EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Nina Rahel	**v**	**University of the Arts London**

Heard at: London Central (in public; in person)

On: 8-12 April 2024

Before: Employment Judge **P Klimov**
Tribunal Member **M Ferry**
Tribunal Member **J Marshall**

Representation:

For the Claimant: **Mr P Tomison** of Counsel.

For the Respondent: **Ms A Palmer** of Counsel

JUDGMENT having been announced to the parties at the hearing on 12 April 2024 and written reasons having been requested by the claimant at the end of the hearing, in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background, Issues and Evidence

1. By a claim form dated 30 November 2021, the claimant brought complaints of discrimination on the grounds of disability, age, and race, victimisation, and unfair dismissal. On 5 July 2023, the claimant withdrew her complaints of discrimination on the grounds of age and race. The remaining complaints proceeded to this final hearing. At the start of the final hearing, the claimant withdrew her complaints of direct disability discrimination and discrimination arising from disability. These complaints have been dismissed upon withdrawal. There remaining complaints in the claim are:
    a. failure to make reasonable adjustments (section 20, 21 Equality Act 2010 ("**EqA**")),

b. victimisation (section 27 EqA), and
c. unfair dismissal (sections 94, 98 Employment Rights 1996 ("**ERA**").

2. Th agreed list of issues, which was finally settled by the parties at the start of the hearing, is appended to this judgement for ease of reference.

3. Mr Tomison appeared for the claimant, and Ms Palmer for the respondent. The Tribunal is grateful to both counsel for their submissions and other assistance to the tribunal.

4. The parties presented in evidence documents contained in an 824-page bundle. Several further documents were submitted in the course of the hearing. These were admitted in evidence. The Tribunal only read the documents referred to in the witness statements, and the documents, to which the tribunal's attention was drawn during the hearing.

5. The Tribunal heard from the claimant and one other witness for the claimant - Ms Karen Riley ("**KR**"), the claimant's trade union representative. The respondent called 5 witnesses:

    (i) Ms Isabella Chan ("**IC**"), the Head of Equality, Diversity and Inclusion, at the relevant time the claimant's direct line manager,
    (ii) Ms Zoe Hack ("**ZH**"), the Associate Director of HR, who was assisting IC in the restructuring/redundancy process,
    (iii) Mr Stephen Marshall ("**SM**"), at the relevant time University Registrar and Secretary, who heard the claimant's representations under the respondent's redundancy policy,
    (iv) Mr Harry Gaskell ("**HG**"), one of the Governors, who was on the appeal panel, which heard the claimant's appeal, and
    (v) Ms Satvinder Matharu ("**Ms SM**"), a Human Resources Consultant, who dealt with the claimant's Dignity at Work complaint.

6. All witnesses gave sworn evidence and were cross-examined.

7. Both counsel prepared written closing submissions, which they supplemented by oral submissions on the morning of the last day of the hearing. The Tribunal then took time to deliberate. It announced its judgment with oral reasons at the end of the final day of the hearing. After the judgment had been announced, the Tribunal listed a remedies hearing and gave directions in preparation for the hearing. After the end of the hearing, Mr Tomison briefly returned to the hearing room together with Ms Palmer and asked on behalf of the claimant for written reasons.

8. On 24 April 2024, I wrote to the parties in relation to a matter concerning one of the panel members. In the same email, I asked the parties if they wished to receive the Judgment with written reasons (which I said would require a few more weeks due to my other work commitments), or to receive the Judgment first, to be followed by written reasons.

9. On 29 April 2024, the respondent replied asking for a liability judgment to be issued first and written reasons to follow. The claimant did not respond.

10. I issued the liability judgment on 8 May 2024. These reasons are provided pursuant to the claimant's original request at the end of the hearing.

Findings of Fact

11. The claimant commenced her employment with the respondent on 22 May 2012 and worked in the role of Equality & Diversity Officer (Grade 5) until her dismissal on 5 October 2021.

12. From November 2018 until her dismissal the claimant was managed by IC.

13. In February 2020, IC initiated a capability and sickness review process with respect to the claimant. The review was prompted by the claimant taking time off for her medical (osteopathy) appointments, which IC thought negatively affected the claimant's ability to meet work deadlines.

14. On 18 February 2020, the claimant and IC spoke on the phone. The conversation followed by several email exchanges between them. In a nutshell, IC appeared to be unhappy about the claimant's absences from work due to osteopathy appointments. The claimant contested both the concerns raised about her not meeting the deadlines and the procedure adopted by IC.

15. This process continued through March 2020 with IC setting the claimant various work objectives with specific deadlines. However, no formal disciplinary action was taken against the claimant.

16. On 4 May 2020 the claimant was placed on furlough. She returned to work on 1 July 2020.

17. On 26 August 2020, following a review planning and appraisal meeting with IC, the claimant sent to IC her Planning, Review and Appraisal form ("**PRA**"). The form is used by the respondent as part of its PRA process, designed "*to provide an opportunity to formally record supportive, work and development conversations*" in the circumstances of the COVID-19 pandemic.

18. The PRA form is to provide the employee's feedback on the issues of wellbeing, achievements and challenges, work priorities, and support and development. The process envisages the employee sitting down with their manager to discuss these issues. Following the discussion, the employee writes up the form based on the discussion and sends it to the manager. The final version should be agreed between the employee and the manager. The manager should then upload it on the respondent's HR system. If the parties disagree on the content of the form, they can record their points of disagreement in the form.

19. In the PRA form the claimant complained that IC had been making things difficult for her since IC had tried to put the claimant through the capability and sickness process in February 2020. She said that she felt being excluded from work and "*thoroughly demeaned and insulted*". She said that she was "*incredibly aggrieved by this situation*". The claimant also accused the respondent of being incapable of a correct response to accusations of racism, giving an example of the respondent offering coaching, rather than counselling, to students and staff, who experienced racism. She complained about the decision to place her on furlough and being excluded from the team. She went on to say that she felt that she was not valued and not wanted by the respondent, and "*[m]aybe [her] impairments, [her] age and [her] experience [were] all too much for [the respondent] to manage.*"

20. IC disagreed with the claimant about the content of the form. However, she did not include the claimant's comments, nor did she upload the form on the HR system, as was required by the PRA policy. In her evidence IC said that she told the claimant to re-write the form, reflecting the true content of their PRA discussion, but the claimant never did. The claimant denied that. On the balance of probabilities, we find that IC did not ask the claimant to re-write the form but decided simply to ignore the claimant's comments and not to bring them to the HR's attention. The reason for this finding, is that we generally preferred the claimant's evidence to the IC's evidence, when these were in conflict, for the reasons we will explain later in the judgment.

21. In or around December 2020, IC decided to restructure the EDI team, because she thought the existing team was incapable of delivering the EDI strategy and operations plan. IC spoke with ZH about this change. She prepared a business case for the change, which was approved by the respondent's executive board on 14 December 2020. The proposal envisaged the claimant's role of EDI Officer being eliminated and new roles of EDI Manager for Staff and Students (Band 5), EDI Officer (Band 4), and EDI Disability Officer (Band 4) created. The proposal stated that it had direct impact on one member of staff – the claimant. The claimant was the only permanent member of staff in the EDI team, except for IC. We find that it was at that stage, or possibly even earlier, when IC had decided to dismiss the claimant for redundancy. The reason being is that IC did not wish the claimant to be part of the new EDI structure. The reason for this finding will be explained in the analysis and conclusions section of the judgment.

22. On 22 January 2021, the claimant was invited to a consultation meeting to discuss the restructure. The first consultation meeting took place on 27 January 2021 between IC and ZH, the claimant and KR (acting as the claimant's companion). At the meeting IC and ZH provided the claimant with a consultation document setting out the restructuring proposal.

23. The document stated that the "*aim of this document is to enable consultation to take place with the Trade Unions and staff affected by a review of UAL's Equality, Diversity and Inclusion (EDI) Unit and proposed changes to the Unit*." It went on to explain the proposal and next steps. Notably, it said:

*"**Consideration will be given to comparing the job duties and grade of the new posts with the job currently undertaken by the employee(s) to identify roles which may be possible alternative employment. Roles that are one grade lower than the employee's current role will be considered, with appropriate pay protection**.*
Where a role(s) within a restructure is/are not considered suitable alternative employment and the above does not apply, there may be the opportunity for affected employees to apply for a role/s before they are advertised more widely in order to retain the skills and experience of affected employees or as an additional way to mitigate redundancies.
*In circumstances other than slotting, there will always be a selection process. Options relating to individual cases will be explored at 1-2-1 discussions." (**emphasis added**)*

24. The document invited the claimant to provide her ideas and comments on the proposal, including alternatives to the proposal. It stated that: "*The final structure will be decided following the conclusion of the consultation period.*" However, at the same time and despite the aforementioned highlighted text, the document went on to say: "*Within these proposals, the EDI officer (0.6, Grade 5) post* [the claimant's role] *will be deleted* ***with no immediate suitable alternative employment and so the post holder will be at risk of redundancy****.*" (***emphasis added***)

25. At the meeting KR asked IC and ZH several questions about the impact of the restructure on the claimant. IC and ZH did not engage on this subject and just followed the script. KR remarked that both sounded "*like robots*."

26. On 3 February 2021, there was the second consultation meeting attended by the same people. At meeting, KR raised various issues and asked further questions concerning the restructure, in particular which role in the new structure IC thought the claimant would fit in. IC responded that she could not comment on that. KR also asked whether the EDI Manager (Grade 5) role would be ringfenced for the claimant in accordance with the respondent's redeployment policy, which states: *"Where a role(s) in the new structure is/are largely the same as a role in the old structure (i.e. 75% or more of responsibilities are the same,) the post holder(s) would normally be automatically slotted into that role."*

27. KR also asked that considerations were given to comparing the job duties of the two new Band 4 roles with the job undertaken by the claimant to identify whether those would be suitable alternative employment for the claimant.

28. On 5 February 2021, IC responded saying that: "*…. the Grade 5 EDI Manager has not been identified as a suitable alternative employment for Nina [the claimant]. However, as per the redeployment policy, this role will be ring fenced for Nina and if she is interested in being considered there will be a selection process to asses[s] suitability to the role. If Nina is interested we ask she advises before consultations is concluded."*

29. On 2 March 2021, IC wrote to the claimant stating that she was agreeable to the claimant's earlier request to extend the consultation period by 10 working days and that the consultation would conclude on 22 March 2021. IC proposed a further 1-2-1 meeting with the claimant on 15 March 2021. With that email IC included a revised consultation timeline, showing the period between 31 March and 2 April 2021 for selection process for any ringfenced roles and the launch

of the recruitment exercise on 5 April. 5 April was also the date for exploring any redeployment options and issuing compulsory redundancy notices.

30. On 17 March 2021, the claimant submitted her response to the proposed restructure, in which she made various complaints about the process, including that it discriminated against her on the grounds of disability, sex, and race. She questioned why she had not been slotted into the EDI Manager (Band 5) role, as she felt it was more than 75% match with her existing role. She sent that document to various senior managers at the respondent.

31. On 30 March 2021, IC responded to the claimant. IC said that she had reviewed the claimant's role against the new EDI Manager role, and these were not a 75% match. IC also said that the claimant would not be slotted into one of the Band 4 roles as these were a grade below the claimant's existing role. IC said that the claimant would be invited to a ringfenced interview for the Band 5 role and could also request to be interviewed for Band 4 roles. IC did not respond to the claimant's allegations of discrimination.

32. With respect to the matching of the claimant's role to the new EDI Manager role, IC wrote: "*This is the same grade as your existing role but the content of the role is very different. A substantial part of this role is to undertake the Race Equality Charter and implement the EDI strategy which is not part of your existing role.*"

33. On 19 April 2021, the claimant confirmed to IC that she was interested in the EDI Manager Band 5 role and both Band 4 roles (EDI Officer and EDI Disability Officer).

34. On the same date, the claimant sent her representations to the Vice Chancellor pursuant to the respondent's redundancy policy, which provides that if following individual redundancy consultation: "*…the employee is dissatisfied with the response they may make representations to the Vice-Chancellor or nominee, in writing, within seven calendar days of the meeting.*" In that document, the claimant, made complaints of, *inter alia*, discrimination on the grounds of disability, age, and race.

