit.
415. In respect to blocking access to Mr Yusuf's work email account, again this allegation post-dated [113.1.2.] the end of the disciplinary hearing on 11 March 2021. Notwithstanding this was a sickness absence procedure, which gives the presumption for dismissal on notice, Mr Yusuf was summarily missed, i.e. the dismissal took effect immediately. This was not in breach of contract because at section 12 of the claimant's contract of employment, the first respondent retained a discretion to dismiss with immediate effect and elect to make a payment in lieu of notice for any unexpired period of notice [HB365]. So, dismissal was in accordance of the contract and took effect immediately. Ms Walker explained in evidence that once an employee had been dismissed, then it was the first respondent's standard procedure to revoke access from the IT system which included any remote access or home working access. This was consistent with Mr Yusuf's leavers notice [HB3409-3411] and the checklist for managers [HB3410].
416. Mr Moore's evidence was that everywhere he worked, employers remove access to IT systems all the employee's personal data for every employer he had worked.
417. Mr Kennedy informed Mr Yusuf on 11 March 2021 that "following the outcome of today's stage three hearing, I write to inform you that your Brent account has been disabled and mobile phone wiped and disabled." [HB3399]. This was merely notifying Mr Yusuf of action that would have been taken for any departing employee. The Tribunal would be concerned about possible data breaches if the first respondent had not taken this step. Mr Yusuf did not raise with Mr Kennedy that the revocation of his access to his data on the first respondent's system was an act of direct discrimination and we could not possible see how this could be so. This allegation is wholly without merit.

Allegation 114: P12(92)

418. The outcome of the disciplinary procedure was sent to Mr Yusuf on 12 July 2021 [HB2989-2996]. Mr Yusuf contended that this amounted to direct discrimination. Mr Wilderspin partially upheld some allegations [HB2992] and did not uphold others [HB2994]. He took account of mitigating factors put forward by Mr Yusuf and considered the information from Mr Yusuf's doctors [HB2993]. The Tribunal regarded the written warning as lenient and surprisingly so in the circumstances. His refusal to carry out a management instruction was frequent and repeated and would normally represent a fundamental breach of contract. Surprisingly, other than generalised complaint Mr Yusuf gave no specific evidence on how the outcome of the disciplinary procedure could be tainted by discrimination. Mr Wilderspin was not available to give evidence at the hearing and given the allegations and the voluminous evidence we have heard about the substance of the allegations found proven, we can see no unfavourable treatment in this

respect. Mr Yusuf was accused of a number of very serious offences. Mr Wilderspin found some of these allegation to be proven and the sanction was surprisingly low. In the circumstances, we are surprised that Mr Yusuf contends that he was treated in a discriminatory manner, but such complaint is unmerited.

419. The allegation is two months out of time and there is no basis for us to consider any just and equitable extension.

Allegation 115: P13(94)

420. Mr Yusuf contended that he was directly discriminated against in his dismissal and being locked out of his work laptop.
421. We have dealt with Mr Yusuf being locked out of the work laptop under allegation 113 above.
422. Mr Yusuf was dismissed, as set out in the stage three outcome letter because Mr Moore determined he was not capable of providing regular and efficient service [HB3405]. The Tribunal quizzed Mr Moore in detail about why this was a capability dismissal, as opposed to a conduct matter. Mr Moore said he, effectively, gave Mr Yusuf the benefit of the doubt. He proceeded on the basis that Mr Yusuf was not able to do the job he was employed to do as opposed to refusing to do the job. He drew a distinction between capability and defiance. On this basis, Mr Moore relied on two main strands: Mr Yusuf's long term sickness absence up to 31 May 2020; and the impact of work-related stress on Mr Yusuf's output since 1 June 2020 [HB3405]. Dismissal is clearly a detriment. In order to ascertain whether this was less favourable treatment, the correct comparator is an employee whose circumstances, and abilities were not materially different from Mr Yusuf, see section 23(1) EqA. There was no direct comparator, so we constructed a hypothetical comparator who: had absences of the same length as Mr Yusuf which were not attributable to a disability; and had undertaken minimal or no work output when nominally at work for reasons unrelated to his/her disability.
423. It is clear to us that such a comparator would have been dismissed, and probably much earlier. On this Mr Yusuf appears to be confused because he challenged Mr Moore during cross examination for supposedly ignoring his disability. Mr Moore contended Mr Yusuf was not dismissed because of his disability but because of his repeated lengthy absences and because he did not do any work when he returned to work.
424. This allegation has no merit at all. Mr Moore said that he considered the twelve to fifteen hours of productive work performed by Mr Yusuf, and not disputed by him, between 1 June 2020 and 14 December 2020 as "negligible". The Tribunal regarded it as "astonishing".