35. On 7 May 2021, ZH invited the claimant for an interview for Grade 5 role to take place on 18 May 2021. The claimant asked for the interview to be re-arranged for 26 May, as she was on holiday that week. On 12 May (after office hours) IC emailed the claimant stating that the interview would take place on 24 May. The claimant wrote back the following morning, pointing out that the invitation had been sent after she had ended her working week (with the following week being her holiday week) and having the interview on Monday, 24 May meant that she would be walking straight into the interview from her holiday without having had the opportunity to get any support from Organisational Development, which the respondent had offered her in preparation for the interview.

36. The claimant's representations were considered by SM, as a nominee of the Vice Chancellor, at a meeting on 12 May 2021. KR was also present at the meeting. The claimant again raised complaints of discrimination on the grounds of age, disability, and race. She said that she felt that she was not being treated equally and fairly in the restructuring process.

37. On 21 May 2021, SM sent a response to the claimant's representations. In his response SM recommended that the claimant met with IC and HR:

- "*…to discuss any areas of the consultation process you feel you have not had an adequate response including any benchmarking information and reasons why certain posts had been deleted*.
- *Understand the detailed reasons why the grade 5 role in the new structure was not a match to your current role and why you were therefore not slotted into this post*
- *Have an independent stakeholder on the interview panel for the grade 5 post*
- *Be skills matched, if necessary to the grade 4 role which may involve an interview process if appropriate*."

38. He did not deal with the claimant's complaints of discrimination but noted that during the meeting the claimant had said that she felt she had been treated "*unfairly*" and advised the claimant that there were separate HR processes to investigate those concerns.

39. On 26 May 2021, IC wrote to KR with her reasons for not slotting the claimant into the EDI Manager Band 5 role. IC said:

> "*To determine that Nina doesn't undertake at least 75% of the EDI Manager role and as such shouldn't be slotted into it, I have compared the duties and responsibilities for the job description for the EDI Manager with Nina's current activities and responsibilities. I naturally manage Nina on a daily basis so I have a clear understanding of the areas of work she engages in and the outputs. I haven't based my assessment on Nina's current job description as it is very broad and out of date.*
> *I attach a version of the job description where I have highlighted (in yellow) the roles and responsibilities that Nina does not undertake within her current role. More professional assessment is that Nina only undertakes approximately 25% of the roles and responsibilities within her current role at present. If Nina wishes me to discuss this with her, I would be happy to do so.*"

40. IC attached the new role description for the EDI Manager Role (Band 5), where in yellow she highlighted duties and responsibilities she considered were outside the claimant's existing role. When being cross-examined on her evidence, IC admitted that that the claimant's role description was broad enough for IC to legitimately ask the claimant to undertake all the duties in the EDI Manager Band 5 role description she had highlighted in yellow. However, IC maintained the difference between the two roles was the EDI Manager Band 5 role was "strategic", when the claimant's role was "operational". In the Tribunal's view, IC was unable to provide a satisfactory explanation why, based on comparing the two role descriptions, she considered the two roles to be different, let alone by "*at least 75%*". She was also unable to provide a satisfactory explanation as to the substantive difference between what she called "strategic" vs. "operational" roles. We, therefore, find that there was no material difference between the claimant's role and the EDI Manager Band 5 role.

41. On the same day, 26 May 2021, IC had a one-to-one meeting with the claimant, at which the claimant informed IC that she did not feel well enough to consider her options or prepare for the interview. IC told the claimant that since the

restructure had been going on since January they needed to "*push on*" and interview candidates.

42. On 1 June 2021, the claimant emailed IC, with a note of their conversation on 26 May 2021, informing IC that she was going off sick with stress, and asking "*for an alternative means of assessment for the grade 5 post as a reasonable adjustment.*" The claimant recorded in her email:

> "*I explained that I did not feel well enough to consider my options, as set out by Stephen Marshall, let alone prepare for an interview.*
> *You said that the restructure had been going on since January and that it needed to be resolved.*
>
> *I explained that I was aware of this as I had borne the brunt of this structure.*
>
> *You said that the other interview panellists would not be able to get together again for the grade 5 interview.*
>
> *In response, I asked, 'never?'*
>
> *You did not reply.*
>
> ***You insisted that the interview would need to take place even though the discussions that Stephen Marshall had recommended had not taken place***." (***emphasis added***)

43. The claimant commenced her sick leave on that day. She did not return to work up until her dismissal.

44. IC replied to the claimant on the same day, saying that she could not offer an alternative method of assessment and offering her to attend an interview on 16 June 2021. IC also offered various adjustments to the interview process, such posting interview questions in the chat function and allowing the claimant longer time to give her answers.

45. On 8 June 2021, the claimant sent to IC a GP's fit note, recording that she was not fit for work due to work stress until 13 July 2021. IC wrote back on the same day saying that she was referring the claimant to Occupational Health ("**OH**") to seek their advice regarding any additional adjustments for the interview. In the same email, IC said that the respondent would be commencing the recruitment process for the EDI Manager role, but it would be "*paused*" if the claimant became fit to undertake the interview.

46. On 15 June 2021, at 5:44pm, IC emailed the claimant asking whether the claimant was intending to attend the interview on 16 June and stating that if she (IC) did not receive a response by 9am the following day, IC would conclude that the claimant had declined to attend the interview and to participate in the OH referral process. The claimant replied a few minutes later, stating that she wanted to attend the interview when she was well enough to do so, but she would not be able to attend the interview on 16 June. The claimant also said that she did not object to the OH referral.

47. On 17 June 2021, KR wrote to IC asking IC to defer the recruitment process for the EDI Manager role until after receiving the OH report.

48. On 18 June 2021, IC responded to KR saying that the interview process cannot be held off due urgent business needs to fill the new EDI roles, but if the claimant became well enough to attend an interview, the process would be paused for her.

49. On 22 June 2021, the claimant attended her OH assessment. The OH report was produced on 25 June 2021. It contained the following assessment and recommendations:

"*Ms Rahel had been referred to assess fitness for work due to work related stress.* ***Ms Rahel is temporarily unfit for work due to overwhelming stress which she associates with work. With a positive outcome from workplace dialogue with you and with appropriate support, a return to work date could be possible within a matter of weeks. She reports symptoms that could impact on her ability to undergo a job interview at this time and I am unable to offer a timeframe as to when this could be; as this would depend on when stress has reduced sufficiently for her to confidently participate in an interview process****. I do hope the recommendations put forward are reasonable to you and will prove helpful.*

[…]

In my opinion Ms Rahel would likely struggle to carry out a job interview with the level of stress described. I am unable to offer a timeframe as to when this could be as this is likely to depend on when stress has reduced sufficiently for her to confidently participate in an interview process. A return to work date is likely to be dependent upon the outcome from workplace dialogue aimed at addressing the sources of perceived pressure. There is no clinical reason why Ms Rahel cannot continue in the role once stress is sufficiently reduced to enable her to return to work*. With good stress management and appropriate support in place,* ***there is every chance that Ms Rahel is likely to render a reliable attendance and performance into the future****. In my opinion, the stress related symptoms are unlikely to be afforded protection within the context of the Equality Act (2010) as there are no long-term substantial negative effects on day-to-day activities and it is hoped resolution can be reached. You may appreciate that my opinion is a clinical one and ultimately this is a legal decision.*

Recommendations to Manager / HR*:*

• I would recommend the completion of a stress risk assessment so as to help clearly identify the sources of identified pressures at work regarding the restructure, where this has not already been considere*d. A stress risk assessment can help to explore possible solutions or actions to help reduce perceived stress at work.* ***It is also recommended that monitoring continues where stress risk is higher than usual e.g. weekly for 4 weeks on a return to work then monthly for 3 months or at agreed intervals thereafter and as stress risk dictates.***
An agreed review date can also help you to evaluate possible solutions or actions taken forward. ***I would recommend regular but sensitive contact with her to see how she is managing and to help plan for a return to work.***" (***emphasis and underlining added***)

50. On 1 July 2021, IC sent a letter to the claimant confirming the outcome of the consultation processing and giving the claimant 3 months' notice of redundancy, with the last day of employment being 5 October 2021.

51. On 13 July 2021, the claimant was sign off as unfit for work due to work related stress until 13 August 2021.

52. On 14 July 2021, the claimant emailed IC objecting to the posts being advertised without giving her the opportunity to be interviewed for them. The claimant also complained that IC did not follow the OH recommendations.

53. On 15 July 2021, IC replied to the claimant saying that because the OH report did not give a date when the claimant would be fit to attend the interview and there being an urgent business need to fill in the roles, the respondent had commenced the recruitment process for all vacancies, but if the claimant became well enough to attend the interview, the process would be paused.

54. On 19 July 2021, the claimant wrote to IC asking to pause the recruitment process and implement the OH recommendations. She said that she was hoping to return to work after 13 August 2021 and requesting to be allowed two weeks from her return to adjust back and prepare for the interview.

55. On 20 July 2021, IC replied saying that the recruitment process was due to conclude on 5 August 2021, but would be paused if the claimant was able to attend the interview before that date, however pausing the process until 30 August (i.e. two weeks after the claimant's planned return to work date) was not a viable option due to the criticality of the work that needed to be undertaken within the new EDI team. IC offered 3 August as an alternative date for the interview.

56. In the same email IC wrote:

> "***Being certified by your GP doesn't preclude you from undertaking an interview it does however identify that you are unable to undertake your normal day to day duties***. *As recommended by Occupational Health I would ask you to start to complete a stress risk assessment which is attached and I will arrange to meet with you prior to your scheduled return to talk this through with you and agree actions. Occupational Health also recommend undertaking discussions with you aimed at addressing the sources of your perceived pressure.* ***By undertaking the interview process it will assist UAL to explore your suitability to the roles you have identified an interest in and enable us to move this process to a conclusion with the aim of reducing your perceived pressure***.
>
> *Can you please advise by 5pm on Wednesday 21st July if you would like to attend an interview on Tuesday 3rd August so we can arrange a suitable panel and send the reference documents out to you.*" (***emphasis added***)

57. On 21 July 2021, the claimant replied saying that she wanted to be interviewed for all available posts but currently was not well enough to work or sit an interview. She said that as a compromise she would ask that the interview for the EDI Manager Band 5 posts be held one week after her scheduled return to work.

58. IC replied a few hours later saying it was not possible to delay the interview beyond 3 August and telling the claimant that if she wished to attend the interview on 3 August, she need to confirm that by 5pm on 22 July 2021.

59. On 23 July 2021, at 8:19am, the claimant emailed IC asking whether candidates were being interviewed for the EDI posts that had been ringfenced for the claimant before the claimant was well enough to work.

60. IC replied later that day saying that 3 August was the claimant's final opportunity to attend the interview, but since she had failed to respond by the deadline

given, the claimant details had been passed to the redeployment pool to explore further redeployment opportunities outside of the vacancies in the EDI Team.

61. On 26 July 2021, the claimant appealed against her dismissed on the ground of redundancy. In her appeal, the claimant complained, *inter alia*, that she was being discriminated against on the grounds of her disability, age, and race.

62. On 13 August 2021, the claimant was signed off work until 5 October 2021.

63. On 3 September 2021, the claimant raised a "Dignity at Work" complaint against IC and ZH under the respondent's Dignity and Work Policy. The complaint contained allegations of "*continuing acts of bullying, harassment and discrimination based on [the claimant's] disability, age and race through the application of the sickness absence policy and capability process and the restructure of the Diversity Team.*"

64. On 10 September 2021, Ms SM emailed the claimant saying that the issues the claimant had raised in her complaint related to restructuring and redundancy would not be dealt with under the Dignity at Work process and asking the claimant to revise her complaint "*taking out all matters related to the restructuring or redundancy including the desired outcome.*"

65. On 13 September 2021, the claimant replied saying that she was shocked being dictated what she can and can't complain about in her grievance and that she could not find anything in the Dignity at Work policy to that effect. The claimant said that Ms MS request was creating new barriers to the claimant being able to pursue her grievance.

66. On 15 September 2021, Andrea Lechner ("**AL**"), the respondent's HR senior manager, emailed the claimant in relation to her Dignity at Work complaint. AL said that because part of the claimant's complaint related to the restructuring process, that part needed to be considered under the restructuring and redundancy policies and procedures, and there was no right to have these matters heard under another policy. AL said that if the claimant wished her complaints to be considered under the Dignity at Work policy she needed to submit "*a fresh document providing:*
1. A summary of your complaint excluding matters relating to the restructure;
2. Any supporting evidence you wish to submit."

67. On 17 September 2021, Ms Vilma Nikolaidou ("**VN**"), the respondent's Associate Director Human Resources (People Strategy) submitted the management response to the claimant's redundancy appeal. The response did not address the issues of discrimination raised by the claimant in her appeal. In the summary section of the response VN stated:

"*….The role that NR wished to be considered for (EDI Manager) was not a 75% or more match with the responsibilities in NR's existing role in the EDI structure. From 7th May 2021 to 21st July 2021, NR was offered 5 opportunities to attend an interview where she would have been given the opportunity to demonstrate her skills and experience to undertake the EDI Manager role. Reasonable adjustments were proposed to NR for the interview and assessment process, NR was provided with time during her normal*

working day by IC to enable her to prepare for an interview and interview coaching was offered on several occasions.
NR commenced a period of sickness absence on 1st June 2021 and remains off sick. An Occupational Health referral was undertaken regarding any additional adjustments that could be recommended and NR's ability to participate in an interview and recommendations provided which were acted upon by IC.
Due to urgent business needs to fill the vacant EDI roles in the new structure a
competitive recruitment process commenced on 18th June 2021 which would allow the closed pool assessment for NR to run in parallel. NR was advised of this initially on the 10th June and it was reiterated several times and she encouraged to participate in the closed pool interview.
NR failed to respond to a final invite to interview on 3rd August 2021 and an appointment was made into the EDI Manager role.
NR was issued with a Notice of Redundancy on 5th July and her last day of employment is 5th October 2021.
The University has conducted this restructuring with the utmost care and sensitivity for Nina. Every request was met with flexibility and support by Zoe hack and Isabella Chan. This was done despite the serious pressures on the team colleagues and Isabella Chan. An interview selection process, with an independent panel member and practical support before and during the process was always our firm commitment. We could not reasonably extend the process any further or wait indefinitely. Redundancy processes have a very personal impact but they are business processes and as such they call for professionalism, fairness, level headedness and compassion. I believe UAL has demonstrated these qualities during this process."

68. On 22 September 2021, the claimant was notified that her appeal would be considered on the submitted papers on 28 September 2021. The appeal date then had to be rescheduled due to the appeal Chair's availability and the claimant's objections to the composition of the panel. It eventually took place on 17 November 2021.

69. On 28 September 2021, AL emailed the appeal panel with additional papers and her response to the Chair's question:

"One thing on which I would appreciate clarity from HR is the point made in the
second para of the Executive Summary, which refers to "additional issues raised by the appellant in her appeal as they are unrelated to her dismissal". Which issues raised fall outside our remit?"

Her response was:

"I would say all matters that are not related to the restructure, for example reference to being unfairly an d unprocedurally performance managed in 2020, sickness managed
in early 2018 and 2020 and the February 2020 PRA."

70. AL went on to suggest that "*the panel may wish to consider though*":

"1. Is the restructuring a sham exercise?
1.1.
It seems to me that Nina is making the case that the restructuring is a sham, i.e. the true purpose of t he restructure is to dismiss her as past attempts to performance/sickness manage her have failed.
1.2.
Is there any evidence for this or do you believe the management rational for restructuring? Does the management rational look/sound plausible and is it the true reason for the redundancy? Is the management rational consistent?
2.
Has management followed a reasonable and fair consultation process based on organisational polici es?
2.1.
Nina feels the process has not been followed, for example she feels other stakeholders (staff network s) should have been consulted (pre-restructuring) consultation and benchmarking exercises.
2.2.
Have the organisational processes been followed including stages/steps to redeploy Nina, including slotting, ringfencing?
3.
Is there any evidence that Nina was discriminated against based on disability, age or race? 'Di rect discrimination occurs when someone is treated less favourably than another person beca

> ***use of a protected characteristic they have or are thought to have or because they associate with someone who has a protected characteristic.'[1]***
> ***3.1. Was she unfairly selected/targeted due to her age, disability or race****?*
> *4. An employer is required to make reasonable adjustments for disabled employees.*
> *4.1. Were the adjustments made throughout the process reasonable?*
> *4.2.*
> *Could management have made other additional adjustments as requested by Nina, for example an extension to the external recruitment process?*
> *5. Is there anything management could have done to better support Nina?*
> *5.1. If yes, does the panel believe it would have made any difference to the outcome?" (**emphasis added**)*

71. Meanwhile, on 4 October 2021, the claimant re-submitted her Dignity at Work complaint, as instructed by Ms MS and AL.

72. On the same date, ZH responded to various questions asked by the appeal committee. Notably, she gave the following response to the question "*1- Could you provide information about why Nina was not matched to one of the grade 4 roles as part of the restructure, particularly in light of Steve Marshall's recommendations and in light of the redeployment policy.*"

> "*Nina expressly stated in verbal conversations with Isabella Chan and Zoe Hack and as detailed in her e-mail dated 16th March that her absolutely first choice was the grade 5 post. As such all effort was put into facilitating the interview process for the grade 5 EDI Manager role where Nina could evidence her skills and experience to undertake the role. Nina maintained that she wished to undertake the interview when she felt she was well enough to do so but there was no clear timescales when this would be as her absence was open ended.*
>
> *It was Nina's personal choice to be considered for the Grade 5 role first and **at no time did Nina change her decision and ask to be considered for any of the grade 4 roles first by skills matching or interview as detailed in Stephen Marshall's outcome report.** Isabella Chan tried to discuss Stephen Marshall's recommendations with Nina during her 1-2-1 on 26th May 2021 and **she declined to discuss any of the recommendations made by Stephen Marshall.** This is also detailed in Nina's e-mail dated 6th June 2021 prior to going off sick.*" (***emphasis added***)

As can be seen from our findings at paragraphs 33, 42 and 57 above, this answer did not represent the true facts.

73. On 6 October 2021, the claimant's notice of termination expired, and her employment was terminated.

74. On 7 October 2021, Ms SM wrote to the claimant:

> "*I am writing further to receipt of your revised complaint on 4 October 2021. **The purposed of a Dignity At Work complaint is for a member of staff to raise concerns and for the employer to look into this and implement actions. Once a staff member has left employment, it is hence not possible to address for them specifically the issues they have raised and for this reason, we do not intend to investigate these matters under our Dignity at Work policy and procedure but we will bring the concerns you raise to the relevant managers attention.** We are conscious that you have appealed the redundancy dismissal and if the appeal panel should reinstate you, we will look at the complaint then under the Dignity At Work policy as part of your continued employment.*" (***emphasis added***)

75. On 17 October 2021, ZH sent to the appeal panel an executive summary of the management position on the claimant's appeal. There she wrote:

> *It was NR's desire to be slotted into the new grade 5 EDI Manager role however as detailed in the UAL redeployment policy, slotting will only occur if 75% or more of the responsibilities are the same.* ***IC determined by undertaking a desktop comparison on NR's existing role and the roles and responsibilities of the new EDI Manager that NR undertook less than 40% of the new role.*** *As such NR could be ring fenced for the EDI Manager role and a selection process involving an interview would be undertaken*.
>
> [...]
>
> ***On 19th April 2021, NR expressed her interest in being assessed in a ring fenced selection pool (as per the redeployment policy) in the following three roles in order of preference 1, EDI Manager, 2, EDI Disability Officer and 3, EDI Officer. Interviews were arranged on five separate occasions for NR between 18th May and 3rd August to enable an assessment for the EDI Manager role with reasonable adjustments and interview coaching but NR declined to attend every interview for varying different reasons****.*
>
> *Due to the urgent business need for the EDI roles to be filled, an internal and external recruitment campaign was launch on the 18th June with the caveat that if NR agreed to undertake the interview for the EDI Manager or any of the other roles she had expressed an interest in prior to the external process concluding, the external process would be paused to enable NR's interview to take place. NR was advised of this five times during correspondence from the 10th June to the 21st July.*
>
> *NR was referred to Occupational Health (OH) on 10th June to determine if she was fit to attend an interview and if not, how long before NR would be fit. Management also asked for advice regarding any further adjustments.* ***The Occupational Health report (received on 28th June) advised that NR reported to OH that her symptoms could impact on her ability to undergo a job interview at this time. OH also advised that they were unable to offer a timeframe as to when NR would attend an interview****. (**emphasis added**)*
>
> As can be seen from the above findings of fact, these submissions did not accurately represent the factual matters.

76. On 25 October 2021, the claimant provided her response to the answers provided by ZH on 4 October 2021 (see paragraph 72 above). Pertinent to the issues in this case, in her response the claimant wrote:

> *"[**appeal panel's question**] 6. Did Nina at any point since Isabella commenced employment with UAL raise a grievance and/or Dignity at Work complaint? Excluding the complaint we received in September 2021.*
>
> *[**ZH response**] Nina's 2020 PRA form outlines areas of concern raised by Nina*

and this was discussed at length in Nina's PRA discussion on 28th of July 2020. During the PRA discussion Isabella also explained the other avenues available to Nina if she wasn't content with Isabella's explanations relating to the issues she raised and wished to make a complaint, this being the Dignity at Work policy and Grievance Procedure.

*[**claimant's response**] There are glaring untruths stated here which feel like a deliberate attempt to weaken me and my ability to stand up to the unfair and discriminatory behaviour I have received.*

The concerns that I raised in my PRA in July 2020 were categorically NOT discussed on 28th July 2020 or at any time after that.

I categorically dispute this statement. It is a total fabrication:

*[**ZH response**] During the PRA discussion Isabella also explained the other avenues available to Nina if she wasn't content with Isabella's explanations relating to the issues she raised and wished to make a complaint, this being the Dignity at Work policy and Grievance Procedure.*

*[**claimant's response**] Where is the evidence for this? Isabella's ONLY response to my PRA document was to say, 'Shall we just submit it to HR?' It has never been my job to tell my manage how to manage. I thought at the very least it would be discussed with Vilma and sole further action or discussions would take place. None ever did.*

Had they done there would be an email trail; there is no evidence to support that. I do not know if Isabella signed my PRA as a record of the meeting as it was never returned to me. […]"

77. The claimant also responded to ZH's response as to why the claimant had not been considered for other available positions (see paragraph 72 above). The claimant said that ZH's response was untrue, and she had never said that she wanted to be considered only for the Grade 5 post. She also pointed out that her sick leave was not open-ended and the sickness certificate had the end date of 13 August 2021. She said that IC did not try to discuss with her SM's recommendations, but simply wanted to push her to be assessed at an interview.