Allegation 116: P14(1)-17(7)

425. This is the allegation of unfair dismissal.
426. Mr Yusuf was dismissed for capability, which is a potentially fair reasons for dismissal, pursuant to s98(2)(a) ERA. Mr Moore said in his evidence that he

did not assess the quality of Mr Yusuf's work merely the quantity. So, his starting point was that if Mr Yusuf did produce any work, it was not an issue as to whether this was good, bad or indifferent. He said that he merely took into account how much work Mr Yusuf had done, which he came to the conclusion was "negligible". He regarded an inability to work anywhere near the expected rate of productivity could amount to incapability in the meaning of s98(2)(a) ERA because he said he expected employees to deliver a certain amount of productivity.

427. The first respondent employed Mr Yusuf to work 36 hours per week [HB362]. Mr Yusuf did not dispute that he undertook a mere twelve to fifteen hours in the second half of 2022. Mr Yusuf did not challenge any evidence in respect of this assessment of twelve to fifteen hours either at the time or subsequently at the Employment Tribunal hearing. Indeed, Mr Yusuf's evidence was that he wanted to sort out his health first which included pursuing various complaints against various members of the first respondent's staff. So, we find that Mr Yusuf was dismissed for a genuine reason, which was his incapability to do the work that he had been employed to do.
428. Mr Yusuf's dismissal was in accordance with the Attendance Policy and we see no unfairness in this regard. We note that there was no requirement in the Attendance Policy to discount absence related to disability so there was no unfairness in that regard. We have dealt with various aspects of the dismissal process in the discrimination complaints above. None of those complaints, and in particular in respect of various triggers, had any merit. If anything, Mr Yusuf was treated favourably during the first respondent's application of its dismissal process.
429. We accept that Mr Moore had a genuine belief that Mr Yusuf was no longer capable of performing his duties because we accept his evidence notwithstanding this had not been challenged by Mr Yusuf but was questioned in detail by the Employment Tribunal.
430. Mr Yusuf's position that he effectively put to Mr Moore was because he was disabled, he could not or should not be dismissed. This is not a viable argument in respect of the unfair dismissal. Mr Yusuf was consulted by Mr Kennedy.
431. As can be seen above, Mr Fazekas and Mr Kennedy consulted adequately with Mr Yusuf about the process. Mr Yusuf was able to raise any points he wanted in respect of his capability, absence and the procedure adopted. So far as the stage three meeting, Mr Yusuf had a proper opportunity to put forward his case, which he did forcefully. Mr Yusuf attended two meetings which lasted six hours in total.
432. The first respondent carried out a reasonable investigation which included finding out about the up-to-date medical position. Mr Moore considered numerous occupational health reports which catalogued Mr Yusuf's ongoing medical condition. Towards the end of the process, Mr Yusuf had refused to undertake further occupational health assessments, so Mr Moore considered the evidence that was available. The occupational health report of July 2020 was reasonably detailed, and Mr Moore said that he needed

more information because a comprehensive picture had emerged from the occupational health evidence. Mr Moore regarded Mr Yusuf's unwillingness to work went beyond purely his medical condition and reflected Mr Yusuf's preoccupation with his complaints about his work colleagues rather than getting on with the work he was paid to do.

433. All adjustments recommended by occupational health had been made with the one exception of Mr Yusuf's wish to change his line manager which had been refused and we determine did not amount to a reasonable adjustment. So, anything that could be considered reasonable had been embarked upon to seek to accommodate Mr Yusuf and this had not prompted him to engage in his contractual duties.
434. Mr Yusuf considered that the first respondent could have waited longer for dismissing him, but this argument is unsustainable because Mr Yusuf's lack of work could not be sustained by the first respondent. Mr Moore explained the strain this was having on Mr Yusuf's colleagues, for example he demonstrated the effect on other employees and the detriment to council tax payers.
435. We contend that the dismissal was within the range of reasonable responses open to an employer of this type. Mr Yusuf stage one sickness meeting was held on 23 March 2018 with Mr Amir Hussein. Mr Yusuf's stage two sickness meeting was held on 15 July 2019 with Mr Kennedy, the stage three meeting was held on 11 March 2020. The final stage three meeting was held on 11 March 2021. With the wisdom of hindsight there was an inevitability about Mr Yusuf's dismissal. No reasonable employer could be expected to endure such a high level of absence and such a poor work output. However, it took this respondent almost three years to resolve this far ranging, ongoing episode. If we were to be critical of the respondent in this process, it is that they were deflected from resolving this matter in a more timely way. Notwithstanding there were issues with Covid, the delay did not act to Mr Yusuf's detriment at all because virtually every criticism he made of the process, however unmeritorious, was met with excessive contemplation by the first respondent, which suggests an unwarranted cautious approach which left the traffic and highways department virtually hamstrung for this period of time.
436. The Tribunal was concerned that what appeared to us to be a performance management process was not followed and the first respondent chose to pursue the capability process. First, we are not entitled to substitute our view of what the first respondent should have done to what, in fact, the first respondent did do. The performance management process would have been quicker but the capability process had more steps and more safeguards, so this directly benefitted Mr Yusuf. If the benefit of the doubt could be given to Mr Yusuf then he well and truly took advantage of that benefit through the more generous capability process. Secondly, this was a complicated case and Mr Yusuf always complained that when he did not want to do anything it was because of his disabilities. Whilst we viewed this more as a performance matter, perhaps looking at the last six months of Mr Yusuf's employment primarily, it is not so clear cut that the health issues alleged were not dominant.