78. The appeal panel met on 17 November 2021. It decided not to uphold the claimant's appeal.

79. On 16 December 2021, the claimant was sent the appeal outcome letter giving the appeal panel's reasons for dismissing her appeal. The outcome letter stated that the appeal panel considered the restructuring exercise being genuine and the claimant's dismissal – fair. With respect to the complaint of discrimination, the appeal panel decided:

"*The Committee considered your first and second grounds of appeal jointly, as they were deemed to have overlapping points. You had stated that: "the continuing acts of bullying, harassment and discrimination based on my disability, age and race through the application of the sickness absence policy and capability process and the restructure of the Diversity Team" (A3 page 11) and that "the*

decisions around the restructure, coming as they did after she ignored the clear grievances in my PRA, amount to a catalogue of discrimination by my line manager, Isabella Chan" (A3 page 11). ***The Committee considered that the tone of correspondence between you, your line manager, Isabella Chan and HR seemed to be respectful and was not suggestive of discrimination, bullying, or harassment. Moreover, the Committee considered that if there had been a campaign of bullying and harassment against you, this could have been raised as a grievance under the Dignity at Work Policy, prior to your notification of redundancy, which it was not. The Committee noted that you had raised concerns about events in early 2020 via your PRA document in the summer of 2020, but that you did not escalate these matters further.*** *The University Secretary and Registrar, in his response to your representations to the President and Vice-Chancellor on 12 May 2021, also noted that "during our meeting, you mentioned you felt you had been treated unfairly." However, he then reiterated that "there are separate HR processes which would allow your concerns to be investigated formally" (B1 page 175).* ***The Committee noted that no formal complaints were raised by you until September 2021, which was shortly before your contract end-date. In reviewing all of the evidence before them, the Committee Members were unable to find any evidence which documented a campaign of bullying and harassment, and did not find any evidence of discrimination****. Therefore, these first two points of your appeal were not upheld.*" (***emphasis added***)

80. On 30 November 2021, the claimant submitted her claim to the Tribunal. On 3 February 2022, her solicitors submitted amended grounds of claim, which included, *inter alia*, an allegation of victimisation by reason of:
"*(j) Failing to deal with her dignity at work complaints of 7 September / 4 October on the basis that she was no longer an employee (this is already pleaded in the ET1 – see Paragraphs 16 above.*" The application to amend was unopposed and the amended grounds of claim were accepted by the decision of EJ Tinnon at the case management preliminary hearing on 7 March 2022.

81. On 21 June 2022, the respondent submitted amended response. It did not amend its defence to the victimisation complaint, in particular, its pleaded defence that:

"*64. In accordance with the Respondent's usual practice, only grievances and complaints from current employees are considered under the Respondent's grievance and dignity at work policies.*"

82. However, on 23 June 2022, unbeknown to the claimant, Laura Friedner ("**LF**"), the respondent's Associate Director of HR, having investigated the claimant's Dignity at Work complaint, found that the claimant "*[t]he allegations of bullying and harassment are not substantiated and in the evidence reviewed they present as reasonable management instructions and implementation of process by IC.*" Her conclusion was based on the findings that there was no or insufficient evidence to support the allegations. As part of her investigation, LF reviewed the claimant's complaint and other paperwork and spoke with IC on 3 March 2022. She did not speak with the claimant.

83. In contrast to Ms SM evidence and the respondent's pleaded case (see paragraph 81 above), LF noted in her report that "*Although NR left UAL on 5 October 2021, as good practice these outstanding issues have been investigated to identify any lessons to be learnt.*"

EDI roles interviews

84. The roles in the new EDI structure were advertised externally with the application closing date of 11 July 2021. The short-listed candidates were interviewed on 5 August 2021 (for the EDI Manager Band 5 role) and on 11 August 2021 (for Band 4 roles). The successful candidates were sent offer letters for the Band 5 role on 10 August 2021, with the start date on 15 November 2021, and for Band 4 roles on 10 September 2021, with the start date on 4 October 2021 and 24 November 2021.

Claimant's disability

85. The claimant relies on two impairments: (i) Type 1 diabetes, and (ii) stress, anxiety and depression ("**SAD**") – the abbreviation used by the claimant.

86. The respondent accepts that at the relevant time the claimant had a disability by reason of Type 1 diabetes, however, it does not accept that at the relevant time the claimant had a disability by reason of SAD.

87. The claimant had various episodes going back to 2003 (at least that is as far back as this Tribunal has been take in the evidence) when she complained to her GP about being stressed and anxious. All these complaints were associated with various adverse life events, such us bereavements, natural worries about health issues, problems at work. In her disability impact statement, the claimant describes the tragic events in her life associated with losing many close relatives between 2004 and 2017. There is no need for us to repeat them here.

88. Despite complaining to her GP on several occasions about feeling "tearful" and in "low mood", the claimant was never referred to a specialist consultant or prescribed any medication for SAD. The claimant said in her evidence that she was offered by her GP but did not wish to take any anti-depressant medication. We accept that, however that still does not show that her GP considered her SAD serious enough to prescribe a course of medicaments' treatment or refer her to a specialist.

89. Between 2009 and 2022 she had several sessions with a psychotherapist, largely to help her to deal with the bereavements in her family. The frequency of sessions ranged between every two weeks to once in several months.

90. When the claimant felt stressed, anxious and depressed, she had difficulties with sleeping. Her eating would become erratic, which in turn had impact on her diabetes. She would have difficulties with concentrating on tasks, would not keep up with house chores, would avoid socialising with her friends.

Analysis and Conclusions

91. I shall deal with the complaints in the following order: failure to make reasonable adjustments, unfair dismissal, victimisation.

FAILURE TO MAKE REASONABLE ADJUSTMENTS

92. To resolve this complaint, we first need to first determine whether the claimant had a disability by reason of SAD at the relevant time. Then, we need to consider whether the respondent was in breach of its duty to make reasonable adjustments under sections 20, 21 EqA.

93. Section 6 of the EqA states:

> *(1) A person (P) has a disability if— (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities…*

94. Para. 12 of Schedule 1 of the EqA provides that when determining whether a person is disabled, the Tribunal "*must take account of such guidance as it thinks is relevant*." The "Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability" (May 2011) (the "**Guidance**") was issued by the Secretary of State pursuant to s. 6(5) of the EqA.

95. In Goodwin v Patent Office [1999] I.C.R. 302, Morison J (President), gave guidance on the proper approach for the Tribunal to adopt when applying the provisions of the Disability Discrimination Act 1995 (the predecessor legislation to the EqA).

    Morison J held that the following four questions should be answered:

    a) Did the claimant have a mental or physical impairment? (the '*impairment condition*');
    b) Did the impairment affect the claimant's ability to carry out normal day-to-day activities? (the '*adverse effect condition*');
    c) Was the adverse condition substantial? (the '*substantial condition*');
    d) And was the adverse condition long term? (the '*long-term condition*').

96. S. 212(1) of the EA 2010 defines "*substantial*" as meaning "*more than minor or trivial*."

97. "*Day to day activities*" encompass activities which are relevant to participation in professional life as well as participation in personal life, and that the Tribunal should focus on what the claimant cannot do, not what he/she can do.

98. Schedule 1, part 1, para. 2 of the EqA defines "*long-term*" as follows:

> "*(1) The effect of an impairment is long-term if -*
> *(a) it has lasted for at least 12 months,*
> *(b) it is likely to last for at least 12 months, or*
> *(c) it is likely to last for the rest of the life of the person affected.*"

99. When considering if an impairment is "*long term*", that consideration must be considered as at the time of the discriminatory act, and not at the date of the hearing.

100. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

101. '*Likely*' has been held to mean it is a "*real possibility*" and "*could well happen*" rather than something that is probable or more likely than not. (SCA Packaging Ltd v Boyle [2009] ICR 1056).

102. The Guidance states that conditions with effects which recur only sporadically or for short periods can still qualify as long term impairments for the purposes of the Act. If the effects on normal day to day activities are substantial and are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term. The guidance sets out examples of impairments with effects which can recur beyond 12 months, or where the effects can be sporadic [C5 and 6].

103. The guidance sets out that it is not necessary for the effect to be the same throughout the period which is being considered in relation to determining whether the long-term element of the definition is met [C7].

104. The Guidance sets out what should be considered in relation to the likelihood of recurrence. Essentially this means that all circumstances should be taken into account including the way in which a person can control or cope with the effects of an impairment, which may not always be successful [C10].

105. Pertinent to this case, the Guidance gives two examples of recurring or fluctuating effects [C5].

> "*A young man has bipolar affective disorder, a recurring form of depression. The first episode occurred in months one and two of a 13-month period. The second episode took place in month 13. This man will satisfy the requirements of the definition in respect of the meaning of long-term, because the adverse effects have recurred beyond 12 months after the first occurrence and are therefore treated as having continued for the whole period (in this case, a period of 13 months).*
>
> *In contrast, a woman has two discrete episodes of depression within a ten-month period. In month one she loses her job and has a period of depression lasting six weeks. In month nine she experiences a bereavement and has a further episode of depression lasting eight weeks. Even though she has experienced two episodes of depression she will not be covered by the Act. This is because, as at this stage, the effects of her impairment have not yet lasted more than 12 months after the first occurrence, and there is no evidence that these episodes are part of an underlying condition of depression which is likely to recur beyond the 12-month period. However, if there was evidence to show that the two episodes did arise from an underlying condition of depression, the effects of which are likely to recur beyond the 12-month period, she would satisfy the long term requirement.*"

106. At [42] in J v DLA Piper UK LLP the EAT said:

> *42. The first point concerns the legitimacy in principle of the kind of distinction made by the Tribunal, as summarised at paragraph 33(3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness – or, if you prefer, a mental condition – which is conveniently referred to as "clinical depression" and is*

unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – "adverse life events". …

We dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians – it is implicit or explicit in the evidence of each of Dr Brener, Dr MacLeod, and Dr Gill in this case – and which should in principle be recognised for the purposes of the Act. We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most laypeople, use such terms as "depression" ("clinical" or otherwise), "anxiety" and "stress". Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at paragraph 40(2) above, a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering "clinical depression" rather than simply a reaction to adverse circumstances: it is a common-sense observation that such reactions are not normally long-lived.

107. In Igweike v TSB Bank plc [2020] IRLR 267, HHJ Auerbach, having reviewed the authorities on the question of identifying an impairment, held at [46] – [55]

"46. I turn first to ground one. Mr Young did not go quite so far as to say that the Judge necessarily erred, purely because he addressed the impairment question before he addressed the questions of substantial and long-term adverse effect. That indeed is not the law. In concurrence with the discussion in Herry, I do not read the discussion at para 42 of J v DLA Piper UK LLP as laying down a rigid rule of law to that effect. It is guidance as to an approach that may be helpful, particularly in a certain type of case, where, if the Tribunal does find that there was a substantial and long-term adverse effect, the Tribunal may then consider that that finding in turn supports an inference that that effect was caused by some impairment.

47. There may, it can be said, be a risk in such a case that if the Tribunal considers the impairment question first – and finds none established – it may fail sufficiently to turn its mind to whether such an effect, if found, might have affected its conclusion on the impairment question. However, what matters ultimately is not the running order in which the Tribunal discusses or presents its conclusions on these aspects, but whether, by the end of the decision, it has erroneously failed to find that there was such an effect, and/or, if so, whether it has, or has also, erroneously failed to draw the inference, taking account of such a finding, that there was an impairment.

[…]

50. Secondly, while there is no longer a rule of law that a mental impairment must be clinically well-recognised, nor is there any rule that such an impairment cannot ever be made out without medical evidence, nevertheless, as the discussion in both J v DLA Piper UK LLP and Morris explains, it is a practical fact that, in some cases of this type, the individual's own evidence may not be sufficient to satisfy the Tribunal of the existence of an impairment. In some cases, even contemporary medical notes or reports may not be sufficient, and expert evidence prepared for the purposes of the litigation may be needed. To say all of this is not to introduce either of these legal heresies by the back door. The question is a purely practical or evidential one, which is sensitive to the nature of the alleged disability, the facts, and the nature of the evidence, in the given case.

[…]

53. Mr Young says that the Judge nevertheless erred because, in para 28.1.3, he showed that he had wrongly assumed that a grief reaction could not be an impairment unless or until it had developed into a depression. The discussion in Herry is, I think, pertinent here. Herry and the present case are plainly not factually on all fours. Herry was about the type of case in which a reaction to circumstances at work is found to have expressed itself in entrenched or intransigent behaviour. In that case, that reaction was also found to have had little or no adverse effect on normal day-to-day activities. However, the discussion in Herry makes a more general point, that a reaction to adverse events or circumstances does not, even if a clinician describes it (in that case) as stress, necessarily by itself bespeak the presence of an impairment. The Judge in the present case cited this passage in Herry and referred to

the distinction between an ordinary reaction to adverse life events as such, and impairment, in terms, at para 14 of his Decision. It is fair to assume that he then had this distinction in mind when he later set out his conclusions in para

54. It seems to me that on a fair reading of the Decision as a whole, the Judge was doing no more in paras 28.1.1 through to 28.1.4, than to apply this valid general conceptual distinction to a case in which the adverse life event was bereavement through the loss of a loved one. In some cases, bereavement may lead to ordinary symptoms of grief which do not bespeak any impairment. In others, they may lead to something more profound which is, or develops into, an impairment over time. A clinician using the word 'depression' may be regarded as one form of evidence that this indeed is what has happened in a given case; but, to repeat, the matter is one for the appreciation of the Tribunal, drawing on the totality of the evidence, and the application of a clinical label is neither necessary nor, if it has been applied, conclusive.

55. Mr Young suggested that there were particular policy considerations that applied in the type of case with which Herry was concerned, because, were the law otherwise, an individual could, by adopting an intransigent or entrenched stance, then adduce support for their own case that they were disabled in law. I agree that a case of that sort would be different in that respect from one in which an individual, plainly not by any conscious decision, reacts to the experience of bereavement. However, that difference does not affect the validity of the insight that there is still a valid distinction to be drawn between a normal reaction to an adverse and tragic life event and something that is more profound and develops into an impairment. That is a distinction which it seems to me was properly applied by the Judge to the circumstances of this case." (*my underlining*)

108. Although we accept that since 2003 the claimant had various episodes, when she was suffering from stress and anxiety, all these were, as Ms Palmer put it to the claimant in cross-examination, "*situational*". We have gone through them all in the evidence. Ms Palmer reproduced them in her closing submissions too. We agree. In other words, in our judgment, these were reactions to what in the ***DLA*** case, the EAT called "*adverse life events*" (family bereavements, problems at work, natural worries about physical health issues).

109. The evidence before us is such that none of those reactions were or developed into what could properly be described as an underlying mental condition (such a PTSD, depression, recurring anxiety). The claimant was never referred by her GP to a psychiatrist or prescribed a course of medications, despite undergoing multiple depression screening. Until the expert report by Dr Falkowski of 6 April 2023 (with which I will deal with later in the judgment), there is no diagnoses of any mental illness of any kind.

110. The claimant's own evidence to this Tribunal is that she does not feel anxious all the time, but when things go wrong, she feels less optimistic about things improving than other people. She said that some people are "glass-half-full", and she is more a "glass-half-empty" person. This, however, is no more as an idiosyncrasy of her character and cannot be sensibly equated with a mental impairment, such as PTSD or another form of a mental disorder.

111. From time-to-time the claimant saw her psychotherapist to help her to overcome those tragic events in her life and to deal with her diabetes. However, again, there is no evidence that she was suffering from a mental illness at that time, as opposed to needed some moral support from a trained person to help her to deal with these issues without developing a long-term mental condition. It appears to us that such sessions were more preventative steps as contrasted with a treatment of a developed mental impairment.

112. As was confirmed by Ms Tomison in the closing submissions, the claimant does not rely on a "past disability". That is to say that she had had a disability by reason of SAD in the past, but then recovered from it. If she had had such a past disability, she would have been entitled to the protection under the EqA by reason of her past disability. In any event, the evidence before us do not support the contention that the claimant had had a past disability by reason of SAD, from which she later recovered.

113. We accept that at the relevant time because of stress at work the claimant was experiencing problems with carrying out normal day-to-day activities, and those effects were substantial. Therefore, the second and third conditions of the ***Goodwin*** tests are satisfied. The real question is whether the adverse effects were caused by SAD (as opposed to being, as before, a normal reaction to an adverse life event, in this instance - being made redundant), and if they were caused by SAD, whether they were "long-term" (meaning had lasted for 12 months, were likely to last for 12 months or for the rest of the claimant's life).

114. It is important to note that what matters is not whether the underlying condition (SAD) had lasted for 12 months or was likely to last for 12 months, but the adverse effects on the claimant's ability to carry out normal day-to-day activities caused by that condition.

115. The claimant's disability impact statement recounts history of various episodes when she says she suffered from SAD and how that affected her. At [45] she says:

In view of all the above, I believe that my condition is long term in that I have suffered from it for more than 12 months at the relevant date in question, and in any event, it's a condition that recurs. I also believe that my condition adversely impacts on my ability to carry out day to day activities as set out above and therefore, consider my condition to constitute a disability.

116. However, as we have found, SAD did not amount to a disability within the meaning of the Act before the relevant period, because those episodes were normal reactions to adverse life events and did not develop into an underlying mental condition of depression or another type of mental impairments.

117. It seems to us that the claimant's reaction on this occasion was no more than a normal reaction to an adverse life event – being made redundant. The GP records [p.641 of the bundle] describe it as stress at work, which is an understandable and natural reaction of a person who is about to lose their job, especially when feeling that she was being treated badly and being discriminated against.

118. It is also of some importance in the overall assessment that the claimant was not referred to a specialist psychiatrist and was signed off work

first from 8 June until 13 July and then extended to 13 August 2021 – a relatively short period of time.

119. Furthermore, at that time the claimant was planning to come back to work and be ready for a very important interview a week later. Of course, just because she was planning to come back to work doesn't necessarily mean that she did not have a mental impairment and that its effects were not substantial or long-term. However, considering what the claimant says about the effects of her SAD (low mood, not able to leave home, impaired focus and communication), the fact that at that time she thought she would be able to come back to work, speaks against SAD (even if it amounted to a mental impairment) having a long-term effect.

120. I pause here to explain that what actually happened after the relevant period, that is after August 2021, cannot be taken into account as the evidence as to whether the adverse effects were likely to last for 12 months. That would be an error of law. We must consider that question looking at things as they were then and not with the benefit of hindsight.

121. Therefore, Dr Falkowski's report is of little help in this case. As explored during the closing arguments, Dr Falkowski was not giving expert evidence as to whether at the relevant time (between May and August 2021) the claimant had a mental impairment, but whether she suffered a mental impairment as a result of being put through the restructuring process and dismissed. It is evident from the questions that were being put to him by the claimant's solicitors.

122. In his report Dr Falkowski gives his opinion at [12.3] that: "*Mrs Rahel suffers* [present tense] *from a recurrent depressive disorder. In between episodes of depression she still has symptoms of anxiety and a low mood at times. After Mrs Rahel was told there was going to be a restructuring at work she developed another depressive episode. Her symptoms included low mood, poor appetite, weight loss, sleep disturbance and anxiety symptoms. Her symptoms reached the point where she was suffering from a moderately severe episode according to the ICD criteria. She continues to suffer from a mild depressive episode*".

123. He then at [13.4] goes on to say: "*Mrs Rahel developed a moderate depressive episode after she was told there was going to be a restructuring. It is unlikely that she would have developed a depressive episode at that time if there had not been a restructuring. She continues to suffer from a mild depressive episode. Her symptoms are worse around the anniversary of her bereavements. She is likely to recover within 4 to 6 months but may still have some symptoms of anxiety and depression*. (*my underlying*)

124. Therefore, at its highest, this evidence may be taken as the evidence that at the relevant time what happened to Ms Rahel was not a mere natural reaction to an adverse life event, but that adverse life event caused her to develop what Dr Falkowski calls "*a moderate depressive episode*". Notably,

he also says that but for the restructuring, the claimant was unlikely to develop a depressive episode, which supports our conclusion that the claimant did not have an underlying mental condition.

125. Moreover, in answering the specific question: "*Given that Mrs Rahel suffered from a pre-existing condition to what extent did the treatment she was subjected to at work exacerbate her condition?*" Dr Falkowski says: at [13.2]

*Mrs Rahel had symptoms of anxiety and depression in 2019 but the symptoms would not have been sufficient to diagnose an anxiety or depressive disorder. She developed a moderately depressive disorder **after** she was told there was going to be a restructuring*. (*my **emphasis** & underlying*)

126. Therefore, it appears that Dr Falkowski does not accept that the claimant was suffering from a pre-existing mental condition, which again supports our conclusion of the lack at the relevant time of any such underlying mental impairment.

127. We accept that this statement appears inconsistent with his earlier statement that the claimant "*suffers from a recurrent depressive disorder*." However, he is the claimant's expert witness, which the claimant chose not to call. Therefore, the Tribunal could only give such weight to his evidence as it finds appropriate. It seems to us that it would not be fair on the respondent for us to interpret his report in the most favourable way for the claimant, when the respondent was not afforded an opportunity to cross-examine Dr Falkowski on his report.

128. We reject Mr Tomison submission that it was incumbent on the respondent to warn the claimant that it wanted to cross-examine Dr Falkowski on his statement. Dr Falkowski was not a joint expert. The usual rule is that a party that wishes to rely on expert evidence must seek permission from the Tribunal. Unlike in the case of a jointly instructed expert, it is expected that the party's expert evidence is called to be cross-examined. Therefore, any criticism of the respondent for not pre-warning the claimant are misplaced. We also do not accept that the Mahon v Accuread Limited (UKEAT/0081/08/ZT) case relied upon by Mr Tomison establishes this as a rule, In any event, **Mahon** is a very different case on the facts, and is properly distinguishable from the case before us.

129. Furthermore, Dr Falkowski says in the report that the claimant is likely to recover within 4 to 6 months but may still have symptoms of anxiety and depression. He, however, does not opine on how those on-going symptoms will affect the claimant's ability to carry out normal day-to-day activity.

130. Therefore, even if "a moderate depressive episode" means a mental impairment, it appears that Dr Falkowski conclusion is that a typical recovery period is 4-6 months following the episode, that is less than 12 months, hence is unlikely to be long-term.

131. I repeat, the fact that the claimant, in Dr Falkowski's opinion, continued to suffer from that mild depressive episode when she saw Dr Falkowski in March 2023, cannot be taken by this Tribunal as the evidence establishing that back in August 2022 the adverse effects were likely to last for 12 months or more.

132. At [47] of his closing submissions Mr Tomison says "*It is indisputable that the Claimant suffers from a mental impairment: recurrent depressive disorder. This has been diagnosed by a psychiatric expert*". This might be so, but that is not the relevant question, the relevant question is whether at the relevant time (May – August 2021) the claimant suffered from a mental impairment, which had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.

133. As I have already mentioned, Dr Falkowski report deals with the claimant health condition at the time he examined her in March 2023. He was not asked and does not answer the question whether in his opinion when she suffered a moderate depressive episode in May-August 2021 the resulting adverse effect on her ability to carry normal day-to-day activities was likely to last 12 months or more.

134. Stepping back and looking at all the evidence before us, we find that the claimant did not have a disability by reason of SAD at the relevant time. That is because, borrowing Mr Falkowski's terminology, the "*depressive episode*" she suffered at the relevant time was a normal reaction to an adverse life event, which did not develop into a mental impairment, and, in any event, the effect of it on the claimant's ability to carry out normal day-to-day activities was not likely to last for 12 months.

<u>Diabetes</u>

135. Turning to the claimant's second condition relied upon – Type 1 diabetes. It is not in dispute that the claimant had a disability within the meaning of s.6 EqA at the relevant time by reason of that impairment.

136. The law says that the assessment of the alleged substantial disadvantage must be based on the facts pertaining to the claimant's disability. In this case, diabetes, not SAD, which we have found was not a disability.

137. In other words, the Tribunal should identify what it was about the claimant's disability (Type 1 diabetes) that made the application of the PCP to the claimant putting her at a substantial disadvantage (see, for example, <u>*Chief Constable of West Midlands Police v Gardner*</u> EAT 0174/11). The claimed disadvantage must relate to the disability.

138. To put it differently, there must be a causal connection between the application of the PCP in question, which is said to result in the claimant being

put at a substantial disadvantage, and such resulting disadvantage and the claimant's disability.

139. Furthermore, 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*' — S.20(3)–(5) EqA. In the present case with persons who do not have Type 1 diabetes.

140. Finally, in assessing the reasonableness of adjustments one of the key factors that the employer should consider is whether taking any particular steps would be effective in preventing the substantial disadvantage. Although no longer part of the statutory framework, the in the Equality and Human Rights Commission's statutory Code of Practice on Employment ('**the EHRC Employment Code**') list it among other factors that a tribunal might take into account (see para 6.28).

Was the respondent in breach of its duty to make reasonable adjustments?