Allegation 117: P18(1)-P18(3)

437. Mr Yusuf claims that his dismissal amounted to direct discrimination, discrimination arising from his disability, reasonable adjustments and victimisation.
438. We have dealt with direct discrimination above under allegation 115. The first respondent accepts, and this is clear to us, that Mr Yusuf's absence from work reduced performance at work were the reasons why he was dismissed. We do not believe that Mr Yusuf's reduced performance in the period August 2020 to December 2020 was something that genuinely arose from his disability because we do not accept that this arose from his PTSD. Mr Yusuf chose to disengage from work, and instead, concentrated his efforts on pursuing his grievance against various work colleagues. He seemed to draft a constant series of lengthy and combative emails. So, in that regard, we consider whether the first respondent's treatment of Mr Yusuf was a proportionate means to achieve a legitimate aim. The first respondents define their legitimate aim as the council's need to ensure that its employees were able to give regular and effective service so that it could deliver public services in a cost effective manner to the council tax payers of Brent. We are in little doubt that this a legitimate aim so the question is whether Mr Yusuf's dismissal was proportionate to achieving that aim. We consider Mr Yusuf's treatment whether the dismissal was necessary. Mr Kennedy said in evidence dated August 2019 Mr Yusuf was sent a single piece of work that would ordinarily take a week. Mr Kennedy gave Mr Yusuf three weeks to undertake such work, but it took Mr Yusuf, in fact 3 months to complete the task. Mr Yusuf did not challenge the accuracy of this evidence. Mr Moore accepted Mr Kennedy's view that between January 2018 and November 2020 Mr Yusuf had not been able to carry out his duties in full and that he had not provided an efficient service. This was the period of when Mr Yusuf was back at work. There were causal explanations as to when Mr Yusuf took sickness absence, so the first respondent managers could not be sure that if Mr Yusuf was to undertake his work and recommence his work and anything approaching an acceptable level that he would not go off sick again. The past is a good indicator to the future.
439. No employer could reasonably be expected to bear the costs of around £47,000 a year to continue the employment of someone of such extraordinarily low quantity of work that Mr Yusuf did. This is particularly salient for a public sector employer seemingly in continual funding crisis and for a local authority dealing with large areas of deprivation in its borough. Covid-19 lockdown compounded these problems, and we were told, and accept, the Highways and Infrastructure Service bore a disproportionate amount of service cutbacks. In short, we accept the first respondent's submission that fewer staff were asked to do more work and Mr Yusuf stood out as a visible non-contributor. Indeed, Mr Yusuf's indolence increased the substantial burden on his colleagues.
440. Mr Moore had clearly concluded there was no prospects of a significant improvement to Mr Yusuf's health in the near future or any likelihood that the first respondent would get more work out of Mr Yusuf. We find Mr Yusuf dismissal was an entirely proportional response to achieving the aforesaid legitimate aim. That complaint had no merit.

441. The reasonable adjustment complaint is misconceived. The first respondent accepted that the PCP of dismissing employees were not capable of giving regular and effective service was accurate and the first respondent contended that not dismissing disabled employees who could not give regular and effective service was not a reasonable adjustment and this seemed blatantly obvious to us. This complaint has no merit and is accordingly dismissed.
442. In respect to victimisation, we could find no causal link, Mr Yusuf was not dismissed because he had brought Employment Tribunal proceedings against the first respondent. Indeed, Mr Moore decision was in no way influenced by any protected act. Mr Moore said that he was aware that Mr Yusuf had raised grievances and had brought an Employment Tribunal process, but this is not in itself evidence that that was the reason for dismissal because awareness differs significantly from motivation. Mr Moore set out his reasons for the dismissal and there is no link with reasons (which we find entirely justified) and separate from Mr Yusuf's protected act.

Applications

443. Mr Yusuf made a number of applications at the beginning of day-11, before the submissions. We heard Mr Yusuf's application for an adjournment but the evidence in the case had been completed and we proceeded to submissions and it was not in the interest of justice nor within the overruling objective to adjourn proceedings any longer. It happened at various stages of the process, Mr Yusuf accused the hearing judge of bias when the application was not granted. Mr Lockley contended that there was nothing new in these allegations and they had already been resolved. Our determination is that there is nothing new in these application of bias to what was added above so that application is dismissed.
444. Mr Yusuf also said that he wished to raise allegations of bias against the non-legal members. He said his reason was for doing so was that the non-legal members had supported the Judge in answering the application. So therefore, if the judge was bias then the non-legal members must be biased also. We reject this application. It is not accepted that the non-legal members are capable of exercising their own independent judgment if one member of a panel of three was contended to be biased, it does not mean that all three members are tainted by such an accusation.

Employment Judge Tobin

Date: 14 May 2023

Sent to the parties on: 18 May 2023

For the Tribunal Office