141. To answer this question, we need to examine first whether in the circumstances of this particular case the respondent was under the duty to make reasonable adjustments to the pleaded PCP because it was placing the claimant at a substantial disadvantage by reason of her Type 1 diabetes.

142. The parties have finally settled that the PCP was: "*a requirement to have to be fit to attend the interview for the Grade 5 post by 3 August 2021 at the latest*". The respondent accepts this was its PCP and it was applied to the Claimant during the relevant period.

143. The difficulty for the claimant is that it is hard to see how the application of the PCP created any disadvantage to her by reason of her Type 1 diabetes. In other words, how the requirement to attend the interview by 3 August 2021 put her at a disadvantage in comparison with people who do not have Type 1 diabetes. The claimant was signed off and unable to attend the interview because of work-related stress, not because of her diabetes.

144. Even accepting that the heightened stress level had negative impact on her diabetes, it was still the stress that stopped her from attending the interview. To the extent it is being suggested that even without suffering from stress the claimant would not have been able to attend the interview by reason of her diabetes, we reject that. There was no evidence before us that would enable us to come to this conclusion.

145. Finally, to the extent it could be argued that the causation chain is that the application of the PCP caused stress and stress caused negative impact on diabetes, this still leads us nowhere. That is because the claimed detriment is not being able to be interviewed for Grade 5 or Grade 4 roles, in turn resulting in losing the opportunity to retain the job, and not the worsening of diabetes.

146. For all these reasons we find that the duty to make reasonable adjustments to the pleaded PCP by reference to Type 1 diabetes did not arise in the first place.

147. It follows, that the respondent was not a breach of its s.21 EqA duty, and therefore the claimant's complaint of failure to make reasonable adjustments fails.

UNFAIR DISMISSAL

148. Next, I will deal with our conclusions on the claimant's complaint of unfair dismissal.

149. The first question – what was the reason for the claimant's dismissal?

150. The respondent says it was redundancy or, in the alternative, some other substantial reason, namely the restructure of the EDI Unit in which the Claimant worked.

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

152. This requires the tribunal to consider the mental process of the person, who made the decision to dismiss and to identify the relevant decision maker was. The tribunal must consider "only the mental processes of the person or persons who was or were authorised to, and did, take the decision to dismiss" (Orr v Milton Keynes Council 2011 ICR 704, CA).

153. If the decision is made for more than one reason the tribunal must identify the principal reason. In deciding what was the real reason for the dismissal the tribunal is not restricted in choosing between alternative reasons advanced by the parties. "*As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side*" (Kuzel v Roche Products Ltd 2008 ICR 799, CA).

154. If the employee adduces some evidence casting doubt on the employer's advanced reason, the employer will have to satisfy the tribunal that its advanced reason was in fact the genuine reason relied on at the time of dismissal (Associated Society of Locomotive Engineers and Firemen v Brady 2006 IRLR 576, EAT).

155. The burden of showing, on the balance of probabilities, a potentially fair reason is on the employer, and it fails to do show that, the dismissal will be unfair. If the tribunal rejects an employer's asserted potentially fair reason, finding that the reason could not have been the one operating on the

employer's mind at the relevant time, the tribunal is not obliged to go on and ascertain the true reason for dismissal if there is insufficient evidence to do so (Hertz (UK) Ltd v Ferrao EAT 0570/05).

156. Section 139 (1) of ERA defines redundancy as follows:

> "*an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—*
> *the fact that the requirements of that business—*
> *(i) for employees to carry out work of a particular kind, or*
> *(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,*
> *have ceased or diminished or are expected to cease or diminish*."

157. In determining whether an employee was dismissed for reason of redundancy the tribunal must decide:

> (i) was the employee dismissed?
> (ii) if so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish?
> (iii) if so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution? (Safeway Stores plc v Burrell 1997 ICR 523, EAT).

158. If the employer shows that the reason for the dismissal is a potentially fair reason under section 98(1), the tribunal must then consider the question of fairness, by reference to the matters set out in section 98(4) ERA which states:

> "*Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
> *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
> *shall be determined in accordance with equity and the substantial merits of the case.*"

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

160. In deciding whether the adopted procedure was fair or unfair the tribunal must not fall into the error of substitution. The question is not whether the tribunal or another employer would have adopted a different and, what the

tribunal might consider a fairer procedure, but whether the procedure adopted by the respondent "*lay within the range of conduct which a reasonable employer could have adopted*" (*Williams v Compair Maxam Ltd* [1982] ICR 156).

161. A fair consultation would normally require the employer to give the employee "*a fair and proper opportunity to understand fully the matters about which [he] is being consulted, and to express [his] views on those subjects, with the consultor thereafter considering those views properly and genuinely*." (per Glidwell LJ in R v British Coal Corporation and Secretary of State for Trade & Industry ex parte Price and others [1994] IRLR 72) cited with approval and as applicable to individual consultation by EAT in Rowell v Hubbard Group Services Ltd 1995 IRLR 195, EAT "*when the need for consultation exists, it must be fair and genuine, and should… be conducted so far as possible as the passage from Glidewell LJ's judgment suggests*". A fair consultation process must give the employee an opportunity to contest his selection for redundancy (John Brown Engineering Ltd v Brown and ors 1997 IRLR 90, EAT).

162. If the tribunal decides that the dismissal is procedurally unfair, as part of considering the issue of remedy it ought to consider the question whether the employee would have been fairly dismissed in any event, and/or to what extent and/or when. This inevitably involves an element of speculation. However, the tribunal may reasonably take the view that based on the evidence available it might be too speculative and uncertain to try and predict what might have happened if a fair procedure had been followed (Software 2000 Ltd v Andrews and ors 2007 ICR 825, EAT).

Was the claimant dismissed for redundancy or for SOSR (restructure)?

163. We find that the respondent has failed to show that the true reason for the claimant's dismissal was redundancy or the EDI function's restructure. We say that for the following reasons.

164. Although we do not question the genuineness of the restructure itself, we find that it was used as a means of dismissing the claimant by eliminating her job and making it virtually impossible for her to secure a job in the new structure. To put it bluntly, it was a convenient way to get rid of the claimant.

165. Although IC denied that in her evidence, we find her evidence unconvincing. In general, the evidence she gave was less than satisfactory, and in many respects contradictory and self-serving. It was full of logical contradictions, which were laid bare in her cross-examination.

166. A glaring example of such logical flaws was IC's accepting that under the claimant's old job "broad" description she, as her manager, was entitled to ask her to do all the tasks she wanted a Band 5 EDI Manager do in the new structure, and therefore the scope of the claimant's duties and Band 5 EDI managers duties were the same, and yet saying that the claimant's role was only 25% fit with the new role. IC also accepted that it was not a question of of

the claimant's skills, but then said that the claimant needed to demonstrate her skills at an interview.

167. IC stated in her witness statement (at [20]) that the claimant was not interested in Grade 4 roles, which was plainly untrue (see our findings above).

168. Looking at the evidence before us, we find that the so-called mapping exercise was no more than a "retrofit" to justify the already made decision that the claimant had no place in the new structure. The IC's evidence on how she went about that exercise were confused and contradictory. If the new job description did not contain anything that was outside the claimant broad job description (which was accepted by IC in her evidence), by definition, as far as the duties were concerned, it was a perfect match between the two roles. The fact that the claimant was undertaking different tasks to what IC thought would need to be undertaken by a Band 5 Manager going forward was a simple matter of IC giving the claimant those tasks, and not such other tasks.

169. There is no evidence before us that the claimant ever told IC that she would not do a particular task because it was outside her duties. The IC's evidence that the new role was "strategic", whilst the claimant was more "operational" is devote of any substance.

170. The IC's evidence (at [25]) that the new "*role was different and included an obligation to undertake work necessary to ensure the University achieved the Race Equality Charter and a duty to consider and implement the EDI strategy*". However, the claimant's job description clearly states that her main duties include, amongst others, to "[w]*ith the guidance and leadership of the Head of Diversity Team, contribute to the development, monitoring and enhancement of strategy, policy, projects and procedures that progress staff equality, diversity and inclusion at UAL*", "[t]*o ensure that relevant equality data is collated, monitored and published; to conduct impact assessments of policies and functions; to undertake stakeholder consultations and to offer recommendations for future policy and practice*", "[a]*s steered by the Head of Diversity Team, co-ordinate a range of diversity and inclusion projects and initiatives, providing advice, coaching and support to key stakeholders as appropriate*", and "*[t]o perform such duties consistent with your position as may from time to time be assigned to you anywhere within the University*".

171. Achieving the Race Equality Charter was an initiative that IC wanted the EDI function to undertake. The new Band 5 role description said that the EDI Manager will be required "[t]*o coordinate and manage the development and delivery of UAL application for the Race Equality Charter (REC) award and assist with implementation of the action plan that will follow a successful application", act as a first point of contact for queries and information relating to the Race Equality Charter",* and "[t]*o work in collaboration with Head of EDI and the University's Self-Assessment Team on the University's Race Equality Charter initiatives and application"*. All that was well within the claimant's job description duties.

172. The IC's evidence about the rationale for not extending the interview deadline was equally defining any logic. If IC thought the claimant would not be able to attend the interview in late August because the OH's report said that they could not give a date when the claimant would be ready for the interview, what was the point of fixing the interview on 3 August when the claimant was off sick and then trying to justify it by saying that although the claimant was signed off as unfit to work that did not mean she was unfit to attend the interview?

173. Furthermore, the OH report clearly recommended that IC engages with the claimant in a positive dialog to reduce the claimant's stress level thus helping the claimant to ease back to work and to prepare for the interview (see paragraph 49 above). Instead, IC put the claimant under all kinds of pressure to attend the interview before she was even fit to return to work. In this context, the IC's suggestion that "*By undertaking the interview process it will assist UAL to explore your suitability to the roles you have identified an interest in and enable us to move this process to a conclusion with the aim of reducing your perceived pressure*" (see paragraph 56 above – my underlying) is very strange, unless it is read as meaning that IC wanted to get it done and over with, knowing that even if the claimant came for the interview that would be just a formality and the claimant would not be given the job.

174. Moreover, neither IC nor ZH were able to provide a credible explanation about the respondent, on the one hand telling the claimant that the roles were "ringfenced" for her, and on the other hand - pressing ahead with the recruitment process and not showing much (if any) flexibility to accommodate the claimant. It was not fully clear from their evidence what the respondent actually meant by "ringfencing" the roles for the claimant, but if it meant that the claimant would be considered for these roles ahead of any other candidates, that necessarily required the respondent to give the claimant at least a fair opportunity to be interviewed for the roles. We find that she was not afforded that opportunity.

175. We do not accept the IC's evidence that there were pressing business needs to fill in the roles. The external candidates did not start until much later (in October – November 2021) and it appears that one of the roles remained unfilled. On the other hand, the claimant was already in the role and was available to start it (or to be more precise - to continue in her role) as soon as she was back from her sickness leave.

176. There were many more similar illogical, contradictory, and self-service statements and answers in the IC's evidence to this Tribunal. In short, we found her evidence unreliable and prefer the claimant's evidence, whom we found a credible and helpful witness.

177. Therefore, we do not accept the IC's evidence that she wanted to keep the claimant in her team and that it was the restructure of the EDI function that made her to dismiss the claimant.

178. Although, applying the ***Safeway*** three step test, and, for the sake of argument, accepting that the restructure amounted in law to a redundancy situation (that is because the requirements for employees to carry out work of a particular kind (that is EDI Officer Band 5) had ceased, or were expected to cease), on one view it could be said that the claimant's dismissal was caused wholly or mainly by that cessation of the requirements, that, in our view, would be a wrong approach on the facts of this case.

179. Just because the new structure did not replicate the claimant's role does not mean that the true reason for the claimant's dismissal was the cessation of the claimant's role. This approach would conflate the reason for the dismissal (i.e. a set of facts or beliefs, which cause IC to dismiss the claimant) with the consequences of the decision to dismiss the claimant.

180. To put it simply, in this case, we find that IC first had decided to dismiss the claimant, because she did not see her in her new structure, and then in consequence of that decision IC developed and implemented the new EDI team restructure with the claimant's role eliminated.

181. Whether it was because IC was unsuccessful in getting approval for the second Band 5 manager role is irrelevant[1]. This does not show that the reason for the claimant's dismissal (i.e. what operated on IC's mind when she decided to dismiss the claimant) was redundancy or restructure. If anything, if it is suggested that if the second Band 5 role had been approved, IC would not have dismissed the claimant, it shows the opposite. That is because if in that scenario IC would have been prepared to keep the claimant in the second Band 5 EDI Manager role (with the same job description as the first Band 5 EDI Manager role), her evidence that the claimant's role was only a 25% match with the Band 5 Manager would be even less credible than it was.

182. We find that if IC genuinely wanted to keep the claimant, she would have mapped her across into the new Band 5 or at the very least offered her one of the two Band 4 roles. I have already explained why we found her evidence about the mapping exercise self-serving and not credible. We find this was done after IC had taken the decision to dismiss the claimant and in order to justify excluding the claimant for the new structure, and only in response for the details of the mapping exercise requested by KR. The response itself shows that IC did that based on her personal view of what she thought the claimant was actually doing, as opposed to comparting the claimant's duties with the duties of the new Band 5 EDI manager role.

183. Furthermore, the IC's approach in refusing to slot the claimant into the Band 5 role and consider slotting her in one of the two Band 4 roles because these were a grade below (see paragraph 31 above) was clearly inconsistent with the what the restructure proposal document required her to do (see paragraph 23 above). In fact, this document itself betrays the pre-determined outcome, where, on the one hand, it states that "*Consideration will be given to comparing the job duties and grade of the new posts with the job currently undertaken by the employee(s) to identify roles which may be possible alternative employment. Roles that are one grade lower than the employee's current role will be considered, with appropriate pay protection*" and, on the other hand, already records that "*….the EDI officer (0.6, Grade 5) post will be deleted*

[1] There were some arguments exchanged at the hearing as to whether the initial proposal to the board had included two Band 5 roles in the new structure, with the implication being that one would be ringfenced for the claimant. IC said that the initial proposal had had two Band 5 roles, and Mr Tomison submitted that it was untrue. We find that we do not need to make a positive finding on this issue. In any event, even if the initial proposal did contain two Band 5 roles (with one being ringfenced for the claimant) this does not assist the respondent, but, on the contrary, goes against its case on the less than 25% match between the two roles.

with no immediate suitable alternative employment and so the post holder will be at risk of redundancy". (*underlining added*).

184. In short, we find that the respondent has failed to show that the true reason for the dismissal was redundancy or restructuring, as a potentially fair reason, and therefore we find that the claimant's dismissal was unfair.

185. That is sufficient to decide this complaint.

186. However, we have also examined the case on the premise if the reason for the dismissal were in fact redundancy and/or restructuring.

187. We would have still found the dismissal unfair.

188. That is not only because significant procedural flaws in the process taking it outside the range of reasonable responses but, more importantly, because we find that the decision to dismiss the claimant was pre-determined and the respondent was simply going through the motions to see the claimant out.

189. Although submitted in the context of the complaint of failure to make reasonable adjustments, paragraphs 61 – 86, 90 - 95 in Mr Tomison's closing submissions (with which we agree) show the unfairness of the process.

190. For these reasons, we find the complaint of unfair dismissal is well founded.

Polkey reduction

191. Although the respondent did not make any substantive submissions on the Polkey issue, the Tribunal has a duty to consider this issue as part of awarding just and equitable compensation.

192. Our primary finding is that redundancy or restructuring were not the true reasons for the dismissal.

193. Therefore, to consider the Polkey point, we need to decide if the respondent had a potentially fair reason to dismiss the claimant what would have been the chance of the claimant being dismissed for such a fair reason and when.

194. The obvious scenario on the facts is whether the claimant would have been dismissed because of the EDI team restructure for redundancy or SOSR (restructure). However, as we have found if IC did not wish to dismiss the claimant for her personal reasons, the claimant would have been mapped across into the Band 5 or one of the Band 4 roles, and therefore would not have been dismissed.

195. The same applies if one were to approach the question from the position that redundancy/restructuring was in fact the reason for the dismissal,

but the dismissal was procedurally unfair. Had a fair process been followed, we find, that the claimant would have been mapped across to one of the roles in the new structure.

196. It follows, that we make no Polkey reduction.

VICTIMISATION

197. Turning to the final complaint of victimisation.

198. Section 27 EqA states:

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because— (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.
(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.
(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith."

199. The relevant legal principles can be summarised as follows:

a. The claimant is protected when he or she complains about discrimination even if he or she is wrong and there has been no discrimination, unless the complaint was made in bad faith, e.g. a false allegation without the employee believing he/she or someone else was discriminated against.
b. The protection is against victimisation for raising a complaint of discrimination. The claimant is not protected against victimisation for simply complaining about unfairness. It is important to identify precisely what the claimant said which amounts to a "protected act" (see Beneviste v Kingston University EAT 0393/05). The protected act must have taken place before the detrimental treatment which is complained of.
c. The meaning of a "detriment" for the purposes of s.27 EqA is broadly the same as the meaning of a "detriment" for the purposes of s.47B ERA. It involves examining the situation from the claimant's point of view and also considering whether a reasonable worker would or might take the view that the treatment in question was in all the circumstances to his or her disadvantage (subjective/objective test) – (see Warburton v Chief Constable of Northamptonshire Police 2022 EAT 42), An unjustified sense of grievance could not amount to a detriment. However, whether or not the claimant has been disadvantaged is to be viewed subjectively (see Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL).
d. Detriment cannot be because of a protected act in circumstances where the person who allegedly inflicted the detriment did not know about the protected act (see Scott v London Borough of Hillingdon 2001 EWCA Civ 2005, CA).

e. If the person who subjects the claimant to the detriment does not do so because of the protected act (and may not even know of the protected act) but has been influenced or manipulated to carry out the detriment by a different person who is aware of it, the detrimental treatment is the manipulation or tainted information (see CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439; [2015] IRLR 562, CA.)
f. Decisions are frequently reached for more than one reason. Provided the protected act, had a significant influence on the outcome, discrimination is made out (Nagarajan v London Regional Transport [1999] IRLR 572, HL, applied in the context of a victimisation claim in Villalba v Merrill Lynch and Co Inc and ors 2007 ICR 469, EAT). As with direct discrimination, the discriminator may have been unconsciously motivated by the protected act (Nagarajan v London Regional Transport 1999 ICR 877, HL).

Time Limit

200. Under s123 EqA a claim under s.27 EqA may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable.

201. However, under s132(3) EqA conduct extending over a period is treated as if done at the end of the period, so the 3 month's period needs to be counted from that point. This is often colloquially referred to as '*continuing act*'.

202. In *Hendricks v Commissioner of Police for the Metropolis* [2003] IRLR 96, the Court of Appeal held that '*an act extending over a period*' can comprise a '*an on-going situation or a continuing state of affairs*' as opposed to a succession of isolated or unconnected acts. There needs to be some kind of link or connection between the actions, especially if different people are involved.

Burden of Proof

203. Section 136 of the EqA states:

> "*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*"

204. There are two stages to the burden of proof:

Stage 1: There must be primary facts from which the tribunal could decide – in the absence of any other explanation, that discrimination took place. The burden of proof is on the claimant (Ayodele v (1) Citylink Ltd (2) Napier [2018]

IRLR 114, CA; Royal Mail Group Ltd v Efobi [2021] UKSC 22).

This is sometimes referred to as proving a *prima facie* case. If this happens, the burden of proof shifts to the respondent.

Stage 2: The respondent must then prove that it did not discriminate against the claimant. The respondent must prove that the treatment was '*in no sense whatsoever*' because of the protected characteristic. As the facts necessary for an explanation are normally in the respondent's possession, a tribunal would normally expect '*cogent evidence*' to discharge the burden of proof.

205. The guidance on the two-stage approach was set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258. Although this concerned sex discrimination under the Sex Discrimination Act, these principles still apply and must be followed (see, for example, Field v Steve Pye & Co (KL) Ltd [2022] EAT 68).

Out of time detriments

206. The respondent accepts that all pleaded protected acts were protected acts under s.27 EqA.

207. It was not disputed by the respondent that the alleged detriments in law amount to detriments.

208. On the face of it, detriments 16 (a), (b), (c) on the List of Issues are out of time. However, we find these were continuing acts linking them to the subsequent in-time detriments. Considering our findings and conclusions on the unfair dismissal complaint it appears the obvious and the only possible conclusion. As we have found, IC had decided to dismiss the claimant from the start of the process, and all these acts and omissions (in time and out of time) were essentially her carrying out that plan.

Has the claimant established a prima facie case of victimisation?

209. Yes, we find she has. Her evidence was that she had good relationship with IC before she made complaints of discrimination in the PRA document in August 2020. That was supported by IC's evidence, who described their pre-August 2020 relationship as "*wonderful*".

210. The way IC handled that complaint gives strong indication that she was unhappy about the claimant making it. She did not follow the PRA process, she did not refer it to HR, she simply decided to ignore it. Her evidence that she told the claimant to go and re-write the PRA document to reflect what had been discussed at the meeting, if anything, shows that she was unhappy with what the claimant had written in the PRA.

211. The claimant then found herself on the receiving end of a restructuring process, which, as we have found, was highly unfair on her and its outcome was pre-determined.

212. All that, in our view, is more than enough of the evidence from which we could conclude, in the absence of any other explanation from the respondent, that the claimant's protected acts were the reason for the treatment by IC.

213. With respect to the detriments not involving IC (16 g(iii), (iv) and (v), h, i, and j – see the List of Issues in the Annex), we also find that the initial burden of proof has been met by the claimant.

214. The refusal to deal with the claimant's discrimination complaints and delay in dealing with her redundancy complaints require an explanation. These delays and the respondent's failure to properly engage with the complaint go contrary to the respondent's policies and procedure and its commitment to "*a zero tolerance approach to bullying and harassment, any other form of discrimination and victimisation*" (from the respondent's Dignity at Work Policy).

215. Taking in the overall context of the treatment of the claimant by IC, following her first complaint, we find that absent any such explanations from the respondent about the delays and failures we could conclude they were because of the claimant repeatedly complaining about discrimination.

Did the respondent prove that the protected acts in no sense whatsoever were the reason for the detrimental treatment?

216. To answer this question, we find that it is convenient to group the detriments as follows:

(i) "IC's detriments" – (a) – (f) and (g(i), (ii) in the List of Issues,
(ii) "SM's detriment" - g(iii)
(iii) "Appeal detriments" - (g(iv), h and i), and
(iv) "Dignity at Work complaint detriment" - (j)

IC's detriments

217. I have already explained why we find IC's evidence unreliable and unsatisfactory. We equally find her denial that the claimant's complaining about discrimination did not have any influence on her actions and decisions unpersuasive.

218. On the contrary, it appears to us that the lack of action on her part to deal with these complaints is very surprising, to say the least, especially from the Head of the EDI function.

219. Furthermore, it is clear from reading the IC's correspondence with the claimant after the first protected act - these were not exchanges with someone you think you have "*wonderful*" relationships.

220. The fact that on one occasion the claimant went to IC for advice before her meeting with SM and thanked IC for her advice does not change the overall picture.

221. As we have found when dealing with the unfair dismissal complaint, the IC's actions were clearly unfair and unreasonable, and even heavy-handed. You would not expect such actions towards someone you have "wonderful" relationship with and want to remain in your team.

222. Looking at all these evidence in the round, we find that the respondent has failed to show that the protected acts in no sense whatsoever influenced (consciously or unconsciously) the IC's actions towards the claimant that are relied upon as the IC's detriments.

223. We find that the IC's acts/omissions complained of amount in law to detriments.

224. It follows, that the claimant's complaint of victimisation in relation to these allegations succeeds.

SM's detriment

225. Although we find that SM did not handle the claimant's discrimination complaint properly, we do not find that it was because the claimant had made her complaint of discrimination in her letter to the Vice-Chancellor or because of any other protected acts. We accept SM's evidence that these complaints had not influenced his decision. It appears to us that he did not engage with the issue properly, but that was because he relied on the HR advice that it was outside the scope of his role and the discrimination complaint should be pursuit through a different route – a grievance under the Dignity at Work policy. We accept his evidence on this issue.

226. Furthermore, SM did put the claimant's allegations of discrimination to IC during his interview with her. Therefore, there was a sort of investigation done by him, albeit very limited. He responded to the claimant on her discrimination allegations and referred the claimant to different HR processes to take her discrimination allegations forward. Therefore, we do not accept Mr Tomison's submission that SM wanted to shut them down.

227. We, therefore, find that SM did not victimise the claimant by failing to investigate and respond to her allegation. That allegation of victimisation fails.

Appeal detriments

228. With respect to detriment (g (iv)) we are satisfied that the appeal panel failure to properly and fully investigate the allegations of discrimination was not because these allegations were made, but them simply thinking, on the HR advice, that it was outside their remit. We accept HG's evidence on this issue (para 6 of his WS).

229. This, of course, in some respect contradicts what AL had suggested the panel may wish to consider as part of its investigation (see paragraph 70 above). However, on balance, we find that it just shows a rather disjoint and confused approach the respondent had adopted in dealing with the claimant's discrimination complaints, by trying to artificially separate her discrimination complaints as partially related to how the claimant was treated by IC in general (outside the appeal panel remit), and partially related to her treatment within the restructuring process (in scope), despite those elements being clearly intertwined, and the so-called in-scope part could only be properly considered in the context of the entire picture.

230. To some extent the appeal panel did address the allegations (see paragraph 79 above). Albeit the panel findings and conclusions appear surprising (see the highlighted text at paragraph 79) and, as noted in the preceding paragraph, show that the panel did not properly engage with the issue, we do not find that the reason for that was the claimant's protected acts.

231. We also accept HG's oral evidence to this Tribunal as to the reasons for the delay in hearing the appeal and sending the outcome (detriments h and i), which were due to an unexpected unfortunate development affecting the panel chair's availability, the claimant's requested changes to the composition of the panel, and the temporary absence of the person, who was responsible for producing the outcome letter and the minutes. These reasons were not in any sense whatsoever related to the protected acts.

232. Therefore, these allegations of victimisation (detriments g(iv), h and i) fail too.

Dignity and work complaint detriment

233. We find that the respondent has failed to show that the failure to deal with this complaint was in no sense whatsoever because of the protected acts relied upon.

234. Ms SM's evidence on this issue was highly unsatisfactory and only showed that there were no good reasons to ignore the complaint. The facts that it was ignored under the pretext that the claimant was no longer an employee, only then 9 months later (and after the claimant had issued tribunal claim) to investigate and dismiss it, goes to show that the explanations provided to the claimant at that time were simply false. See our findings of fact at paragraphs 63-66,71,80- 83 above.

235. We, therefore, find that this allegation of victimisation (detriment (j)) succeeds.

236. To sum up:

(i) The complaint of failure to make reasonable adjustments fails because at the relevant times the claimant did not have a disability by reason of SAD, and because the duty to make reasonable adjustments to the PCP by reason of the claimant's Type 1 diabetes did not arise;

(ii) The claimant's complaint of unfair dismissal succeeds. There shall be no Polkey reduction.

(iii) The complaint of victimisation in relation to detriments (a) to (f), g(i), g(ii) and j succeeds, and fails in relation to detriments g(iii), g(iv), h and i.

Employment Judge Klimov

4 June 2024

Sent to the parties on:

5 June 2024

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For the Tribunals Office

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Annex – The final List of Issues

Disability - Introduction

1. The parties agree the Claimant's disability-related claims require her to have been disabled during the period May 2021 – August 2021 (the "**relevant period**").
2. The Claimant alleges she had two relevant disabilities during the relevant period: Type 1 Diabetes, and stress, anxiety and depression (**SAD**).
3. The Respondent accepts the Claimant was disabled because of Type 1 Diabetes during the relevant period. It does not accept the Claimant was disabled because of SAD.

Disability – Stress, Anxiety, Depression

4. Was the Claimant disabled because of SAD during the relevant period? In particular:
   - 4.1 Did the Claimant have mental impairments of stress, anxiety and/or depression?
   - 4.2 If yes, did that impairment have a substantial adverse effect on the Claimant's ability to carry out normal day to day activities?
   - 4.3 If yes, was that substantial adverse effect itself long-term, ie:
     a. had it lasted 12 months? or
     b. was it likely to last 12 months?

Jurisdiction / Time Bar

5. Were the Claimant's Equality Act 2010 claims presented in time, ie, within 3 months of the conduct (act, omission, detriment) relied upon (taking into account the effect of ACAS early conciliation)?
6. If not, did that conduct form part of conduct extending over a period of time in respect of which the Claimant timely presented a claim?
7. If not, and a claim was presented out of time, is it just and equitable to extend time to allow the claim to be presented?

Claim #1: Failure to make reasonable adjustments (ss.20-21 Equality Act 2010)

8. During the relevant period, did the Respondent apply the following PCP to the Claimant: "*a requirement to have to be fit to attend the interview for the Grade 5 post by 3 August 2021 at the latest"*. The Respondent accepts that this was a PCP that it applied to the Claimant during the relevant period.

9. Did the application of that PCP put the Claimant to the following comparative disadvantages which applying the PCP to her non-disabled work colleagues did not or would not put them to:
   9.1 not being able to interview for the Grade 5 post;
   9.2 not being able to secure the position of the Grade 5 or Grade 4 posts;
   9.3 not being able to be retained;
   9.4 not being able to avoid dismissal.

10. If yes, did the Respondent know, or could it reasonably be expected to know –
   10.1 that the Claimant had the disability of stress, anxiety and depression, and
   10.2 that she was likely to be placed at a substantial disadvantage by the PCP.

11. If and to the extent the Claimant was put to the disadvantages referred to in 9 above, would the following adjustments have avoided or materially reduced those disadvantages:
   11.1 extending the deadline for the Grade 5 post by granting the Claimant a further 3 weeks (from 3 August to 23 August 2021) to return to work and be fit to attend the interview for the Grade 5 EDI Manager post;
   11.2 allocating someone other than Ms Chan to deal with the Claimant (the Claimant alleges this would have facilitated a faster return to work and enabled her to have interviewed for the Grade 5 post on 3 August 2021);
   11.3 offering the Claimant the following alternative Grade 4 posts:
      a. full time EDI Officer post;
      b. full time EDI Disability Officer post.

12. Did the Respondent make those adjustments?

13. Were those adjustments reasonable adjustments for the Respondent to have to make to avoid/reduce those disadvantages?

14. Given the foregoing, is the Respondent in breach of its duty to make reasonable adjustments for the Claimant?

Claim #3 - Victimisation (s.27 Equality Act 2010)

15. The Claimant relies on the following protected acts. The Respondent accepts that these were protected acts:

   a. In her PRA form on 26 August 2020:

(i) Allegation of disability discrimination and harassment (bundle page 246) ending "If I did not have these impairments I would not be in this situation, I think that amounts to harassment and discrimination and certainly feels hostile."

(ii) Allegations of disability and age discrimination (page 247) ending "Maybe my impairments, my age and my experience are all too much for UAL to manage"

b. In her response to the proposed restructure on 17 March 2021:

(i) Allegations of disability and race discrimination contained in bullet points on first page (page 373) and expanded upon thereafter;

(ii) Allegations of disability, race and age discrimination (page 383): "The repetition of Full-time for all the posts as opposed to 1FTE, is discriminatory against me, the only current post holder at risk of redundancy from this proposal, a disabled, woman of colour of a certain age, working part-time.

c. In her letter to the Vice Chancellor on 19 April 2021:

(i) Allegations of disability, age and race discrimination as explained in letter whereby she explains that the restructure is designed against her and concluding with "*It feels that I am an inconvenience to management for a number of reasons, including my disability, age and my lived experience as a person of colour who will challenge bad practice*" (page 413);

(ii) Allegations of disability discrimination contained in bullet points on page 413.

d. In her meeting with Stephen Marshall on 12 May 2021: "NR stated that she believes it is indirect or direct discrimination due to her age, disability or race" (page 432), plus preceding and following factual details supporting that allegation.

e. In her appeal against redundancy on 26 July 2021:

(i) Allegations of disability, age and race discrimination as stated in first and second bullet points on p1 (page 484) and detailed thereafter

(ii) Allegation of disability discrimination and harassment contained under "context" sub-heading (page 484)

f. In her Dignity at Work complaint on 7 September 2021;

(i) Allegations of disability, age and race discrimination explained in bullet points on page 1 (p500 bundle) and expanded upon thereafter

g. In her revised Dignity at Work complaint on 4 October 2021:

(i) Allegations of disability, age and race discrimination explained on page 1 and expanded upon thereafter.

16. Did the Respondent do (or fail to do) the following:

a. select the Claimant's post for redundancy in January 2021 (protected act (a));

b. fail to slot/match the Claimant directly into the Grade 5 EDI Manager role (which the Claimant alleges was effectively her role). This decision was taken by 27 January 2021 (protected act (a));

c. fail to share the details of the slotting exercise with the Claimant until after 12 May 2021 (the Claimant alleges it ought to have been shared on 3 February 2021) (protected act (a));

d. fail to extend the interview period for the Grade 5 EDI Manager role beyond 3 August 2021. The final decision was taken on 23 July 2021 (protected acts (a)-(d));

e. fail to consider the Claimant for the following alternative roles once it was decided that the grade 5 deadline would not be extended. C alleges that consideration should have been given on 23 July 2021 (protected acts (a)-(d)):

   (i) full time EDI Officer post;

   (ii) full time EDI Disability Officer

f. dismiss the Claimant (protected acts (a)-(d));

g. fail to properly investigate and respond to the Claimant's allegations of race, age and or disability discrimination made between 26 August 2020 (complaints first raised) until the outcome of her appeal (21 December 2021) – here, the Claimant will allege that:

   the Respondent failed to provide any investigation notes;

   the Respondent failed to investigate/determine whether the Claimant had been discriminated against by Ms Chan;

   the Respondent failed to interview any of her colleagues were interviewed to establish whether there were any concerns regarding her treatment;

   In terms of timing:

   (i) Ms Chan should have responded to the allegations of discrimination contained in the PRA within one month (protected act (a)).

   (ii) Ms Chan should have responded to the allegations of discrimination made in the Claimant's response to the proposed restructure on 17 March 2021 in her outcome letter on 30 March 2021 (protected acts (a)-(b)).

   (iii) Mr Marshall should have investigated and responded to the Claimant's allegations of discrimination on 12 May 2021 in his outcome letter on 20 May 2021 (protected act (c)).

   (iv) The appeal panel should have investigated and responded to the Claimant's allegations of discrimination on outcome of the appeal (protected acts (b)-(e)).

h. delay dealing with the Claimant's appeal (5 months). The appeal was dealt with on 17 November 2021. (protected acts (b)-(e));

i. delay sending the outcome following the appeal meeting in November 2021, thereby breaching the Respondent's own policies. The outcome was sent on 16 December 2021 (protected acts (b)-(e));

j. fail to deal with the Claimant's 'dignity at work' complaints on the basis that she was no longer an employee. The failure occurred on 4 October 2021.(protected acts (f)-(g))

17. If and to the extent the conduct occurred, did the Respondent thereby subject the Claimant to a detriment?

18. If the Claimant was subjected to a detriment, was that because she had done one or more protected act (and if yes, which specific protected act/acts)?

Claim #5: Unfair Dismissal (ss.94-98 Employment Rights Act 1996)

19. Was the Claimant dismissed for the potentially fair reason of either
    19.1 Redundancy? or
    19.2 Some other substantial reason, namely, restructure of the EDI Unit in which the Claimant worked?

20. If so:
    a. did the Respondent engage in a reasonable consultation process?
    b. did the Respondent make reasonable efforts to find alternative employment for the Claimant before dismissing her on grounds of redundancy?

21. Was the Claimant's dismissal within the range of reasonable responses open to the Respondent at the time?

22. If the Claimant was unfairly dismissed, is there a chance – and if so, how great a chance – she would have been fairly dismissed if a fair process had been followed?